



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

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### CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 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 2019

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
17	Friday, January 25, 2019	February 13, 2019
18	Friday, February 8, 2019	February 27, 2019
19	Friday, February 22, 2019	March 13, 2019

**PLEASE NOTE:**

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

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

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

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

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Air quality, amendments to chs 20, 22, 23, 25 IAB 1/2/19 <b>ARC 4221C</b>	Conference Room 4 East Wallace State Office Bldg. Des Moines, Iowa	January 22, 2019 1 to 2 p.m.
Surface water classification, 61.3(5) IAB 1/16/19 <b>ARC 4227C</b>	Urbandale Public Library 3520 86th St. Urbandale, Iowa	February 12, 2019 4 p.m.
	Nicola-Stoufer Room Washington Public Library 115 W. Washington St. Washington, Iowa	February 13, 2019 4 p.m.
	Harlan Community Library 718 Court St. Harlan, Iowa	February 14, 2019 4 p.m.

**INSURANCE DIVISION[191]**

Short-term limited-duration health insurance policies, 35.23, 36.4(17), 36.6(11), 36.7(13) IAB 1/16/19 <b>ARC 4242C</b>	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	February 8, 2019 11 a.m. to 12 noon
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**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

Contribution rates; sick and compensatory time; bona fide funds; vesting; service credit and purchases; IRC Section 415 testing; beneficiaries; alternate payees; overpayments and underpayments, amendments to chs 4, 6 to 9, 11, 12, 14, 16 IAB 1/16/19 <b>ARC 4238C</b>	IPERS 7401 Register Dr. Des Moines, Iowa	February 5, 2019 9 to 10 a.m.
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**LABOR SERVICES DIVISION[875]**

Federal occupational safety and health standards for crane operator training—adoption by reference, 26.1 IAB 1/2/19 <b>ARC 4198C</b>	150 Des Moines St. Des Moines, Iowa	January 23, 2019 9 a.m. (If requested)
Conveyance safety program—elevator alterations, fees, 71.10(4), 71.16(4) IAB 1/16/19 <b>ARC 4237C</b>	150 Des Moines St. Des Moines, Iowa	February 6, 2019 9 a.m. (If requested)

**MEDICINE BOARD[653]**

Training for chronic pain management and end-of-life care for permanent or special license renewal; definition of “opioid,” 11.1, 11.4(1) IAB 1/2/19 <b>ARC 4204C</b>	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	January 22, 2019 10 to 11 a.m.
Standards of practice—medical cannabidiol, 13.15(1) IAB 1/16/19 <b>ARC 4241C</b>	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	February 5, 2019 9 a.m.

**NATURAL RESOURCE COMMISSION[571]**

Camping, rental facility, vessel storage, and other special privilege fees, 61.2 to 61.6, 61.22(1)“b” IAB 1/16/19 <b>ARC 4225C</b>	Conference Room 4E/4W Wallace State Office Bldg. Des Moines, Iowa	February 7, 2019 12 noon to 2 p.m.
	Lake Darling Lodge 111 Lake Darling Rd. Brighton, Iowa	February 7, 2019 12 noon to 2 p.m.
	Conference Room Cold Springs District Office 57744 Lewis Rd. Lewis, Iowa	February 7, 2019 12 noon to 2 p.m.
	Clear Lake State Park Office 2730 South Lakeview Dr. Clear Lake, Iowa	February 7, 2019 12 noon to 2 p.m.
	Conference Room Delaware County Conservation Board 2379 Jefferson Rd. Manchester, Iowa	February 7, 2019 12 noon to 2 p.m.
	Banquet Room Lewis and Clark Visitor Center 21914 Park Loop Onawa, Iowa	February 7, 2019 12 noon to 2 p.m.

**NATURAL RESOURCES DEPARTMENT[561]**

State park and recreation area fees, ch 16 IAB 1/16/19 <b>ARC 4226C</b>	Conference Room Delaware County Conservation Board 2379 Jefferson Rd. Manchester, Iowa	February 7, 2019 12 noon to 2 p.m.
	Clear Lake State Park Office 2730 South Lakeview Dr. Clear Lake, Iowa	February 7, 2019 12 noon to 2 p.m.
	Banquet Room Lewis and Clark Visitor Center 21914 Park Loop Onawa, Iowa	February 7, 2019 12 noon to 2 p.m.
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	Lark Darling Lodge 111 Lake Darling Rd. Brighton, Iowa	February 7, 2019 12 noon to 2 p.m.

**NATURAL RESOURCES DEPARTMENT[561](cont'd)**

Conference Room 4E/4W  
Wallace State Office Bldg.  
Des Moines, Iowa

February 7, 2019  
12 noon to 2 p.m.

**PUBLIC HEALTH DEPARTMENT[641]**

Vaporizable forms of medical  
cannabidiol, 154.14  
IAB 1/16/19 ARC 4240C

Room 518  
Lucas State Office Bldg.  
Des Moines, Iowa

February 6, 2019  
11 to 11:30 a.m.

**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Oversight by superintendent  
of banking—update of rules,  
amend chs 1, 3, 5, 6, 8, 9, 11,  
16, 17; adopt chs 18 to 25  
IAB 1/16/19 ARC 4224C

Small Conference Room, Third Floor  
200 E. Grand Ave.  
Des Moines, Iowa

February 8, 2019  
8:30 to 9:30 a.m.

**REVENUE DEPARTMENT[701]**

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Room 430, Fourth Floor  
Hoover State Office Bldg.  
Des Moines, Iowa

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and specified digital products,  
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IAB 1/2/19 ARC 4200C

Room 430, Fourth Floor  
Hoover State Office Bldg.  
Des Moines, Iowa

January 23, 2019  
10 to 11 a.m.

**TRANSPORTATION DEPARTMENT[761]**

Procurement of equipment,  
materials, supplies and  
services; exemptions from  
competition with private  
enterprise, amendments to chs  
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IAB 1/16/19 ARC 4236C

Department of Transportation  
Administration Bldg.  
First Floor, South Conference Room  
800 Lincoln Way  
Ames, Iowa

February 7, 2019  
9 a.m.  
(If requested)

Public improvement quotation  
process—retained funds,  
amendments to ch 180  
IAB 1/16/19 ARC 4228C

Department of Transportation  
Administration Bldg.  
First Floor, North Conference Room  
800 Lincoln Way  
Ames, Iowa

February 7, 2019  
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(If requested)

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Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Blvd.  
Ankeny, Iowa

February 7, 2019  
1 p.m.  
(If requested)

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Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Blvd.  
Ankeny, Iowa

February 7, 2019  
4 p.m.  
(If requested)

**TRANSPORTATION DEPARTMENT[761](cont'd)**

Permitted tandem axle weights, 511.13(6) IAB 1/16/19 <b>ARC 4231C</b>	Department of Transportation Motor Vehicle Division 6310 SE Convenience Blvd. Ankeny, Iowa	February 11, 2019 10 a.m. (If requested)
For-hire intrastate motor carrier authority, 524.1 to 524.8, 524.11, 524.12(1)“b,” 524.15, 524.18 IAB 1/16/19 <b>ARC 4233C</b>	Department of Transportation Motor Vehicle Division 6310 SE Convenience Blvd. Ankeny, Iowa	February 7, 2019 2 p.m. (If requested)
Operating while intoxicated revocations—issuance of temporary restricted license, installation of ignition interlock device, 620.3 IAB 1/16/19 <b>ARC 4229C</b>	Department of Transportation Motor Vehicle Division 6310 SE Convenience Blvd. Ankeny, Iowa	February 7, 2019 3 p.m. (If requested)



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 4234C

**CITY FINANCE COMMITTEE[545]****Notice of Intended Action****Proposing rule making related to fund transfers  
and providing an opportunity for public comment**

The City Finance Committee hereby proposes to amend Chapter 2, “Budget Amendments and Fund Transfers,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 384.15.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 384.6.

*Purpose and Summary*

These proposed amendments clarify the meaning of “transfers between funds” by adding definitions of “fund transfer resolution” and “intrafund transfers” and require all transfers of moneys between city funds to be approved by a fund transfer resolution.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

The Committee does not intend to grant waivers to these rules.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department of Management no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Ted Nellesen  
Iowa Department of Management  
State Capitol, Room 13  
1007 East Grand Avenue  
Des Moines, Iowa 50319  
Phone: 515.242.5897  
Fax: 515.281.3705  
Email: [ted.nellesen@iowa.gov](mailto:ted.nellesen@iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

## CITY FINANCE COMMITTEE[545](cont'd)

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 545—2.1(384,388) as follows:

**545—2.1(384,388) Definitions.** The following terms when used in the rules of this part have the following meanings:

“*Act*” means the home rule Act, Acts of the Sixty-fourth General Assembly, chapter 1088, as amended.

“*Budget amendment*” means any change in the appropriations of a city's budget after the budget has been finally adopted, and that requires preparation and adoption as provided in Iowa Code section 384.16 and subject to protest in Iowa Code section 384.19.

If in these rules the committee has provided that amendments of certain types or up to certain amounts do not require preparation and adoption as provided in Iowa Code section 384.15 and are not subject to protest as provided in Iowa Code section 384.19, then these types of amendments are not considered to be budget amendments.

“*Budget appropriation*” means the allocation of the total appropriation to each program for the following fiscal year, as provided for by a city's budget as finally adopted. All appropriations shall be allocated to one or more of the nine programs as defined in this rule.

Any expenditure authorized in Iowa Code sections 384.23 to 384.94 shall be deemed appropriated.

“*Detailed budget*” shall mean documenting revenues and transfer in by sources and funds, and documenting expenditures and transfers out by funds, functions and objects.

“*Fund*” means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

“*Fund transfer resolution*” means a resolution of the city council which must be passed to allow for transfers between funds. A fund transfer resolution must be completed for all transfers between funds and must include a clear statement of reason or purpose for the transfer, the name of the fund from which the transfer is originating, the name of the fund into which the transfer is to be received, and the dollar amount to be transferred. For transfers of utility surpluses outlined in subrule 2.5(5), the calculation proving the surplus must also be shown in the resolution. Intrafund transfers do not require a fund transfer resolution. Multiple transfers between funds may be approved in one resolution, so long as each transfer's purpose, originating fund or subfund, and receiving fund or subfund, and the amount of transferred dollars are separately identified. Fund transfer resolutions may also be included in budget or budget amendment adoption resolutions, so long as each transfer's purpose, originating fund or subfund and receiving fund or subfund, and the amount of transferred dollars are separately identified.

“*Intrafund transfer*” means a transfer between accounts or subfunds within a fund.

“*Program*” means any one of the following nine major functions of public service that the city finance committee requires ~~cities~~ a city to use in defining ~~its~~ the city's program structure:

1. Public safety;
2. Public works;
3. Health and social services;
4. Culture and recreation;
5. Community and economic development;
6. General government;

## CITY FINANCE COMMITTEE[545](cont'd)

7. Debt service;
8. Capital projects;
9. Business-type activities.

“*Transfers between funds*” means the transfer of amounts from one fund to another fund.

ITEM 2. Amend subrule 2.5(1) as follows:

**2.5(1) *General provision provisions.*** All transfers of moneys between funds found in the city budget forms must be approved by a fund transfer resolution. Transfers between funds in one program are types of amendments that do not require preparation and adoption as provided in Iowa Code section 384.16 and are not subject to protest as provided in Iowa Code section 384.19, but such transfers must comply with the state laws regarding the funds and the following subrules:

**ARC 4223C**

## **EGG COUNCIL, IOWA[301]**

### **Notice of Intended Action**

#### **Proposing rule making related to nomination petitions and technical updates and providing an opportunity for public comment**

The Iowa Egg Council hereby proposes to amend Chapter 1, “Organization and Purpose,” Chapter 2, “Rules of Practice,” Chapter 3, “Election of Members,” Chapter 4, “Assessment on Eggs,” and Chapter 5, “Public Records and Fair Information Practices,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 184.10(3).

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 184.

#### *Purpose and Summary*

The proposed amendments reduce the number of producers required to sign a nomination petition for nominees to the Council’s board from 20 to 3. The Council’s address is updated and a number of technical changes are made.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

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

#### *Waivers*

The administrative rules for the Council do not contain a waiver provision.

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Council no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

EGG COUNCIL, IOWA[301](cont'd)

Kevin Stiles  
Iowa Egg Council  
8515 Douglas Avenue, Suite 9  
Urbandale, Iowa 50322  
Email: [kevins@iowapoultry.com](mailto:kevins@iowapoultry.com)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Strike “196A” wherever it appears in the parenthetical implementation statutes of rules **301—1.1(196A)** to **301—1.5(196A)** and insert “184” in lieu thereof.

ITEM 2. Amend rule 301—1.1(196A), introductory paragraph, as follows:

**301—1.1(196A) Iowa egg council composition.** The Iowa egg council consists of seven members. Each council member must be a natural person who is a producer or an officer, equity owner, or employee of a producer. Two persons shall represent large producers, two persons shall represent medium producers, and three persons shall represent small producers. These members are elected according to 301—Chapter 3. The council is responsible for promoting market development for eggs, advancing public relations for the egg industry, and administering the assessment on eggs produced in Iowa imposed in Iowa Code chapter ~~196A~~ 184.

ITEM 3. Amend rule **301—1.5(196A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 17A.3 and ~~1995 Iowa Acts, House File 179~~ chapter 184.

ITEM 4. Strike “196A” wherever it appears in the parenthetical implementation statutes of **301—Chapter 2** and insert “184” in lieu thereof.

ITEM 5. Amend rules 301—2.1(196A) and 301—2.2(196A) as follows:

**301—2.1(196A) Definitions.** All words and terms defined in Iowa Code section ~~196A.1~~ 184.1 employed in these rules are given the definitions found in that chapter. The following words and terms used in these rules shall have the meaning hereafter ascribed to them:

“*Eligible voter*” means every producer who owns, or contracts for the care of, 30,000 or more layer-type chickens raised in this state.

This rule is intended to implement Iowa Code section ~~196A.12~~ 184.10.

**301—2.2(196A) Public information.** The public is invited to obtain information or make informal requests of the council by addressing these matters, either orally or in writing, to the executive director of the Iowa Egg Council, ~~535 East Lincoln Way, Ames, Iowa 50010~~ 8515 Douglas Avenue, Suite 9, Urbandale, Iowa 50322.

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

EGG COUNCIL, IOWA[301](cont'd)

ITEM 6. Amend subrule 2.4(2) as follows:

**2.4(2)** The petition shall be filed at the office of the council at ~~535 East Lincoln Way, Ames, Iowa 50010~~ 8515 Douglas Avenue, Suite 9, Urbandale, Iowa 50322.

ITEM 7. Amend rule 301—2.5(196A), introductory paragraph, as follows:

**301—2.5(196A) Petition for adoption of rules.** An interested person may file with the council a written request that the council adopt, amend, or repeal a rule. The petition shall be addressed to the Iowa Egg Council, ~~535 East Lincoln Way, Ames, Iowa 50010~~ 8515 Douglas Avenue, Suite 9, Urbandale, Iowa 50322, and shall include:

ITEM 8. Strike “196A” wherever it appears in the parenthetical implementation statutes of **301—Chapter 3** and insert “184” in lieu thereof.

ITEM 9. Amend subrule 3.1(6) as follows:

**3.1(6)** All eligible nominees nominated by valid petition signed by ~~20~~ three producers shall be included on the ballot and shall be eligible for election to the council.

ITEM 10. Amend rule **301—3.1(196A)**, implementation sentence, as follows:

This rule is intended to implement ~~1995 Iowa Acts, House File 179, section 9~~ Iowa Code section 184.8.

ITEM 11. Amend subrule 3.2(2) as follows:

**3.2(2)** In addition to the mailed notice provided for above, the council shall cause to be published ~~in a newspaper of general circulation in the state of Iowa, on the Iowa egg council website and in the producer newsletter~~ a notice of election and form of ballot ~~as the same appear in Exhibit 5, set out at the end of these rules and made a part hereof by reference.~~ This published notice shall appear not less than 10 nor more than 20 days prior to the date of election, not counting the election day itself.

ITEM 12. Amend rule **301—3.2(196A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~196A.12 and 1995 Iowa Acts, House File 179, section 9~~ 184.8.

ITEM 13. Strike “196A” wherever it appears in the parenthetical implementation statutes of **301—Chapter 4** and insert “184” in lieu thereof.

ITEM 14. Amend rule 301—4.1(196A) as follows:

**301—4.1(196A) Rate of assessment.** The assessment on egg sales authorized by Iowa Code section ~~196A.15 as amended by 1995 Iowa Acts, House File 179, 184.3~~ and established by referendum as specified in Iowa Code section ~~196A.4~~ 184.2 is set by the council at not more than five cents for each 30 dozen eggs (one case) sold by a producer.

This rule is intended to implement Iowa Code section ~~196A.15 as amended by 1995 Iowa Acts, House File 179~~ 184.3.

ITEM 15. Amend subrule 4.2(3) as follows:

**4.2(3)** Except as provided above, egg processors who have purchased eggs from producers during any calendar quarter must remit to the Iowa egg council all assessments collected during that quarter not later than 30 days after each calendar quarter. All other persons who collect the assessment but who are not referred to in Iowa Code section ~~196A.15 as amended by 1995 Iowa Acts, House File 179, 184.3~~ must also forward to the council the amount assessed, not later than 30 days after each calendar quarter.

ITEM 16. Amend subrule 4.2(6), introductory paragraph, as follows:

**4.2(6)** An assessment is considered “remitted” within the meaning of Iowa Code section ~~196A.17~~ 184.13:

ITEM 17. Amend rule **301—4.2(196A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~196A.15 as amended by 1995 Iowa Acts, House File 179, and section 196A.17~~ 184.3.

EGG COUNCIL, IOWA[301](cont'd)

ITEM 18. Amend rule **301—4.3(196A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~196A.15 as amended by 1995 Iowa Acts, House File 179~~ 184.3.

ITEM 19. Amend **301—Chapter 4**, Exhibit 1, as follows:

EXHIBIT 1. NOTICE OF ELECTION OF IOWA EGG COUNCIL

TO: All Iowa Egg Producers

This is to notify all Iowa egg producers eligible to vote for representatives to the Iowa Egg Council, pursuant to Iowa Code chapter ~~196A~~ 184, that the election for members of the Council will be held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The following vacancies will be filled in this election: one Egg Producer Representative for large producers, one Egg Producer Representative for medium producers, one Egg Producer Representative for small producers.

The following nominations have been made by the Iowa Egg Council Nominating Committee. Egg Producer Representative for large egg producers: Egg Producer Jones and Egg Producer Smith. Egg Producer Representative for medium egg producers: Egg Producer Smith and Egg Producer Jones. Egg Producer Representative for small egg producers: Egg Producer Jones and Egg Producer Smith.

The Iowa Egg Council will ~~mail~~ send ballots to each eligible voter appearing on the council records by the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. Additional ballots can be furnished upon request from the Iowa Egg Council, ~~P.O. Box 408, Ames, Iowa 50010-0408.~~

In order to be counted, ballots must be ~~mailed to~~ received by the Iowa Egg Council at ~~P.O. Box 408, Ames, Iowa 50010-0408~~, with a postmark no later than the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. ~~Ballots may be delivered to 535 East Lincoln Way, Ames, Iowa 50010-0408~~, no later than 5 p.m. on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Executive Director  
Iowa Egg Council  
~~535 East Lincoln Way~~  
Ames, Iowa 50010

ITEM 20. Amend **301—Chapter 4**, Exhibit 2, as follows:

EXHIBIT 2. NOMINATING PETITION

\_\_\_\_\_  
Date Submitted

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name and Address of Nominee

\_\_\_\_\_  
Number of layer-type chickens raised in Iowa



EGG COUNCIL, IOWA[301](cont'd)

The undersigned, being egg producers in the state of Iowa, hereby nominate the above named person to be an Iowa Egg Council Egg Producer Candidate representing medium egg production. We certify that the nominee is willing to serve if elected.

	Name	Address
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____
12.	_____	_____
13.	_____	_____
14.	_____	_____
15.	_____	_____
16.	_____	_____
17.	_____	_____
18.	_____	_____
19.	_____	_____
20.	_____	_____

INSTRUCTIONS FOR PETITIONERS

All blank items must be legibly completed.

Show nominee's name as it is to be shown on the ballot.

The nominee must be:

Eligible to vote in the election.

A producer with layer-type chickens raised in Iowa within the classification (small, medium, or large) which represents the vacancy on the council.

Eligible to hold an office.

Willing to serve if elected.

The petition must be:

Signed by at least 20 three eligible Iowa Egg Council voters.

Delivered to the Iowa Egg Council office not later than \_\_\_\_\_.

ITEM 21. Amend **301**—**Chapter 4**, Exhibit 3, as follows:

EXHIBIT 3. ELECTION NOTIFICATION LETTER

Iowa Egg Council  
535 East Lincoln Way 8515 Douglas Avenue, Suite 9  
Ames, Iowa 50010-0408 Urbandale, Iowa 50322

Date \_\_\_\_\_

Iowa Egg Producer:

EGG COUNCIL, IOWA[301](cont'd)

The Iowa Egg Council election will be held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. ~~That is the final date for mailing voted ballots to the Iowa Egg Council.~~

~~Your official ballot is on the back of this letter.~~ Please use it the ballot to vote for your choice of representative(s) to the Iowa Egg Council. The ballot lists the names of the candidates.

~~If you know of any eligible voters who did not receive ballots, please let them know that they can request ballots from the Iowa Egg Council office.~~

If you have any questions on eligibility to vote or to hold office, please contact the Iowa Egg Council office to obtain an answer.

~~To~~ Efforts will be made to ensure the secrecy of your vote, ~~the blank envelope containing your ballot will be thoroughly shuffled among the other ballot envelopes before opening.~~ The number of votes received by any candidate is available to you on request after the vote counting is completed.

The candidate receiving the highest number of votes will be elected to the Council vacancy.

REMEMBER \_\_\_\_\_, \_\_\_\_\_ IS  
THE FINAL DATE TO MAIL OR DELIVER CAST YOUR VOTED BALLOT VOTE.

Iowa Egg Council elections are open to all eligible voters without regard to race, color, religion, sex, or national origin.

---

Executive Director  
Iowa Egg Council

ITEM 22. Amend **301—Chapter 4**, Exhibit 4, as follows:

EXHIBIT 4. IOWA EGG COUNCIL ELECTION OFFICIAL BALLOT

INSTRUCTIONS FOR VOTING:

1. If you are a producer who owns, or contracts for the care of, thirty thousand or more layer-type chickens raised in Iowa, you are eligible to vote for members of the Iowa Egg Council.
2. Vote for one candidate for each vacancy. If you vote for more than one for each vacancy, your vote will not be counted.
3. Mark an "X" ~~in the box~~ by the name of the candidate you are voting for.
4. ~~Seal the marked ballot in the ballot envelope. DO NOT ENCLOSE ANY OTHER MATERIAL IN THE BALLOT ENVELOPE.~~ Follow the instructions provided.
5. ~~Seal ballot envelope in business reply envelope addressed to the Iowa Egg Council.~~
6. ~~Sign and date the certification on the back of the business reply envelope. The ballot will not be counted unless the certification is properly signed.~~
7. ~~Mail the ballot envelope containing your marked ballot sealed in the business reply envelope.~~
8. ~~THE BUSINESS REPLY ENVELOPE CONTAINING THE BALLOT ENVELOPE MUST BE POSTMARKED OR RETURNED TO THE IOWA EGG COUNCIL OFFICE BY~~  
\_\_\_\_\_, \_\_\_\_\_ IN ORDER TO COUNT.



EGG COUNCIL, IOWA[301](cont'd)

	When using more than one page, carry totals to top line of succeeding page.	TOTALS	30 Dozen cases \$

IEC—Revised 6/76—White copy to Iowa Egg Council, Pink copy to Processor

ITEM 25. Amend **301—Chapter 5**, introductory paragraph, as follows:

The Iowa egg council hereby adopts, with the following exceptions and amendments, rules of the Governor’s Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code published at www.legis.iowa.gov/docs/publications/ACOD/767403.pdf on the General Assembly’s website.

ITEM 26. Amend subrule 5.3(1) as follows:

**5.3(1) Location of record.** In lieu of the words “(insert agency head)”, insert “executive director”. In lieu of the words “(insert agency name and address)”, insert “Iowa Egg Council, 535 East Lincoln Way, Ames, Iowa 50010 8515 Douglas Avenue, Suite 9, Urbandale, Iowa 50322”.

ITEM 27. Amend rule 301—5.10(17A,22) as follows:

**301—5.10(17A,22) Personally identifiable information.** Agency records include the following personally identifiable information: excise tax remittance in identifying individual producers and the amounts remitted, refund requests from producers, and personal information in confidential personnel records. This information is collected pursuant to the authority of Iowa Code chapter ~~496A~~ 184 and is stored in the office files of the council office. Personally identifiable information contained in these records shall be confidential.

**ARC 4227C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

**Proposing rule making related to surface water classification and providing an opportunity for public comment**

The Environmental Protection Commission hereby proposes to amend Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 455B.173(2), 455B.176(4) and 455B.176A(7).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 455B.105(3), 455B.173(2) and 455B.176(4).

*Purpose and Summary*

This proposed amendment revises subrule 61.3(5) to adopt by reference a revised Surface Water Classification document. The revised Surface Water Classification document reflects use designations which have been determined through field work and the completion of a use attainability analysis (UAA).

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

The federal Clean Water Act establishes a rebuttable presumption that all Iowa streams can achieve the highest level of use, referred to as fishable and swimmable uses. In 2006, the Commission adopted this presumption by rule for all of Iowa's previously undesignated perennial streams. As an outcome of these efforts, all 26,000 miles of Iowa's perennial (flowing year-round) streams are initially designated at the highest levels for recreation and warm water aquatic life uses. These stream designations provided initial protection for many miles of perennial streams that were previously not designated for aquatic life or recreational uses.

The concept of assigning all perennial streams the highest use designation if an assessment has not been completed is referred to as the "rebuttable presumption." Included in the federal regulations are provisions that allow for scientific analysis of these "presumed" recreational and aquatic life uses. This analysis is known as a UAA, which requires the gathering of site-specific field data on stream features and uses. The concept of UAA is being applied by the Department of Natural Resources (Department) as a step-by-step process to gather site-specific field data on stream features and uses. The Department assesses available information to determine if the "presumed" recreational and aquatic life uses are appropriate.

Iowa Code section 455B.176A(8) prohibits the Department from renewing a National Pollutant Discharge Elimination System (NPDES) permit for a facility discharging to a stream subject to a presumed use until the Department conducts a UAA and ensures the stream has the appropriate designation. Prior to issuing an NPDES permit for an affected facility, the Department must complete a UAA for the receiving stream or stream network.

This batch of recommended stream designation changes affects 109 stream segments and 81 facilities. In addition to the designation changes, there are corrections to stream names and legal descriptions in the Surface Water Classification document to correct errors from the previous version. A complete list of the recommended stream designation changes and affected facilities, as well as the updated version of the Surface Water Classification document, can be found on the Department's water quality standards web page at: [www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Standards](http://www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Standards). The full UAA for each stream segment can also be found in the state's UAA database at the following web page: [programs.iowadnr.gov/uaa/search.aspx](http://programs.iowadnr.gov/uaa/search.aspx).

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. This rule making will allow for the renewal of NPDES permits for approximately 81 facilities, which may result in a cost of \$10 to \$13 million for facility upgrades at these facilities. These costs have already been accounted for in the 2006 rule making. A copy of the impact statement is available from the Department upon request.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the impact statement is available upon request from the Department.

#### *Waivers*

This rule is subject to the waiver provisions of 561—Chapter 10, as adopted by reference at rule 567—13.1(17A), to the extent such waiver is consistent with federal water quality standards requirements. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 22, 2019. Comments should be directed to:

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

Matthew Dvorak  
 Water Quality Monitoring and Assessment Section  
 Department of Natural Resources  
 Wallace State Office Building  
 502 East Ninth Street  
 Des Moines, Iowa 50319  
 Email: [matthew.dvorak@dnr.iowa.gov](mailto:matthew.dvorak@dnr.iowa.gov)

*Public Hearing*

Three public hearings at which persons may present their views orally or in writing will be held as follows:

February 12, 2019 4 p.m.	Urbandale Public Library 3520 86th Street Urbandale, Iowa
February 13, 2019 4 p.m.	Nicola-Stoufer Room Washington Public Library 115 W. Washington Street Washington, Iowa
February 14, 2019 4 p.m.	Harlan Community Library 718 Court Street Harlan, Iowa

Persons who wish to make oral comments at a public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 61.3(5) as follows:

**61.3(5) *Surface water classification.*** The department hereby incorporates by reference "Surface Water Classification," effective ~~June 17, 2015~~ [the effective date of this amendment]. This document may be obtained on the department's website at [www.iowadnr.gov](http://www.iowadnr.gov).

**ARC 4239C****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to updates of forms and information  
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 234.6.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 234.6.

*Purpose and Summary*

The purpose of these proposed amendments is to streamline required maintenance of administrative rules related to dependent adult abuse by removing form numbers from the administrative rules.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Harry Rossander  
Bureau of Policy Coordination  
Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

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

ITEM 1. Amend subrule 176.4(2) as follows:

**176.4(2)** The reporter may use a form prescribed by the department's Form 470-2441, Suspected Dependent Adult Abuse Report, department or may use a form developed by the reporter that meets the requirements of Iowa Code section 235B.3.

ITEM 2. Amend subrule 176.6(5) as follows:

**176.6(5)** Completion of evaluation or assessment report. Upon completion of its evaluation or assessment, the department shall complete a report that describes its findings and includes all actions taken or contemplated.

a. No change.

b. Upon completion of an evaluation, the department shall enter its report into the ~~system on dependent adults (SODA)~~ dependent adult reporting and evaluation system (DARES).

c. Upon completion of an assessment when the alleged abuse is the result of the acts or omissions of the dependent adult, the department shall place the report in the case file of the dependent adult and ~~on SODA~~ enter information into DARES.

ITEM 3. Amend subrule 176.6(14), introductory paragraph, as follows:

**176.6(14)** Assessment of dependency and risk. After the first visit to a dependent adult who is alleged to be abused, the department shall complete an assessment of the adult using ~~Form 470-3246, Dependent Adult Assessment Tool~~ a form prescribed by the department. The department shall assess:

ITEM 4. Amend subrule 176.6(15) as follows:

**176.6(15)** Follow-up for at-risk adults. When it has not been possible or necessary to obtain a court order for services to an at-risk adult, the department shall attempt to ~~persuade~~ empower the at-risk adult to agree to accept services and to participate in preparing a safety plan. If the adult refuses to sign ~~Form 470-4835, Safety Plan for At-Risk Adult~~, a safety plan for an at-risk adult and to accept recommended services, the department shall provide periodic visits.

a. *Purpose.* The purpose of the visits shall be to:

(1) and (2) No change.

(3) ~~Persuade Empower~~ the adult to accept recommended services and to ~~sign Form 470-4835, Safety Plan for At-Risk Adult~~ engage in safety planning.

b. to d. No change.

ITEM 5. Amend subrule 176.10(10) as follows:

**176.10(10)** *Mandatory reporter notification.* The department shall attempt to notify orally the mandatory reporter who made the report in a dependent adult abuse case of the results of the evaluation or assessment and of the confidentiality provisions of Iowa Code sections 235B.6 and 235B.12. The department shall subsequently transmit a written ~~notice on Form 470-2444, Adult Protective Notification~~, adult protective notification on a form prescribed by the department to ~~the each~~ mandatory reporter who made the report. The form shall include information regarding the results of the evaluation or assessment and confidentiality provisions. A copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in Iowa Code section 235B.8.

ITEM 6. Amend subrule 176.15(2), introductory paragraph, as follows:

**176.15(2)** *Execution of team agreement.* When the team is established, the service area manager or designee and all team members shall execute an agreement on ~~Form 470-2328, Dependent Adult Abuse Multidisciplinary Team Agreement~~ a form prescribed by the department. ~~This~~ The multidisciplinary team agreement specifies shall specify:



ARC 4242C

**INSURANCE DIVISION[191]****Notice of Intended Action****Proposing rule making related to short-term limited-duration health insurance policies and providing an opportunity for public comment**

The Insurance Division hereby proposes to amend Chapter 35, “Accident and Health Insurance,” and Chapter 36, “Individual Accident and Health—Minimum Standards and Rate Hearings,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapters 505 and 514D and 83 FR 38212.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 505 and 514D and 83 FR 38212.

*Purpose and Summary*

This proposed rule making is intended to implement, in whole or in part, a final rule issued by the Internal Revenue Service, Department of the Treasury; the Employee Benefits Security Administration, Department of Labor; and the Centers for Medicare and Medicaid Services, Department of Health and Human Services, found at 83 FR 38212 (new HHS rule).

The new HHS rule extends the permissible policy term periods for short-term limited-duration health insurance policies to up to 12 months (increased from three months). The new federal rule also allows such plans to be renewable for a period of up to three years. Prior to this new HHS rule, these plans were not renewable for periods beyond three months. The new HHS rule was published in the Federal Register on August 3, 2018, and was effective on October 2, 2018.

The amendments proposed in this Notice of Intended Action set a minimum standard of benefits for short-term limited-duration health insurance policies, in response to the new HHS rule, and require certain other consumer protections. These amendments also are intended to allow for the Insurance Division’s administration of short-term limited-duration health insurance in response to the new HHS rule.

As part of the federal rule-making process, the Department of Health and Human Services provided notice of the proposed rule on February 20, 2018, and it accepted public comment from that date through April 21, 2018. (The comment submitted by the Insurance Division can be found at [www.regulations.gov/document?D=CMS-2018-0015-8866](http://www.regulations.gov/document?D=CMS-2018-0015-8866).)

The Insurance Division finds that the availability and affordability of health insurance is critical for the greater public interest and that the necessity of ensuring that short-term limited-duration coverage has appropriate consumer protections requires these amendments to be implemented.

The Insurance Division intends to adopt these amendments emergency after notice, public comment and public hearing, to be effective as early as February 20, 2019.

*Fiscal Impact*

This rule making may have some fiscal impact to the State of Iowa, in that an increase in the number of these plans being sold would increase the amount of premium tax funds collected by the State from the issuing companies. While the expected fiscal impact is unknown because the number of plans that will be sold by the issuing companies is unknown, the Insurance Division does not expect a large fiscal impact from the amount of premium tax funds collected.

INSURANCE DIVISION[191](cont'd)

*Jobs Impact*

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

*Waivers*

The Insurance Division's general waiver provisions of 191—Chapter 4 apply to these rules.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Insurance Division no later than 4:30 p.m. on February 8, 2019. Comments should be directed to:

Ann Outka  
Insurance Division  
Two Ruan Center  
601 Locust Street, Fourth Floor  
Des Moines, Iowa 50309  
Fax: 515.281.3059  
Email: [ann.outka@iid.iowa.gov](mailto:ann.outka@iid.iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 8, 2019  
11 a.m. to 12 noon

Division Offices, Fourth Floor  
Two Ruan Center  
601 Locust Street  
Des Moines, Iowa

Persons attending the public hearing will be asked to provide their names; persons may submit written comments; if persons wish to make oral comments in person or by telephone, they will be asked to state their names and who they represent for the record and to confine any remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **191—35.23(509)**, definition of “Creditable coverage,” as follows:  
“Creditable coverage” means health benefits or coverage provided to an individual under any of the following:

1. to 10. No change.
11. A short-term ~~limited-duration~~ limited-duration policy.

ITEM 2. Amend rule **191—35.23(509)**, definition of “Health insurance coverage,” as follows:  
“Health insurance coverage” or “Health insurance plan” means benefits consisting of health care provided directly, through insurance or reimbursement, or otherwise and including items and services

## INSURANCE DIVISION[191](cont'd)

paid for as health care under a hospital or health service policy or certificate, hospital or health service plan contract, or health maintenance organization contract offered by a carrier.

1. No change.
2. "Health insurance coverage" does not include benefits provided under a separate policy as follows:

- Limited scope dental or vision benefits.
  - Benefits for long-term care, nursing home care, home health care, or community-based care.
  - Short-term ~~limited-duration~~ limited-duration insurance.
  - Any other similar, limited benefits as provided by rule of the commissioner.
  - Stop loss insurance coverage.
3. No change.
  4. No change.
  5. No change.

ITEM 3. Rescind the definition of "Short-term limited duration insurance" in rule **191—35.23(509)** and adopt the following **new** definition in lieu thereof:

*"Short-term limited-duration insurance"* means health coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total.

ITEM 4. Adopt the following **new** subrule 36.4(17):

**36.4(17)** *"Short-term limited-duration insurance"* means health coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total.

ITEM 5. Adopt the following **new** subrule 36.6(11):

**36.6(11)** *Short-term limited-duration insurance coverage.*

a. "Short-term limited-duration insurance coverage" provides coverage up to an aggregate maximum of not less than \$500,000 for each initial or renewal policy term and shall include a minimum of all of the following services subject to the approved policy terms, limitations and exclusions:

- (1) Daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides;
- (2) Miscellaneous hospital services, including emergency room services;
- (3) Surgical services;
- (4) Anesthesia services;
- (5) In-hospital medical services;
- (6) Out-of-hospital care consisting of physicians' services rendered on an ambulatory basis, and through telemedicine by remote diagnosis and treatment of patients by means of telecommunications technology, where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic X-ray, laboratory services, radiation therapy, and hemodialysis ordered by a physician;
- (7) In-hospital registered nurse services;
- (8) Convalescent nursing care;
- (9) Diagnosis and treatment by a radiologist or physiotherapist;
- (10) Rental of special medical equipment, as defined by the insurer in the policy;
- (11) Artificial limbs or eyes, casts, splints, trusses or braces;
- (12) Treatment for functional nervous disorders, mental and emotional disorders and substance use disorders; and
- (13) Out-of-hospital prescription drugs and medications.

b. If the short-term limited-duration insurance coverage establishes a separate out-of-pocket maximum for the prescription drug benefit, the short-term limited-duration insurance coverage shall contain a deductible, coinsurance and copayment out-of-pocket maximum for all benefits for each

## INSURANCE DIVISION[191](cont'd)

covered person, excluding prescription drug services, that shall not exceed \$5,000 multiplied by the number of months of coverage and not in excess of \$20,000 for the full policy term of any duration, and the separate prescription drug benefit shall have a deductible, coinsurance and copayment out-of-pocket maximum separate from the other required services that shall not exceed \$2,500 multiplied by the number of months of coverage and not in excess of \$10,000 for the full policy term of any duration.

*c.* If the short-term limited-duration insurance coverage integrates a prescription drug benefit into the plan design, the deductible, coinsurance and copayment out-of-pocket maximum for each covered person for all medical and prescription drug coverage shall not exceed \$7,500 multiplied by the number of months of coverage and not in excess of \$30,000 for the full policy term of any duration.

*d.* After 180 days of coverage, short-term limited-duration insurance coverage that has an initial policy term or has been renewed or extended beyond 180 days in duration shall also provide preventative and wellness services subject to deductibles, coinsurance and copayments, including annual routine office visits, immunizations, mammography examinations, prostate-specific antigen blood tests and Papanicolaou tests.

*e.* Short-term limited-duration insurance shall not contain preexisting condition exclusions that exceed the initial policy term. Any renewable short-term limited-duration insurance shall be guaranteed renewable.

*f.* Short-term limited-duration insurance shall have an expiration date specified in the policy.

*g.* All short-term limited-duration policies shall contain the notices required of short-term limited-duration insurance as set forth in the Public Health Service Act, 45 CFR Section 144.103.

*h.* All short-term limited-duration insurance shall contain a free-look period of not less than ten days after the insured receives the policy during which the insured may cancel the insurance. If the insurance is so canceled, all fees and premiums paid shall be promptly refunded and the insurance shall be voided as if the policy had not been issued. Notice of the free-look period shall be prominently displayed on the first page of the policy.

(1) For the purposes of this paragraph, the policy shall be determined to be received by the insured as follows:

1. Pursuant to Iowa Code section 554D.117 if received electronically; and
2. Four days after the policy is postmarked for delivery if sent in the mail.

(2) For the purposes of this paragraph, the insured may cancel the insurance by giving notice to the insurance company, agent, broker or other representative in any manner, including but not limited to via electronic notice or by telephone.

*i.* All applications for short-term limited-duration insurance shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant and identify any preexisting conditions.

ITEM 6. Adopt the following **new** subrule 36.7(13):

**36.7(13)** *Short-term limited-duration insurance coverage.*

*a. Outline of coverage.* An outline of coverage, in the form prescribed below, shall be issued in connection with any short-term limited-duration insurance, as set forth in subrule 36.6(11). This outline of coverage must be provided in addition to the notices required by paragraph 36.6(11) "g." The items included in the outline of coverage must appear in the sequence prescribed below, and Section A must be in at least 14-point type or, if electronic, of equivalent prominence:

[COMPANY NAME]

SHORT-TERM LIMITED-DURATION INSURANCE COVERAGE

OUTLINE OF COVERAGE

[If coverage begins before January 1, 2019, the following notice shall appear in at least 14-point type or, if electronic, of equivalent prominence:]

A. THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH CERTAIN FEDERAL MARKET REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE AFFORDABLE CARE ACT. BE SURE TO CHECK YOUR POLICY CAREFULLY TO MAKE SURE YOU ARE AWARE OF ANY EXCLUSIONS OR LIMITATIONS REGARDING COVERAGE

INSURANCE DIVISION[191](cont'd)

OF PREEXISTING CONDITIONS OR HEALTH BENEFITS (SUCH AS HOSPITALIZATION, EMERGENCY SERVICES, MATERNITY CARE, PREVENTIVE CARE, PRESCRIPTION DRUGS, AND MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES). YOUR POLICY MIGHT ALSO HAVE LIFETIME AND/OR ANNUAL DOLLAR LIMITS ON HEALTH BENEFITS. IF THIS COVERAGE EXPIRES OR YOU LOSE ELIGIBILITY FOR THIS COVERAGE, YOU MIGHT HAVE TO WAIT UNTIL AN OPEN ENROLLMENT PERIOD TO GET OTHER HEALTH INSURANCE COVERAGE. ALSO, THIS COVERAGE IS NOT "MINIMUM ESSENTIAL COVERAGE" FOR ANY MONTH IN 2018. YOU MAY HAVE TO MAKE A PAYMENT WHEN YOU FILE YOUR TAX RETURN UNLESS YOU QUALIFY FOR AN EXEMPTION FROM THE REQUIREMENT THAT YOU HAVE HEALTH COVERAGE FOR THAT MONTH.

[If coverage begins on or after January 1, 2019, the following notice shall appear in at least 14-point type or, if electronic, of equivalent prominence:]

A. THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH CERTAIN FEDERAL MARKET REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE AFFORDABLE CARE ACT. BE SURE TO CHECK YOUR POLICY CAREFULLY TO MAKE SURE YOU ARE AWARE OF ANY EXCLUSIONS OR LIMITATIONS REGARDING COVERAGE OF PREEXISTING CONDITIONS OR HEALTH BENEFITS (SUCH AS HOSPITALIZATION, EMERGENCY SERVICES, MATERNITY CARE, PREVENTIVE CARE, PRESCRIPTION DRUGS, AND MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES). YOUR POLICY MIGHT ALSO HAVE LIFETIME AND/OR ANNUAL DOLLAR LIMITS ON HEALTH BENEFITS. IF THIS COVERAGE EXPIRES OR YOU LOSE ELIGIBILITY FOR THIS COVERAGE, YOU MIGHT HAVE TO WAIT UNTIL AN OPEN ENROLLMENT PERIOD TO GET OTHER HEALTH INSURANCE COVERAGE.

B. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract, and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY.

C. [A brief specific description of the benefits, including dollar amounts, contained in this policy. The description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment or other out-of-pocket cost provisions applicable to the benefits described. The description of benefits shall also clearly state any applicable provider network requirements including but not limited to distinctions in cost provisions for in-network and out-of-network providers.]

D. [A description of any other policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in Section C, above, including but not limited to any preexisting condition exclusions for policies.]

E. [A description of policy provisions regarding renewability or continuation of coverage, including any reservation of right to change premiums.]

*b. Application for coverage for short-term limited-duration insurance.* All applications for short-term limited-duration policies shall contain the notice prescribed below, which shall be in at least 14-point type or, if electronic, of equivalent prominence. One signed copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer.

STATEMENT TO APPLICANT BY ISSUER [PRODUCER, BROKER OR OTHER REPRESENTATIVE]:

**Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under this policy.** This could result in a denial or delay of payment of benefits. If you wish to purchase a short-term limited-duration policy, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

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ALSO NOTE THAT, IF THIS COVERAGE EXPIRES OR YOU LOSE ELIGIBILITY FOR THIS COVERAGE, YOU MIGHT HAVE TO WAIT UNTIL AN OPEN ENROLLMENT PERIOD TO GET OTHER HEALTH INSURANCE COVERAGE.

\_\_\_\_\_  
 (Signature of Producer, Broker or Other Representative of the Company)  
 [Typed Name and Address of Producer, Broker or Other Representative]

The above "Statement to Applicant" was delivered to me on:

\_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 (Applicant's Signature)

**ARC 4238C**

## **IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

### **Notice of Intended Action**

#### **Proposing rule making related to five-year review of rules and providing an opportunity for public comment**

The Iowa Public Employees' Retirement System (IPERS) hereby proposes to amend Chapter 4, "Employers," Chapter 6, "Covered Wages," Chapter 7, "Service Credit and Vesting Status," Chapter 8, "Service Purchases," Chapter 9, "Refunds," Chapter 11, "Application for, Modification of, and Termination of Benefits," Chapter 12, "Calculation of Monthly Retirement Benefits," Chapter 14, "Death Benefits and Beneficiaries," and Chapter 16, "Domestic Relations Orders and Other Assignments," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 97B.4 and 97B.15.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 97B.

#### *Purpose and Summary*

This proposed rule making is intended to conform rules with other rules and statutes or rescind rules that are outdated, redundant or inconsistent, or no longer in effect to meet the requirements of the statutory five-year review of rules for Chapters 6 to 10; to implement contribution rates for employers and regular and special service members beginning July 1, 2019; to simplify and update language in rules pertaining to sick and compensatory time; to emphasize that bona fide refunds require a member to remain out of IPERS-covered employment for 30 days and simplify language concerning restoring a member's account; to clarify vesting status post-June 30, 2012, for special service and regular service members; to rescind and replace language in subrule 8.1(1) to update and amend current rules covering service purchases to conform with current law and practice; to align Internal Revenue Code (IRC) Section 415 testing compliance language with actual practice and Internal Revenue Service (IRS) regulation of all service purchases; to emphasize that service credit purchases are available for leaves of absence only if previously approved by the employer; to clarify that members have 60 days from the date of IPERS' acceptance of a service purchase to revoke the purchase; to clearly define that periods during which a member was self-employed or worked as an independent contractor are not periods that

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

can be used to make a service purchase; to stress the seriousness of the member's notarized statement regarding efforts to locate the member's spouse for the spouse's written acknowledgment by changing "indicating" to "affirming"; to combine subrules 9.4(2) and 9.4(3) to increase clarity regarding the determination of a member's last day of employment and use of an electronic funds transfer related to refunds; and to document current policy regarding payment of a named beneficiary's share to the other named beneficiaries in the event they predecease the member. Also, this rule making is intended to provide for corrections of overpayments and underpayments of contributions and benefits caused by the misreporting of covered wages; to eliminate successor alternate payee (SAP) language from qualified domestic relations orders; and to improve the alternate payee benefit process while retaining a member's rights and securing alternate payee benefits.

*Fiscal Impact*

Contribution rate changes for all three member classes of IPERS employees (regular member, sheriffs and deputy sheriffs, and protection occupation) are reflected. No fiscal impact has been found for regular class members. A decreased fiscal impact has been found for sheriffs and deputy sheriffs. A decreased fiscal impact has been found for the protection occupation class.

*Jobs Impact*

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

*Waivers*

There are no discretionary rules in this filing. IPERS is following nondiscretionary statutes and rules adopted by the federal and state governments.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by IPERS no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Gregg Schochenmaier  
Iowa Public Employees' Retirement System  
7401 Register Drive  
Des Moines, Iowa 50321  
Phone: 515.281.0054  
Email: [gsch@ipers.org](mailto:gsch@ipers.org)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 5, 2019  
9 to 10 a.m.

IPERS  
7401 Register Drive  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 4.6(1) as follows:

**4.6(1)** Contribution rates for regular class members.

a. No change.

b. Effective July 1, 2012, and every year thereafter, the contribution rates for regular members shall be publicly declared by IPERS staff no later than the preceding December as determined by the annual valuation of the preceding fiscal year. The public declaration of contribution rates will be followed by rule making that will include a notice and comment period and that will become effective July 1 of the next fiscal year. Contribution rates for regular members are as follows.

	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019
Combined rate	14.88%	14.88%	14.88%	14.88%	15.73%	<u>15.73%</u>
Employer	8.93%	8.93%	8.93%	8.93%	9.44%	<u>9.44%</u>
Employee	5.95%	5.95%	5.95%	5.95%	6.29%	<u>6.29%</u>

ITEM 2. Amend subrule 4.6(2) as follows:

**4.6(2)** Contribution rates for sheriffs and deputy sheriffs are as follows.

	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019
Combined rate	19.76%	19.76%	19.26%	18.76%	19.52%	<u>19.02%</u>
Employer	9.88%	9.88%	9.63%	9.38%	9.76%	<u>9.51%</u>
Employee	9.88%	9.88%	9.63%	9.38%	9.76%	<u>9.51%</u>

ITEM 3. Amend subrule 4.6(3) as follows:

**4.6(3)** Contribution rates for protection occupations are as follows.

	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019
Combined rate	16.90%	16.40%	16.40%	16.40%	17.02%	<u>16.52%</u>
Employer	10.14%	9.84%	9.84%	9.84%	10.21%	<u>9.91%</u>
Employee	6.76%	6.56%	6.56%	6.56%	6.81%	<u>6.61%</u>

ITEM 4. Amend subrule 6.3(2) as follows:

**6.3(2)** *Sick pay.* Sick pay means ~~payments made for sick leave which are a continuation of salary payments~~ the amount paid to an employee during a period of sick leave.

ITEM 5. Amend subrule 6.3(4) as follows:

**6.3(4)** *Compensatory time.* Wages include amounts paid for compensatory time taken in lieu of regular work hours or when paid as a lump sum. However, compensatory time paid in a lump sum shall not exceed 240 hours per employee per year or any lesser number of hours set by the employer. Each employer shall determine whether to use the calendar year or a fiscal year other than the calendar year when setting its compensatory time policy. The wages reported to IPERS must reflect the employer's policy.



## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

ITEM 6. Amend subrule 6.4(2) as follows:

**6.4(2)** One quarter of service will be credited for each quarter in which a member is paid IPERS-covered wages.

*a.* "Covered wages" means wages of a member during periods of service that do not exceed the annual covered wage maximum as permitted for a given year under Sections 401(a)(17)(A) and (B) of the Internal Revenue Code, which are incorporated herein by this reference.

~~*b.* Effective January 1, 1988, covered wages shall include wages paid a member regardless of age. (From July 1, 1978, until January 1, 1988, covered wages did not include wages paid a member on or after the first day of the month in which the member reached the age of 70.)~~

~~*e. b.*~~ If a member is employed by more than one employer during the calendar year, the total amount of wages paid by all covered employers shall be included in determining the annual covered wage limit established under Sections 401(a)(17)(A) and (B) of the Internal Revenue Code. If the amount of wages paid to a member by several employers during any given month exceeds the covered wage limit as determined for that calendar year, the amount of the excess shall not be subject to contributions required by Iowa Code section 97B.11. IPERS shall not accept excess wages and applicable contributions from employers and shall return excess contributions as provided in 495—subrule 4.3(8).

ITEM 7. Rescind subrule **6.5(7)**.

ITEM 8. Rescind subrule **6.5(8)**.

ITEM 9. Adopt the following new rule 495—6.6(97B):

**495—6.6(97B) Corrections of overpayments and underpayments of contributions and benefits caused by misreporting of covered wages.** IPERS shall use the following guidelines in requiring corrections of overpayments and underpayments of contributions caused by misreported wages or IPERS-covered service. Corrections must be made for all current employees omitted in error, active, retired, and inactive members, subject to the following limitations:

**6.6(1)** If employer and employee contributions were underreported, wage adjustments shall be filed and employers shall be billed for all shortages of employer and employee contributions plus interest. Employers shall be entitled to collect reimbursement for the employee share of contributions as provided in Iowa Code section 97B.9. If retirement benefits have been underpaid as a result of the error, IPERS shall, upon receipt of the contribution shortage, make the appropriate adjustments and pay all back benefits.

**6.6(2)** If employer and employee contributions were overreported, wage adjustments shall be filed and the appropriate contribution amounts shall be credited to employers for distribution to the respective employee and employer contributors. If the reporting error caused an overpayment of retirement benefits, IPERS may offset excess contributions received against overpayments and shall request a repayment of the remainder of the overpayment, if any, from the recipient.

Wage adjustments, overpayments and underpayments, and unintentional reporting errors shall be determined as of the onset of the error. Notwithstanding the foregoing adjustment and collection standards, IPERS reserves the right to negotiate adjustments with individual employers in special situations, and no negotiated settlement with an employer shall be deemed to constitute a waiver of this rule or a binding precedent for other employers.

ITEM 10. Amend paragraph **7.1(1)“c”** as follows:

*c.* Notwithstanding paragraph 7.1(1)“b” above, a member who is on an unpaid leave of absence and who during the period covered by the unpaid leave performs services for the covered employer granting the unpaid leave shall not receive service credit for such services until the employer has reported \$1,000 in each of two consecutive quarters included in the unpaid leave period, and such service credit shall be granted only with respect to quarters beginning after said two consecutive quarters.

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

ITEM 11. Rescind rule **495—7.2(97B)**.

ITEM 12. Renumber rule **495—7.3(97B)** as **495—7.2(97B)**.

ITEM 13. Amend renumbered rule 495—7.2(97B) as follows:

**495—7.2(97B) Vesting status.**

**7.2(1)** to **7.2(4)** No change.

**7.2(5) Vesting at age 55 prior to July 1, 2012.** IPERS shall interpret Iowa Code section 97B.1A(25) "a"(3), ~~as enacted in 2010 Iowa Acts, House File 2518, section 21,~~ as follows: for periods prior to July 1, 2012, the phrase "has attained the age of fifty-five or greater while in covered employment" means "has attained the age of fifty-five or greater while an active member, as defined in Iowa Code section 97B.1A(3)".

**7.2(6) Vesting after June 30, 2012.** For periods after June 30, 2012, the member becomes vested if the member meets one of the following requirements:

*a.* For a member in a special service, has attained the age of 55 or greater while in covered employment.

*b.* For a member in regular service, has attained the age of 65 or greater while in covered employment.

The phrase "covered employment" means "active member" as defined by Iowa Code section 97B.1A(3).

ITEM 14. Rescind subrule 8.1(1) and adopt the following **new** subrule in lieu thereof:

**8.1(1) *Estimates and cost quotes.*** All service purchase estimates and cost quotes shall be calculated at actuarial cost. The following procedures and calculations shall apply:

*a. Service purchase estimate prior to retirement.* Members who are vested by service may request a service purchase estimate by completing and submitting a service purchase application. Once the application is submitted, IPERS shall complete a cost estimate. This calculation is an estimate only and is not considered binding. The cost estimate shall be calculated as follows:

(1) IPERS will calculate the actuarial cost by capturing the projected baseline benefit attributes at the member's anticipated retirement date without any service purchase quarterly credits including: average salary, years of service, the Option 2 benefit amount, accumulated member contributions and the calculated present-day reserve value. The present-day reserve value is a lump sum value calculated with actuarial tables provided by the system's actuary which represents the lump sum value sufficient to pay the monthly benefits over the member's expected life span.

(2) With each potential purchasable quarterly service credit, IPERS will recalculate the Option 2 benefit amount. A new present-day reserve value will also be calculated. The cost of each quarterly service credit will be the difference between the new reserve amount and the previous one.

*b. Final service purchase cost quote at retirement.* On or before the date that a member's first benefit payment is issued, a member who is vested by service may request a final service purchase cost quote by completing and submitting an application for retirement/disability benefit indicating the member's desire to receive a final service purchase cost quote. After the completed application has been submitted, IPERS shall generate a final service purchase cost quote once all of the member's wages are submitted to IPERS, which may be after the member's first month of entitlement. The final cost quote shall be calculated as follows:

(1) IPERS will calculate the cost by capturing the baseline benefit attributes at the member's first month of entitlement without any service purchase quarterly credits including: average salary, years of service, the Option 2 benefit amount, accumulated member contributions and the calculated present-day reserve value. The present-day reserve value is a lump sum value calculated with actuarial tables provided by the system's actuary which represents the lump sum value sufficient to pay the monthly benefits over the member's expected life span. With each potential purchasable service credit, IPERS will recalculate the Option 2 benefit amount. A new present-day reserve value will also be calculated. The cost of each purchasable quarter of service credit will be the difference between the new reserve amount and the previous one.

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(2) The retired member will have six months from the date in which IPERS generates the final service purchase cost quote to purchase additional service.

(3) If the retired member purchases service within the six-month deadline, the increase in the retirement benefit shall be made effective with the month of the service purchase payment.

(4) Retired members who do not indicate their desire for a final service purchase cost quote on or before the date their first payment is issued or do not complete the purchase within the six-month deadline indicated on the final service purchase cost quote shall not be eligible to purchase additional credit.

(5) Retired members who selected Option 1 upon retirement may request the lump sum death benefit to be increased to take into account the additional contributions from making a service purchase. If the member requests an increase in the death benefit, the monthly benefit will be reduced to take into account the increased death benefit.

*c. Cost adjustments due to changes in the original retirement benefit.* If an error in the service purchase cost is discovered or a retired member's account is adjusted in any manner after a purchase is made, IPERS may rescind the service purchase, make adjustments to the service purchase cost, or adjust the retirement allowance to ensure the member paid the actuarial cost of buying additional service. In the event that a retired member overpays due to an adjustment, IPERS will issue a refund to the retired member directly or to the rollover institution.

ITEM 15. Amend subrule 8.1(2) as follows:

**8.1(2) Service credit for other public employment.**

~~a. Effective July 1, 1992, a vested or retired A member may make application to IPERS for purchasing credit for service rendered to another public employer. In order to be eligible, a member must:~~

~~(1) Have been a public employee in a position comparable to an IPERS covered position at the time the application for buy-in is processed. Effective July 1, 1990, "public employee" includes a member who had service as a public employee in another state, or for the federal government, or within other retirement systems established in the state of Iowa; and~~

~~(2) Submit verification of service for that other public employer to IPERS.~~

~~A quarter of credit may be purchased for each quarter the employee received wages.~~

~~b. Effective July 1, 1992, through June 30, 1999, a qualifying member who decides to purchase IPERS credit must make employer and employee contributions to IPERS for each calendar quarter of service allowed in this buy-in. This contribution shall be determined using the member's IPERS covered wages for the most recent full calendar year of IPERS coverage, the applicable rates established in Iowa Code sections 97B.11, 97B.49B and 97B.49C, and multiplied by the number of quarters being purchased from other public employment. "Applicable rates" means the rates in effect at the time of purchase for the types of service being purchased. A member must have at least four quarters of reported wages in any calendar year before a buy-in cost may be calculated.~~

~~c. Effective July 1, 1992, through June 30, 1999, if a vested or retired member does not have wages in the most recent calendar year, the cost of the buy-in will be calculated using the member's last calendar year of reported wages, adjusted by an inflation factor based on the Consumer Price Index as published by the United States Department of Labor.~~

~~d. b. Members eligible to complete the buy-in may buy the entire period of service for a public employer or may buy credit in increments of one or more calendar quarters. The quarters need not be specifically identified to particular calendar quarters. A period of service is defined as follows: (1) if a member was continuously employed by an employer, the entire time is one period of employment, regardless of whether a portion or all of the service was covered by one or more retirement systems; and (2) if a member is continuously employed by multiple employers within a single retirement system, the entire service credited by that retirement system is one period of employment. A member with service credit under another public employee retirement system who wishes to transfer only a portion of the service value of the member's public service in another public system to IPERS must provide a waiver of that service time to IPERS together with proof that the other public system has accepted this waiver and allowed partial withdrawal of service credit. Members are allowed to purchase time credited by~~

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

the other public employer as a leave of absence in the same manner as other service credit. However, members wishing to receive free credit for military service performed while in the employ of a qualifying non-IPERS covered public employer must purchase the entire period of service encompassing the service time for that public employer or in the other retirement system, excluding the military time. Veterans' credit originally purchased in another retirement system may be purchased in the same manner as other service credit.

*e.*— The total amount paid will be added to the member's contributions, and the years of service this amount represents will be added to the member's IPERS years of service. Effective January 1, 1993, the purchase will not affect the member's three-year average covered wage.

*f.*— Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-in, as certified by IPERS. In calculating the actuarial cost of a buy-in, IPERS shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: (1) the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age; and (2) if gender-distinct mortality assumptions are used in the annual actuarial valuation, the system shall use blended mortality assumptions reasonably representative of the system's experience. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. If IPERS changes the service purchase mortality assumptions, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after the date printed on the cost quote letter. After that time, a new cost quote must be obtained for any quarters not previously purchased.

*g.*— Effective January 1, 2016, for new service purchase applications and updated cost requests received, the following procedures and calculations shall apply:

(1) ~~Service purchase estimate prior to retirement. Members who are vested by service may request a service purchase estimate by completing and submitting a service purchase application. Once the application is submitted, IPERS shall complete a cost estimate. This calculation is an estimate only and is not considered binding. The cost estimate shall be calculated as follows:~~

1. ~~IPERS will calculate the cost by capturing the baseline benefit attributes at the member's anticipated retirement date without any service purchase quarterly credits including: average salary, years of service, the Option 2 benefit amount, current member investment amount and the calculated present-day reserve value. The present-day reserve value is a lump sum value calculated with actuarial tables provided by the system's actuary which represents the lump sum value sufficient to pay the monthly benefits over the member's expected life span.~~

2. ~~With each potential purchasable quarterly service credit, IPERS will recalculate the Option 2 benefit amount. A new present-day reserve value will also be calculated. The cost of each quarterly service credit will be the difference between the new reserve amount and the previous one.~~

(2) ~~Final service purchase cost quote at retirement. On or before the date that a member's first benefit payment is issued, a member who is vested by service may request a final service purchase cost quote by completing and submitting an application for retirement/disability benefit indicating the member's desire to receive a final service purchase cost quote. After the completed application has been submitted, IPERS shall generate a final service purchase cost quote once all of the member's wages are submitted to IPERS, which may be after the member's first month of entitlement. The final cost quote shall be calculated as follows:~~

1. ~~IPERS will calculate the cost by capturing the baseline benefit attributes at the member's first month of entitlement without any service purchase quarterly credits including: average salary, years of service, the Option 2 benefit amount, current member investment amount and the calculated present-day reserve value. The present-day reserve value is a lump sum value calculated with actuarial tables provided by the system's actuary which represents the lump sum value sufficient to pay the monthly benefits over the member's expected life span. With each potential purchasable service credit, IPERS will recalculate the Option 2 benefit amount. A new present-day reserve value will also be calculated.~~

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

The cost of each purchasable quarter of service credit will be the difference between the new reserve amount and the previous one.

2.—The retired member will have six months from the date in which IPERS generates the final service purchase cost quote to purchase additional service.

3.—If the retired member purchases service within the six-month deadline, the increase in the retirement benefit shall be made effective with the month of the service purchase payment.

4.—Retired members who do not indicate their desire for a final service purchase cost quote on or before the date their first payment is issued or do not complete the purchase within the six-month deadline indicated on the final service purchase cost quote shall not be eligible to purchase additional credit.

5.—Retired members who selected Option 1 upon retirement may request the lump sum death benefit to be increased to take into account the additional contributions from making a service purchase. If the member requests an increase in the death benefit, the monthly benefit will be reduced to take into account the increased death benefit.

(3) Cost adjustments due to changes in the original retirement benefit. If an error in the service purchase cost is discovered or a retired member's account is adjusted in any manner after a purchase is made, IPERS may rescind the service purchase, make adjustments to the service purchase cost, or adjust the retirement allowance to ensure the member paid the actuarial cost of buying additional service. In the event that a retired member overpays due to an adjustment, IPERS will issue a refund to the retired member directly or to the rollover institution.

ITEM 16. Amend subrule 8.1(3) as follows:

**8.1(3) IPERS buy-back.** Effective July 1, 1996, only vested or retired members Members may buy back previously refunded IPERS service credit under the methodology of subrule 8.1(1). For the period beginning July 1, 1996, and ending June 30, 1999, an eligible member is required to make membership contributions equal to the accumulated contributions received by the member for the period of service being purchased plus accumulated interest and interest dividends. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-back, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: (1) the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age; and (2) if gender-distinct mortality assumptions are used in the annual actuarial valuation, the system shall use blended mortality assumptions reasonably representative of the system's experience. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. If IPERS changes the service purchase mortality assumptions, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after the date printed on the cost quote letter. After that time, a new cost quote must be obtained for any quarters not previously purchased.

Effective July 1, 1996, buy-backs may be made in increments of one or more calendar quarters. Prior to July 1, 1996, the member was required to repurchase the entire period of service and repay the total amount received plus accumulated interest and interest dividends.

A member who is vested solely by having attained the age of 55 must have at least one calendar quarter of wages on file with IPERS before completing a buy-back.

For persons who submitted requests for buy-back cost quotes on or before January 14, 2004, IPERS shall restore the wage records of a member who makes a buy-back based on those quotes and utilize those wage records in subsequent benefit calculations for that member.

For persons who submit requests for buy-back cost quotes and make purchases based on those quotes after January 14, 2004, IPERS shall not restore the wage records for the purchased quarters. After January 14, 2004, such buy-backs shall be treated like all other service purchases and IPERS will only restore service credit.

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~~Effective January 1, 2016, the member must be vested by service and must pay the actuarial cost of a service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions, procedures and cost methods as those described in paragraph 8.1(2) "g."~~

ITEM 17. Rescind subrule **8.1(4)**.

ITEM 18. Renumber subrules **8.1(5)** and **8.1(6)** as **8.1(4)** and **8.1(5)**.

ITEM 19. Amend renumbered subrule 8.1(4) as follows:

**8.1(4) Veterans' credit.**

~~a. Effective July 1, 1992, a vested or retired A member, in order to receive service credit under the IPERS system, may elect to make employer and employee contributions to IPERS may make a service credit purchase for a period of active duty service in the armed forces of the United States, ~~in increments of one or more calendar quarters~~, if the member produces verification of active duty service in the armed forces of the United States.~~

~~b. A member must have at least four quarters of reported wages in any calendar year before a buy in cost may be calculated.~~

~~c. A service purchase shall not affect the member's high three-year average wage.~~

~~d. Effective July 1, 1999, an eligible member must pay the actuarial cost of a military service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions and cost methods as those in paragraph 8.1(2) "f."~~

~~e. Effective January 1, 2016, the member must be vested by service and must pay the actuarial cost of a service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions, procedures and cost methods as those described in paragraph 8.1(2) "g."~~

ITEM 20. Amend renumbered subrule 8.1(5) as follows:

**8.1(5) Legislative members.**

~~a. *Active members.* Persons who are members of the Seventy-first General Assembly or a succeeding general assembly during any period beginning July 4, 1953, may, upon proof of such membership in the general assembly, make contributions to the system for all or a portion of the period of such service in the general assembly. The contributions made by the member shall be determined in the same manner as provided in paragraph 8.1(2) "f."~~

~~b. *Vested or retired former members of the general assembly.*~~

~~(1) A vested or retired member of the system who was a member of the general assembly prior to July 1, 1988, may make contributions to the system for all or a portion of the period of service in the general assembly.~~

~~(2) The contributions made by the member shall be equal to the accumulated contributions as defined in Iowa Code section 97B.1A(2), which would have been made if the member of the general assembly had been a member of the system during the period of service in the general assembly being purchased.~~

~~(3) (1) The member shall submit to IPERS proof of membership in the general assembly for the period claimed.~~

~~(4) (2) Upon determining a member eligible and receiving the appropriate contributions from the member, IPERS shall credit the member with the period of membership service for which contributions are made.~~

~~c. *Incremental purchases.* Service purchased under this subrule must be purchased in increments of one or more calendar quarters.~~

~~d. *Actuarial cost.* Effective July 1, 1999, an eligible member must pay 40 percent and the Iowa legislature shall pay 60 percent of the actuarial cost of a legislative service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions and cost methods as those in paragraph 8.1(2) "f."~~

~~e. c. *Actuarial cost.* Effective January 1, 2016, the member must be vested by service and must pay 40 percent and the Iowa legislature shall pay 60 percent of the actuarial cost of a service purchase, as~~

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions, procedures and cost methods as those described in ~~paragraph 8.1(2) "g."~~ subrule 8.1(1).

ITEM 21. Rescind subrule **8.1(7)**.

ITEM 22. Renumber subrules **8.1(8)** to **8.1(10)** as **8.1(6)** to **8.1(8)**.

ITEM 23. Amend renumbered subrule 8.1(6) as follows:

**8.1(6)** *Leaves Employer-approved leaves of absence.* Service credit for employer-approved leaves of absence that begin on or after July 1, 1998, may be purchased. ~~A member must be vested or retired and must have one calendar year of wages on file in order to make such a purchase.~~

~~For a leave of absence beginning on or after July 1, 1998, and purchased before July 1, 1999, the service purchase cost shall be equal to the employer and employee contributions and interest payable for the employee's most recent year of covered wages, adjusted by the inflation factor used in paragraph 8.1(2) "c."~~ For a leave of absence beginning on or after July 1, 1998, and purchased on or after July 1, 1999, the service purchase cost shall be the actuarial cost, as certified by IPERS. In calculating the actuarial cost of a service purchase under this subrule, IPERS shall apply the same actuarial assumptions and cost methods as those in paragraph 8.1(2) "f."

~~Effective January 1, 2016, the member must be vested by service and must pay the actuarial cost of a service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions, procedures and cost methods as those described in paragraph 8.1(2) "g."~~

ITEM 24. Amend renumbered subrule 8.1(7) as follows:

**8.1(7)** *Service credit for elective coverage positions—coverage not elected.* Service credit for periods of time prior to January 1, 1999, when the member was employed in a position for which coverage could have been elected, but was not, may be purchased. ~~The cost of such service purchases shall be calculated in the same manner as provided for buy-ins under paragraph 8.1(2) "f."~~ In addition, ~~a member must be vested or retired, and must have one calendar year of wages on file in order to make such a purchase.~~

~~Effective January 1, 2016, the member must be vested by service and must pay the actuarial cost of a service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions, procedures and cost methods as those described in paragraph 8.1(2) "g."~~

ITEM 25. Amend renumbered subrule 8.1(8) as follows:

**8.1(8)** *Service credit for noncovered public employment in Iowa.* A ~~vested or retired~~ member who ~~has one or more years of service credit and who~~ was previously employed in public employment for which optional coverage was not available, such as substitute teaching or other temporary employment, may purchase service credit for such employment subject to the requirements of Iowa Code section 97B.80C. Service credit may not be purchased under this subrule for periods in which the individual was performing services as an independent contractor. ~~The contributions required under this subrule shall be in an amount equal to the actuarial cost of the service purchase as determined under paragraph 8.1(2) "f."~~

~~Effective January 1, 2016, the member must be vested by service and must pay the actuarial cost of a service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions, procedures and cost methods as those described in paragraph 8.1(2) "g."~~

ITEM 26. Amend rule 495—8.2(97B) as follows:

**495—8.2(97B) Revocation of service purchase application and refund of amounts paid.** A member may revoke a service purchase application and receive a refund without interest of all or a portion of amounts paid to IPERS to buy back prior service credit or to purchase credit for other service pursuant to Iowa Code chapter 97B. The revocation must be made in writing and must be made within 60 days after the date of receipt of such amounts by IPERS. Such refunds shall be in increments representing one or more quarters. ~~No refund shall be made if a member has made a service purchase under this chapter and one or more monthly retirement allowance payments have been made thereafter.~~ Furthermore, this rule shall not limit IPERS' ability to refund service purchase amounts when required in order to meet the

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

provisions of the Internal Revenue Code that apply to IPERS. This rule shall be effective for revocation requests received by IPERS on or after May 3, 1996.

ITEM 27. Amend rule 495—8.3(97B), introductory paragraph, as follows:

**495—8.3(97B) IRC Section 415(n) compliance.** Service purchases made under this chapter ~~and other posttax contributions, including buy-backs and buy-ups,~~ shall not exceed the defined contribution dollar limit then in effect under Internal Revenue Code Section ~~415(e) 415(c)(1),~~ per calendar year, as provided under IRC Section 415(n)(2)(B). In addition, the amounts contributed for service purchases under this chapter shall not exceed the amount required to purchase the service according to the current cost schedules. In implementing these and the other requirements of IRC Section 415(n), IPERS shall use the following procedures.

ITEM 28. Amend subrule 8.3(4) as follows:

**8.3(4)** The limitations of this rule shall ~~not~~ apply to buy-backs of prior refunds. In addition, the annual limit under this rule shall not apply to service purchases grandfathered under the provisions of the Iowa Code and Section 1526 of the Taxpayer Relief Act of 1997.

ITEM 29. Rescind subrule **8.3(6)**.

ITEM 30. Renumber subrules **8.3(7)** and **8.3(8)** as **8.3(6)** and **8.3(7)**.

ITEM 31. Amend renumbered subrule 8.3(6) as follows:

**8.3(6)** The IRC Section 415(c) limitations shall not apply to a service purchase that qualifies as a direct rollover ~~for from~~ an eligible retirement plan or a direct transfer from a plan qualified under IRC Section 403(b) or 457. ~~The IRC Section 415(e) limits also shall not apply to a service purchase under subrule 8.1(3).~~

ITEM 32. Rescind and reserve rule **495—8.4(97B)**.

ITEM 33. Rescind subrule **8.5(1)**.

ITEM 34. Renumber subrules **8.5(2)** to **8.5(4)** as **8.5(1)** to **8.5(3)**.

ITEM 35. Amend renumbered subrule 8.5(1) as follows:

**8.5(1) Additional service purchase procedures.**

*a.* Service purchase cost quotes for members currently in special service positions shall be prepared as special service credit.

*b.* Members covered under another retirement plan. Members who wish to buy service credit for employment that is covered by another retirement plan qualified under IRC Section 401, IRC Section 403 or 457 and similar plans and retirement pay from the United States government for active duty in the armed forces (except retirement pay for nonregular service pursuant to 10 U.S.C. Sections 12731-12739) must waive their right to benefits based on the service credit that is being purchased under IPERS. ~~If a waiver is not obtained, however, service purchases for such employment may still be made but shall be limited to 20 quarters.~~

~~*e.* Members retired under IPERS' disability formula. A retired member receiving IPERS benefits as a result of a disability shall receive a service purchase cost quote which reflects no penalty for early age reduction.~~

~~*d. c.* Effective January 1, 2007, IPERS may, notwithstanding certain provisions of Iowa Code section 97B.82 adopted in order to comply with prior rollover provisions of the Internal Revenue Code, utilize forms and procedures permitting direct rollover service purchases to include after-tax amounts as provided under the applicable rollover provisions of the Internal Revenue Code as amended subsequent to the enactment of Iowa Code section 97B.82.~~

ITEM 36. Amend renumbered subrule 8.5(2) as follows:

**8.5(2) Additional service purchase limitations.**

*a.* Under no circumstances shall service purchases be allowed for quarters already on file with IPERS as covered quarters.



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*b.* If a member has requested a service purchase cost quote and, before the six-month expiration has passed, submits another request for a service purchase cost quote for the same or different employer, the new service purchase cost quote will be based on a combination of the two service purchase cost quotes. The latest service purchase cost quote shall supersede all prior cost quotes provided to the member for the quarters that the member purchases after the issuance of the second cost quote.

~~*c.* If before the six-month expiration has passed a member has made a partial purchase under a service purchase cost quote and requests another service purchase cost quote, the quarters covered by the original cost quote will be added to the new request. IPERS will prepare a new service purchase cost quote. The latest service purchase cost quote shall supersede all prior quotes provided to the member for quarters that the member purchases after the issuance of the second cost quote. For example, if the member receives a cost quote of \$300 per quarter for 6 quarters of Illinois public employment and, three months later, after buying 3 Illinois quarters, requests a service purchase cost quote for 8 quarters of military service, the second quote would be prepared using 11 quarters as the basis for the cost quote. The per quarter cost quote prepared using the 11 quarters would supersede the \$300 per quarter cost previously quoted. This superseding cost principle will apply regardless of whether the recalculated cost is greater or less than the superseded quote. Thus, in the above example, if the second cost quote is \$350 per quarter, that would be the price for all 11 quarters for the next six months. However, if the second quote comes in at \$250 per quarter, that would be the cost for all 11 quarters for the next six months.~~

~~*d. c.* Self-employed and independent contractor members. Because of the difficulty in documenting what portion of the amounts paid are actually related to the performance of services, including amounts reported to the federal and state tax authorities, members Members shall not be permitted to purchase service credit for periods of self-employment or as an independent contractor.~~

ITEM 37. Amend renumbered subrule 8.5(3) as follows:

**8.5(3)** ~~*“Buy-up”*~~ *Buy-up of service credit through service purchase.* Effective July 1, 2008, IPERS members may be allowed to “buy up” service credit. The term “buy up” means to convert regular service credit to special service credit by payment of the actuarial cost pursuant to the requirements of subrule 8.1(1). ~~In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions and cost methods as those in paragraph 8.1(2)“f;” except as modified according to the actuary’s recommendations.~~

~~Effective January 1, 2016, the member must be vested by service and must pay the actuarial cost of a service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions, procedures and cost methods as those described in paragraph 8.1(2)“g.”~~

~~*a.* Active, retired and inactive members.~~ Effective January 1, 2016, a member must have at least one quarter of available or retired special service wages on file and must be vested by years of service at the time of the buy-up.

~~*b. a.* Mixture of service time.~~ If a member’s service time contains a mixture of regular, protection and sheriff service credit, IPERS shall prepare buy-up cost quotes prior to other service credit purchases and shall process the buy-up as follows:

(1) If the member is currently employed in the sheriff class or retired as a sheriff, the cost quote shall be prepared reflecting a buy-up to sheriff service credit.

(2) If the member is not currently employed in the sheriff class or did not retire as a sheriff, the cost quote shall be prepared reflecting a buy-up to protection occupation service credit.

~~*c. b.* Wage adjustment after a buy-up.~~ If an employer wage adjustment completely removes a member’s service credit in a buy-up quarter, IPERS shall correct the service credit and perform the necessary recalculations.

~~*d. c.* IRS limitations.~~ Buy-up service purchases will be aggregated with buy-in and buy-back service purchases during a calendar year and subjected to the applicable limits of shall not exceed the defined contribution dollar limit then in effect under Section 415(c) of the Internal Revenue Code. Amounts that are rolled over from other qualified plans for service purchases are excluded from these limits.

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ITEM 38. Amend subrule 9.4(1) as follows:

**9.4(1)** To obtain a refund, a member must file a refund application form, which is available directly from IPERS or which can be reprinted from IPERS' ~~Web site~~ website: [www.ipers.org](http://www.ipers.org). Effective December 31, 2002, refund application forms shall only be available from IPERS. If the member is married, election of a refund under this chapter requires the written acknowledgment of the member's spouse. However, the system may accept a married member's election of a refund under this chapter without the written acknowledgment of the member's spouse if the member submits a notarized statement ~~indicating~~ affirming that, after reasonable diligent efforts, the member has been unable to locate the member's spouse to obtain the written acknowledgment of the spouse. The member's election of a refund shall become effective upon filing the necessary forms, including the notarized statement, with the system. The system shall not be liable to the member, the member's spouse, nor to any other person affected by the member's election of a refund based upon an election of a refund accomplished without the written acknowledgment of the member's spouse.

ITEM 39. Amend subrule 9.4(2) as follows:

**9.4(2)** The last date the member is considered an employee and the date of the last paycheck from which IPERS contributions will be deducted must be certified by the employer on the refund application unless the member has not been paid covered wages for at least one year or the employer has provided the termination date and date of the last paycheck on the monthly wage reports filed with IPERS. Terminated employees must keep IPERS advised in writing of any change in address so that refunds and tax documents may be delivered. Unless an electronic funds transfer is requested by the member, the refund warrant will be mailed to the member at the address listed on the application for refund.

ITEM 40. Rescind subrule **9.4(3)**.

ITEM 41. Renumber subrules **9.4(4)** to **9.4(6)** as **9.4(3)** to **9.4(5)**.

ITEM 42. Amend renumbered subrule 9.4(4) as follows:

**9.4(4)** Effective July 1, 2004, an employee must sever all covered employment for 30 days after the date the employee was last considered an employee, ~~and not for 30 days after the date of the last paycheck containing IPERS covered wages of a covered employer.~~

ITEM 43. Amend rule 495—9.6(97B) as follows:

**495—9.6(97B) Refund followed by commencement of disability benefits under Iowa Code section 97B.50(2).** If a vested member terminates covered employment, takes a refund, and is subsequently approved for disability under the federal Social Security Act or the federal Railroad Retirement Act, the member may reinstate membership service credit for the period covered by the refund by paying the actuarial cost as determined by IPERS' actuary in 495—subrule 8.1(1) and within 90 days after the date federal social security disability or railroad retirement disability payments begin. Repayments must be made by:

1. For members whose federal social security or railroad retirement disability payments begin before July 1, 2000, within 90 days after July 1, 2000; or
2. For members whose social security or railroad retirement disability payments begin on or after July 1, 2000, within 90 days after the date federal social security or railroad retirement payments begin.

ITEM 44. Amend subrule 11.5(3) as follows:

**11.5(3) Bona fide refund.** For a member to be eligible for a lump sum refund, the member must terminate the member's covered employment and remain out of employment for 30 days with all covered employers. The 30-day bona fide refund period shall be waived for an elected official covered under Iowa Code section 97B.1A(8) "a"(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8) "a"(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS-covered employment prior to the issuance of the refund. Such an official may remain in the elective office and receive an IPERS refund without violating IPERS' bona fide refund rules. If such elected official terminates coverage for the elective office and also terminates all other IPERS-covered

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

employment but is then reemployed in covered employment, and has not received a refund as of the date of hire, the refund shall not be made. Furthermore, if such elected official is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the public official shall not be eligible for new IPERS coverage for such elected position.

The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official is reelected to the same position without an intervening term out of office. The waiver granted in this subrule shall be applicable to such elected officials who were in violation of the prior bona fide refund rules on and after November 1, 2002, when such individuals have not repaid the previously invalid refund.

If a member takes a refund in violation of the bona fide refund requirements of Iowa Code section 97B.53(4), the member ~~shall have 30 days from the date of written notice by IPERS to repay the refund in full without interest. Thereafter, in order to receive service credit for the period covered by the refund, the member shall be required to buy back the period of service at its full actuarial cost. may return the refund during the bona fide retirement period and restore the member's account.~~

ITEM 45. Amend paragraph **12.4(5)“b”** as follows:

*b.* The applicable percentage multiplier divided by 30 times the years of regular service credit (if any) times the member's high three-year average prior to July 1, 2012, or the member's high five-year average after June 30, 2012, covered wage minus the applicable wage reduction (if any).

*c.* If the sum of the percentages obtained exceeds the applicable percentage multiplier for that member, the percentage obtained above for each class of service shall be subject to reduction so that the total shall not exceed the member's applicable percentage multiplier in the order specified in paragraph ~~12.4(3)“c” of this subrule.~~ 12.4(3)“c.”

ITEM 46. Amend subrule 12.5(1) as follows:

**12.5(1)** For each member who is vested prior to July 1, 2012, and is retiring prior to July 1, 2012, with less than four complete years of service, a monthly annuity shall be determined by applying the total reserve as of the effective retirement date (plus any retirement dividends standing to the member's credit on December 31, 1966) to the annuity tables in use by the system according to the member's age (or member's and contingent annuitant's ages, if applicable). If the member's retirement occurs before January 1, 1995, IPERS' revised ~~6.5~~ 6.50 percent tables shall be used. If the member's retirement occurs after December 31, 1994, IPERS' 6.75 percent tables shall be used. If the member's retirement occurs after December 31, 2009, IPERS' 7.50 percent tables shall be used. If the member's retirement occurs after December 31, 2019, IPERS' 7.00 percent tables shall be used.

ITEM 47. Renumber subrules **14.3(2)** and **14.3(3)** as **14.3(3)** and **14.3(4)**.

ITEM 48. Adopt the following **new** subrule 14.3(2):

**14.3(2) Deceased beneficiary.** If a named beneficiary predeceased the member, that beneficiary's share shall be paid to the surviving named beneficiaries in equal shares.

ITEM 49. Amend subrule **16.2(1)**, definition of “Successor alternate payee,” as follows:

“*Successor alternate payee*” means a ~~non-spouse~~ person or persons named in a domestic relations order prior to July 1, 2019, to receive the amounts payable to the former spouse alternate payee under the QDRO if the alternate payee dies before the member. Successor alternate payees must be named individuals, not a class of individuals, a trust or an estate.

ITEM 50. Amend subparagraph **16.2(2)“a”(6)** as follows:

(6) Conforms IPERS with IRS reporting requirements for distributions to ~~non-spouse~~ successor alternate payees. The Prior to July 1, 2019, the taxable portion and basis will be prorated to each respective recipient if the payee is the alternate payee. If the payee is a successor alternate payee, the taxable portion and basis will be borne by the member, pursuant to IRC Pub. L. 99-514, 100 Stat. 2085, enacted October 22, 1986. Effective July 1, 2019, a domestic relations order must conform IPERS with IRS reporting requirements for distributions to alternate payees. The taxable portion and basis will be prorated to each respective recipient; and

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

ITEM 51. Adopt the following new subparagraph **16.2(2)“b”(7)**:

(7) Appoints a successor alternate payee after June 30, 2019.

ITEM 52. Amend subparagraph **16.2(2)“c”(3)** as follows:

(3) Bar a vested member from requesting a refund of the member's accumulated contributions without the alternate payee's written consent. If a member applies for a refund, a consent form will be sent to the alternate payee at the address of record at IPERS. The completed consent form must be received by IPERS within 60 days. If returned undeliverable or no response is received, the alternate payee's member's portion of the refund amount will be payable to the member. If returned marked “no consent,” the refund will not be payable to either the member or alternate payee;

ITEM 53. Amend subparagraph **16.2(2)“c”(4)** as follows:

(4) Allow benefits to be paid to an alternate payee based on a period of reemployment for a retired member; and.

ITEM 54. Rescind subparagraph **16.2(2)“c”(5)**.

ITEM 55. Amend paragraph **16.2(3)“a”** as follows:

a. IPERS uses the shared payment method for payments under a domestic relations order. IPERS will not create a separate account for the alternate payee or any successor alternate payee(s). Payment to the alternate payee (or successor alternate payee(s)) shall be in a lump sum if the member's benefits are paid in a lump sum distribution or as monthly payments if the member's benefits are paid under a retirement option. A member shall not be able to receive an actuarial equivalent (AE) under Iowa Code section 97B.48(1) unless the total benefit payable with respect to that member meets the applicable requirements. All divisions of benefits shall be based on the gross amount of monthly or lump sum benefits payable. Federal and state income taxes shall be deducted from the member's and former spouse alternate payee's respective shares and reported under their respective federal tax identification numbers. Unrecovered basis shall be allocated on a pro rata basis to the member and alternate payee. Federal and state income taxes shall be deducted from the member's gross payment when a ~~nonspouse~~ successor alternate payee(s) receives a payment. Federal and state income taxes shall be reported under the member's federal tax identification number. Unrecovered basis shall be allocated to the member.

ITEM 56. Amend paragraph **16.2(3)“j”** as follows:

j. ~~IPERS has no duty or responsibility to search for alternate payees. Alternate payees must notify IPERS of any change in their mailing addresses. IPERS shall mail the alternate payee an application once an application for a distribution has been received from the member and considered a complete application by IPERS. The application mailed by IPERS to the alternate payee states that, if the alternate payee does not return the application to IPERS within 60 days after the application is mailed by IPERS, the amounts otherwise payable to the alternate payee shall be paid to the member or the member's beneficiary(ies). If the member applied for a refund, and the alternate payee's application is not received within the 60 days, the alternate payee's share of the member's lump sum refund shall be paid to the member. The alternate payee's only recourse shall be with the member. IPERS shall have no liability to the alternate payee or the member with respect to payment of the alternate payee's share to the member. If the member applies for a monthly pension payment, unless and until a valid application for the alternate payee's share of the monthly pension payments is received and accepted by IPERS, IPERS shall have no liability to the alternate payee with respect to payment of monthly amounts, nor will any retroactive payment be made if and when an application is received and accepted. All monthly payments in this case shall be prospective. For monthly benefit applications, the alternate payee is eligible for monthly payments as of the member's first month of entitlement.~~

ITEM 57. Rescind paragraph **16.2(3)“r.”**

**ARC 4237C****LABOR SERVICES DIVISION[875]****Notice of Intended Action****Proposing rule making related to conveyance safety and providing an opportunity for public comment**

The Elevator Safety Board hereby proposes to amend Chapter 71, “Administration of the Conveyance Safety Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 89A.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 89A.

*Purpose and Summary*

The ASME A17.3 Code requires upgrades of some older elevators. These proposed amendments would reduce the fee for alteration permits linked to ASME A17.3 and clarify which ASME A17.3 upgrades need an alteration permit.

*Fiscal Impact*

Reducing the alteration fee linked to ASME A17.3 will cause a slight reduction of receipts to the elevator safety fund.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 66.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 6, 2019. Comments should be directed to:

Kathleen Uehling  
Division of Labor Services  
1000 East Grand Avenue  
Des Moines, Iowa, 50319-0209  
Email: [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov)

*Public Hearing*

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

LABOR SERVICES DIVISION[875](cont'd)

February 6, 2019  
9 a.m.

150 Des Moines Street  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** subrule 71.10(4):

**71.10(4)** Work required by ASME A17.3 (2011) qualifies as normal maintenance and does not require an alteration permit except for work performed to comply with ASME A17.3 (2011) 2.3.3, 3.4.4.1(a), 3.4.4.2, 3.5.3, 3.5.5(a) and (b), 3.5.7, 3.6.1, 3.6.2, 3.8.1(a), 3.8.3(a), 3.10.1, 3.10.4(b) through (g), 3.10.4(i) through (k), 3.10.4(m), 3.10.4(r), 3.10.4(w), 3.10.7, 3.10.9, 3.10.10, 4.4.2, 4.4.3, and 4.7.3.

ITEM 2. Amend paragraph **71.16(4)“a”** as follows:

a. ~~The~~ Except as set forth below, the fee for any elevator alteration permit shall be \$500 and shall cover the initial print review, alteration permit, and initial inspection.

ITEM 3. Reletter paragraph **71.16(4)“d”** as **71.16(4)“e.”**

ITEM 4. Adopt the following **new** paragraph **71.16(4)“d”**:

d. The fee for an initial print review, elevator alteration permit, and initial inspection shall be \$250 if both of the following conditions are met:

(1) The only changes covered by the elevator alteration permit application are required by ASME A17.3 (2011) as adopted in 875—Chapters 72 and 73; and

(2) The elevator alteration permit application is submitted no later than 120 days after the issuance of an inspection report describing ASME A17.3 requirements.

**ARC 4241C**

**MEDICINE BOARD[653]**

**Notice of Intended Action**

**Proposing rule making related to medical conditions for which medical cannabidiol may be used and providing an opportunity for public comment**

The Board of Medicine hereby proposes to amend Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapters 124E, 148 and 272C.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 124E.

MEDICINE BOARD[653](cont'd)

*Purpose and Summary*

This proposed rule making amends rule 653—13.15(124E,147,148,272C), which establishes the standards of practice for the use of medical cannabidiol, by adding “severe, intractable pediatric autism with self-injurious or aggressive behaviors” to the list of debilitating medical conditions for which medical cannabidiol may be used.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Kent Nebel  
Iowa Board of Medicine  
400 S.W. Eighth Street, Suite C  
Des Moines, Iowa 50309  
Phone: 515.281.7088  
Fax: 515.242.5908  
Email: [kent.nebel@iowa.gov](mailto:kent.nebel@iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 5, 2019  
9 a.m.

Board Office, Suite C  
400 S.W. Eighth Street  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

MEDICINE BOARD[653](cont'd)

Amend subrule **13.15(1)**, definition of “Debilating medical condition,” as follows:

“*Debilating medical condition*” means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:
  - Severe or chronic pain.
  - Nausea or severe vomiting.
  - Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.
5. Crohn’s disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
  - Severe or chronic pain.
  - Nausea or severe vomiting.
  - Cachexia or severe wasting.
8. Parkinson’s disease.
9. Untreatable pain.
10. Ulcerative colitis.
11. Severe, intractable pediatric autism with self-injurious or aggressive behaviors.

**ARC 4225C**

## **NATURAL RESOURCE COMMISSION[571]**

### **Notice of Intended Action**

#### **Proposing rule making related to camping, rental facility, vessel storage, and other special privilege fees and providing an opportunity for public comment**

The Natural Resource Commission hereby proposes to amend Chapter 61, “State Parks, Recreation Areas, and State Forest Camping,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 455A.5(6)“a.”

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 455A.14.

#### *Purpose and Summary*

The proposed rule making amends portions of Chapter 61 by adding references to proposed new 561—Chapter 16 (**ARC 4226C**, IAB 1/16/19) and removes provisions that are no longer needed. This is because the Department of Natural Resources (Department) is authorized, pursuant to Iowa Code section 455A.14 as enacted by 2018 Iowa Acts, Senate File 2389 (signed by Governor Reynolds on April 26, 2018), to set and publish camping, rental facility, vessel storage, and other special privilege fees on the Department’s website.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. A copy of the impact statement is available from the Department upon request.



## NATURAL RESOURCE COMMISSION[571](cont'd)

*Jobs Impact*

After analysis and review of this rule making, the Commission does not anticipate any impact to private sector jobs or employment in the state from this rule making. In fact, the public's use of state parks and recreation areas provides important economic support to nearby cities and towns, with guests supporting local businesses and camping and rental fees resulting in sales tax revenue. This is expected to continue, and possibly at times even increase, due to the dynamic pricing strategies that would be made possible by this proposed rule making and its proposed companion rule making to adopt 561—Chapter 16. A copy of the impact statement is available from the Department upon request.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 571—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 7, 2019. Comments should be directed to:

Sherry Arntzen  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street, Fourth Floor  
Des Moines, Iowa 50319-0034  
Email: [sherry.arntzen@dnr.iowa.gov](mailto:sherry.arntzen@dnr.iowa.gov)

*Public Hearing*

Six public hearings at which persons may present their views orally or in writing will be held as follows:

February 7, 2019 12 noon to 2 p.m.	Wallace State Office Building Conference Room 4E/4W Des Moines, Iowa
February 7, 2019 12 noon to 2 p.m.	Lake Darling State Park Lake Darling Lodge 111 Lake Darling Road Brighton, Iowa
February 7, 2019 12 noon to 2 p.m.	Cold Springs District Office Conference Room 57744 Lewis Road Lewis, Iowa
February 7, 2019 12 noon to 2 p.m.	Clear Lake State Park Office 2730 South Lakeview Drive Clear Lake, Iowa
February 7, 2019 12 noon to 2 p.m.	Delaware County Conservation Board Conference Room 2379 Jefferson Road Manchester, Iowa
February 7, 2019 12 noon to 2 p.m.	Lewis and Clark State Park Lewis and Clark Visitor Center Banquet Room 21914 Park Loop Onawa, Iowa

## NATURAL RESOURCE COMMISSION[571](cont'd)

Persons who wish to make oral comments at a public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind the definition of "Reservation transaction fees" in rule **571—61.2(461A)**.

ITEM 2. Rescind subrule 61.3(3) and adopt the following **new** subrule in lieu thereof:

**61.3(3) Reservation transaction fees.** Fees to process a reservation, change a reservation or cancel a reservation shall be set contractually with the reservation system vendor and published on the department's website with the camping, rental facility and other special privilege fees set by the department pursuant to 561—Chapter 16.

ITEM 3. Rescind subrule 61.4(1) and adopt the following **new** subrule in lieu thereof:

**61.4(1) Fees.** Camping fees shall be set by the department pursuant to 561—Chapter 16.

ITEM 4. Rescind and reserve subrule **61.4(2)**.

ITEM 5. Amend paragraph **61.4(4)“b”** as follows:

*b.* Chaperoned, organized youth groups may choose to occupy campsites not designated as organized youth group campsites. However, the group is subject to ~~all fees and rules in 61.4(1), 61.4(3) and 61.4(5) pertaining to the campsite the group wishes to occupy, as well as all fees as set by the department in 561—Chapter 16.~~

ITEM 6. Amend rule 571—61.5(461A), introductory paragraph, as follows:

~~**571—61.5(461A) Rental facilities.** The following are maximum fees for facility use in state parks and recreation areas. The fees may be reduced or waived by the director for special events or special promotional efforts sponsored by the department. Special events or promotional efforts shall be conducted so as to give all park facility users equal opportunity to take advantage of reduced or waived fees. Reductions or waivers shall be on a statewide basis covering like facilities. In the case of promotional events, prizes shall be awarded by random drawing of registrations made available to all park visitors during the event.~~

ITEM 7. Rescind subrule 61.5(1) and adopt the following **new** subrule in lieu thereof:

**61.5(1) Rental facility fees.** Rental facility fees shall be set by the department pursuant to 561—Chapter 16.

ITEM 8. Rescind and reserve subrule **61.5(2)**.

ITEM 9. Rescind rule 571—61.6(461A) and adopt the following **new** rule in lieu thereof:

**571—61.6(461A) Vessel storage fees.** Vessel storage fees shall be set by the department pursuant to 561—Chapter 16.

This rule is intended to implement Iowa Code section 455A.14.

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 10. Amend paragraph **61.22(1)“b”** as follows:

*b.* The fees for camping in established state forest campgrounds shall be ~~the same as those cited in paragraphs 61.4(1)“a” and “b” for all other nonmodern camping areas managed by the department where fees are charged~~ set by the department pursuant to 561—Chapter 16.

**ARC 4226C****NATURAL RESOURCES DEPARTMENT[561]****Notice of Intended Action****Proposing rule making related to state park and recreation area fees and providing an opportunity for public comment**

The Natural Resources Department hereby proposes to adopt new Chapter 16, “State Park and Recreation Area Fees,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 455A.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 455A.14.

*Purpose and Summary*

Iowa Code section 455A.14 explicitly directs the Department to promulgate in rule a methodology for establishing base fees for park and recreation area camping, rental facilities, vessel storage, and other special privileges. This proposed rule making establishes this methodology. The methodology reflects the parameters of rate setting contained in the statute, namely to ensure fees are competitive with those charged at other parks and recreation areas within a 60-mile radius for the same or similar privileges and to strategically adjust these fees in response to, or so as to stimulate, user demand. This proposed rule making does not directly establish any fees but rather outlines the criteria that will determine what those fees will be. Once set, those fees shall be published on the Department’s website.

*Fiscal Impact*

The fiscal impact of this rule making would be a possible increase in revenue for the state’s conservation fund, which is required by law to support Iowa’s state parks system among other public lands and waters. See Iowa Code section 456A.17. This rule making does not directly establish what camping, rental facility, vessel storage, and other special privilege base fees will be. Instead, it defines the methodology used by the Director to set those fees; nonetheless, the ultimate impact of this rule making is state park and recreation area fees. Accordingly, the Department associates all speculated revenues with this proposed rule making.

Importantly, these revenues are necessarily speculative due to the data collection required by 2018 Iowa Acts, Senate File 2389, that is still ongoing. Senate File 2389 requires the Department to survey a 60-mile radius around each state park and recreation area and catalog prices assessed at other public areas within each radius. The information gained from the survey is to guide the Department in establishing base fees to ensure rates remain competitive. A final assessment is not expected until sometime next year. As such, the Department does not anticipate many fee changes in 2019. That said, the surveying completed so far reveals a wide variety of prices, some much higher and some less than those currently charged at certain parks and recreation areas, so a few fee modifications are likely. The Department does not anticipate that the possible modifications will result in significantly higher fee amounts.

One possible example of a modification to fees for 2019 would be extending peak season pricing for fall destination parks. The peak season for camping is typically May 1 through September 30. During this period, the camping rates are at the highest amount of the year. The winter season rates

## NATURAL RESOURCES DEPARTMENT[561](cont'd)

typically begin October 1 and run through April 30. The Department anticipates that it will drop its winter season camping rate by \$5/night for all campsite types (electric, nonelectric, full hook-up) in a modern campground and by \$3/night for all campsite types (electric, nonelectric, full hook-up) in a nonmodern campground. However, several state parks and recreation areas around the state are popular camping destinations during the fall, including the month of October, while shower and restrooms facilities are still open and water is available. Water is turned off and facilities shut down sometime in mid-October due to the potential of freezing temperatures. The Department is reviewing the occupancy rates of campgrounds in the month of October to determine which campgrounds could justifiably maintain the peak season rates. For example, Pikes Peak State Park is situated on the bluffs overlooking the Mississippi and Wisconsin Rivers. It is a destination area for fall foliage visits. In 2017, the campground's overall occupancy for electric campsites was 56 percent (62 percent on weekends) and 27.57 percent for nonelectric sites (52 percent on weekends). If the peak season for this park was extended to include October 1 to 31, an additional \$5,100 in new revenue could be generated for the conservation fund.

The Department is considering a strategic reduction in camping fees during pre- and post-peak season times to increase use and occupancy. Under the current rules, peak season pricing begins on May 1, but campground use really picks up around Memorial Day. Likewise, peak season pricing stays in effect until September 30, but camping starts to taper off after Labor Day, except in the fall destination parks noted above. To drive use and occupancy during these less popular times, the Department may strategically reduce rates through the use of short-term discount promotions or create a lower pre- and post-season rate. Estimations on revenue generation are necessarily speculative, but even a \$10/night price (for example) for an otherwise unoccupied campsite is positive revenue to the conservation fund.

Finally, the Department may strategically increase peak season rental fees at several high-demand and unique facilities around the state, with Gull Point State Lodge being one example. This large stone and timber day-use lodge was built by the Civilian Conservation Corps. It sits on the shore of West Okoboji, has seating for 200 guests and a patio that seats an additional 30, and has a full kitchen, a modern restroom, and two fireplaces. It is a high-demand venue for weddings, reunions, and other group activities. It currently rents for \$200/day on Fridays, Saturdays, and major holidays, and \$100/day on weekdays. There are no similarly situated or sized public comparables in a 60-mile radius, and notably, the comparable private facilities rent for several hundred to several thousand dollars a day. Therefore, the Department is likely to increase its rate, and even doubling the rate would still result in an extraordinarily low and affordable fee for the venue's size, location, and amenities and would generate several thousand dollars for the conservation fund.

However, consistent with the criteria in this proposed rule making, the Director would be able to strategically decrease or increase all fees depending on the listed factors. The scenarios above are just examples of speculated future revenues based on the dynamic pricing made possible by 2018 Iowa Acts, Senate File 2389, and this proposed rule, and no final fee decisions for 2019 have been made. A copy of the impact statement is available from the Department upon request.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. If anything, the public's use of state parks and recreation areas provides important economic support to nearby cities and towns, with guests supporting local businesses and camping and rental fees resulting in sales tax revenue. This is expected to continue, and possibly at times even increase, due to the dynamic pricing strategies that would be made possible by this proposed rule making. A copy of the impact statement is available from the Department upon request.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, to pursuant to 561—Chapter 10.

## NATURAL RESOURCES DEPARTMENT[561](cont'd)

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 7, 2019. Comments should be directed to:

Sherry Arntzen  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street, Fourth Floor  
Des Moines, Iowa 50319-0034  
Email: [sherry.arntzen@dnr.iowa.gov](mailto:sherry.arntzen@dnr.iowa.gov)

*Public Hearing*

Six public hearings at which persons may present their views orally or in writing will be held as follows:

February 7, 2019 12 noon to 2 p.m.	Delaware County Conservation Board Conference Room 2379 Jefferson Road Manchester, Iowa
February 7, 2019 12 noon to 2 p.m.	Clear Lake State Park Office 2730 South Lakeview Drive Clear Lake, Iowa
February 7, 2019 12 noon to 2 p.m.	Lewis and Clark State Park Lewis and Clark Visitor Center Banquet Room 21914 Park Loop Onawa, Iowa
February 7, 2019 12 noon to 2 p.m.	Cold Springs District Office Conference Room 57744 Lewis Road Lewis, Iowa
February 7, 2019 12 noon to 2 p.m.	Lake Darling State Park Lake Darling Lodge 111 Lake Darling Road Brighton, Iowa
February 7, 2019 12 noon to 2 p.m.	Wallace State Office Building Conference Room 4E/4W Des Moines, Iowa

Persons who wish to make oral comments at a public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

NATURAL RESOURCES DEPARTMENT[561](cont'd)

The following rule-making action is proposed:

Adopt the following **new** 561—Chapter 16:

CHAPTER 16  
STATE PARK AND RECREATION AREA FEES

**561—16.1(455A) Definitions.**

“*Commission*” means the natural resource commission.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources.

**561—16.2(455A) Camping, rental facilities, vessel storage, and other special privileges—fees.**

**16.2(1) *Fee methodology.*** The director or the director’s designee shall fix and publish on the department’s website base fees for camping, the use of rental facilities, vessel storage and other special privileges at state parks and recreation areas under the jurisdiction of the department and the commission. The director or the director’s designee may increase, reduce, or waive the base fees on a case-by-case basis in order to take advantage of marketing opportunities so as to encourage maximum use of state facilities. The director or the director’s designee may consider the following factors when establishing and when adjusting base fees:

- a. The specific park’s or recreation area’s amenities.
- b. The size and features of a particular campsite or rental facility.
- c. Use of campsites, rental facilities, or other special privileges.
- d. Day of the week, season of the year, holidays, or other noteworthy occasions or special events.
- e. Cost of operations.
- f. Other considerations that the director or the director’s designee deems appropriate.

**16.2(2) *Fees honored.*** The fee to be charged shall be the fee currently in effect at the time the reservation is made and paid for. Any change to a reservation shall be subject to the fees applicable to the campsite or rental facility, along with any applicable reservation change fee, at the time the reservation is modified.

**561—16.3(455A) Areas under management—varying fees.** Fees charged for like services in state-owned areas under management by political subdivisions may vary from those established by this chapter.

These rules are intended to implement Iowa Code section 455A.14.

**ARC 4240C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Proposing rule making related to vaporizable forms of medical cannabidiol  
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 154, “Medical Cannabidiol Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 124E.11.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 124E.11(2)“c.”

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

*Purpose and Summary*

The Medical Cannabidiol Board asked the Board of Medicine to reconsider vaporizable forms of medical cannabidiol as allowable forms. The vaporizable forms allow for the administration of medical cannabidiol by a different route that avoids the digestive system and does not require the ability to swallow. The Board of Medicine approved the proposed amendment at its December 14, 2018, meeting. This proposed amendment adds the vaporizable form of inhaled medical cannabidiol to the allowable forms.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's variance and waiver provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Randy Mayer  
Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [randall.mayer@idph.iowa.gov](mailto:randall.mayer@idph.iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 6, 2019  
11 to 11:30 a.m.

Room 518  
Lucas State Office Building  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The following rule-making action is proposed:

Amend rule 641—154.14(124E) as follows:

**641—154.14(124E) Form and quantity of medical cannabidiol.** The form and quantity of medical cannabidiol authorized in this rule may be modified pursuant to recommendations by the medical cannabidiol board, subsequent approval of the recommendations by the board of medicine and adoption of the recommendations by the department by rule.

**154.14(1) Quantity.** A 90-day supply is the maximum amount of each product that shall be dispensed by a dispensary at one time.

**154.14(2) Form.**

a. A manufacturer may only manufacture medical cannabidiol in the following forms:

(1) Oral forms, including but not limited to:

1. Tablet.
2. Capsule.
3. Liquid.
4. Tincture.
5. Sublingual.

(2) Topical forms, including but not limited to:

1. Gel.
2. Ointment, cream or lotion.
3. Transdermal patch.

(3) ~~Nebulizable inhaled forms.~~ Inhaled forms, limited to:

1. Nebulizable.
2. Vaporizable.

(4) Rectal/vaginal forms, including but not limited to suppository.

b. A manufacturer may not produce medical cannabidiol in any form that may be smoked.

c. A manufacturer may not produce medical cannabidiol in an edible form as defined in rule 641—154.1(124E).

**ARC 4224C**

## **REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

### **Notice of Intended Action**

#### **Proposing rule making related to review of rules and providing an opportunity for public comment**

The Real Estate Appraiser Examining Board hereby proposes to amend Chapter 1, “Organization and Administration,” Chapter 3, “General Provisions for Examinations,” Chapter 5, “Certified Residential Real Property Appraiser,” Chapter 6, “Certified General Real Property Appraiser,” Chapter 8, “Investigations and Disciplinary Procedures,” Chapter 9, “Renewal, Expiration and Reinstatement of Certificates and Registrations, and Inactive Status,” Chapter 11, “Continuing Education,” Chapter 16, “Enforcement Proceedings Against Nonlicensees,” and Chapter 17, “Superintendent Supervision Standards and Procedures,” and to adopt new Chapter 18, “Waivers and Variances from Rules,” Chapter 19, “Investigatory Subpoenas,” Chapter 20, “Contested Cases,” Chapter 21, “Denial of Issuance or Renewal, Suspension, or Revocation of License for Nonpayment of Child Support, Student Loan, or State Debt,” Chapter 22, “Petition for Rule Making,” Chapter 23, “Declaratory Orders,” Chapter 24, “Sales and Leases of Goods and Services,” and Chapter 25, “Public Records and Fair Information Practices,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 543D.5.



## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 543D.

*Purpose and Summary*

The purposes of these proposed amendments are to ensure the Board's rules adequately reflect the Board's recent organizational relocation from the Professional Licensing and Regulation Bureau to the Division of Banking, including oversight of the Board by the Superintendent of Banking (see 2016 Iowa Acts, chapter 1124, division II (Iowa Real Estate Examining Board—Supervision), at [www.legis.iowa.gov/docs/publications/iactc/86.2/CH1124.pdf](http://www.legis.iowa.gov/docs/publications/iactc/86.2/CH1124.pdf)) and to incorporate standard agency and licensing board chapters (e.g., waivers and variances, contested cases, public information). The Board historically relied on the Professional Licensing and Regulation Bureau's rules for those standard chapters; however, those chapters are no longer applicable to the Board as a result of the Board's relocation within the Banking Division. These amendments are also part of the Board's rolling review of rules process, designed to ensure the Board's administrative rules have been reviewed and updated within the last five years pursuant to Iowa Code section 17A.7(2).

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 8, 2019. Comments should be directed to:

Brandy March  
Real Estate Appraiser Examining Board  
East Grand Office Park  
200 East Grand Avenue, Suite 350  
Des Moines, Iowa 50309  
Phone: 515.725.9025  
Email: [brandy.march@iowa.gov](mailto:brandy.march@iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 8, 2019  
8:30 to 9:30 a.m.

Small Conference Room, Third Floor  
200 East Grand Avenue  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 1.1(3) as follows:

**1.1(3)** All board action under Iowa Code chapter 543D and 193F—Chapter 17 shall be taken under the supervision of the superintendent, as provided in ~~2016 Iowa Acts, House File 2436~~ Iowa Code section 543D.23 and the implementing rules set forth herein.

ITEM 2. Amend rule **193F—1.2(543D)**, catchwords, as follows:

**193F—1.2(543D) Administrative committees authority.**

ITEM 3. Amend paragraph **1.2(5)“d”** as follows:

*d.* ~~Final~~ Records, filings, and requests for public information. Unless otherwise provided by rule of the board, final board action which is discretionary shall be effective upon the expiration of 20 days following issuance of the board's action if not timely reviewed by or appealed to the superintendent or upon final action by the superintendent if timely reviewed or appealed.

ITEM 4. Amend rule 193F—1.6(543D) as follows:

**193F—1.6(543D) Records, filings, and requests for public information.** Unless otherwise specified by the rules of the department of commerce ~~or the professional licensing and regulation division~~, the board is the principal custodian of its own agency orders, statements of law or policy issued by the board, legal documents, and other public documents on file with the board.

**1.6(1)** Any person may examine public records promulgated or maintained by the board at its office during regular business hours as ~~provided in 193—Chapter 13~~ specified in 193F—Chapter 25.

**1.6(2)** Records, documents and other information may be gathered, stored, and available in electronic format. Information, various forms, documents, and the law and rules may be reviewed or obtained anytime by the public from the board's Internet website located at [www.state.ia.us/iapp](http://www.state.ia.us/iapp) [idob.state.ia.us/reap](http://idob.state.ia.us/reap).

**1.6(3)** No change.

ITEM 5. Rescind and reserve rules **193F—1.8(22)** to **193F—1.16(272C)**.

ITEM 6. Amend subrule 3.3(3) as follows:

**3.3(3)** Any examination candidate who challenges a decision of the board under this rule may request a contested case hearing pursuant to ~~193—7.39(546,272C)~~ rule 193F—20.39(543D,272C). The request for hearing shall be in writing, shall briefly describe the basis for the challenge, and shall be filed in the board's office within 30 days of the date of the board decision that is being challenged.

ITEM 7. Amend subrule 5.6(7) as follows:

**5.6(7)** An applicant who is denied certification based on the work product review described in this rule, or on any other ground, shall be entitled to a contested case hearing as provided in rule ~~193—7.39(546,272C)~~ 193F—20.39(543D,272C). Notice of denial shall specify the grounds for denial, which may include any of the work performance-related grounds for discipline against a certified appraiser.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 8. Amend subrule 6.6(7) as follows:

**6.6(7)** An applicant who is denied certification based on the work product review described in this rule, or on any other ground, shall be entitled to a contested case hearing as provided in rule ~~193—7.39(546,272C)~~ 193F—20.39(543D,272C). Notice of denial shall specify the grounds for denial, which may include any of the work performance-related grounds for discipline against a certified appraiser.

ITEM 9. Amend subrule 8.8(4) as follows:

**8.8(4)** *Subpoena authority.* Pursuant to Iowa Code ~~subsections~~ sections 17A.13(1) and 272C.6(3), the board is authorized in connection with a disciplinary investigation to issue subpoenas to compel witnesses to testify or persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision about whether to initiate a disciplinary proceeding. Board procedures concerning investigative subpoenas are set forth in ~~193—Chapter 6~~ 193F—Chapter 19.

ITEM 10. Amend subrule 8.9(4) as follows:

**8.9(4)** The disciplinary committee, subject to board approval, may propose a consent order at the time of the informal discussion. If the licensee agrees to a consent order, a statement of charges shall be filed simultaneously with the consent order, as provided in rule ~~193—7.4(17A,272C)~~ 193F—20.4(17A,272C).

ITEM 11. Amend rule 193F—8.10(272C,543D), introductory paragraph, as follows:

**193F—8.10(272C,543D) Peer review committee (PRC).** A peer review committee may be appointed by the board to investigate a complaint. The committee may consist of one or more certified general or certified residential real property appraisers registered to practice in Iowa. The board may appoint a single peer review consultant to perform the functions of a PRC when, in the board's opinion, appointing a committee with more members would be impractical, unnecessary or undesirable given the nature of the expertise required, the need for prompt action or the circumstances of the complaint. An individual shall be ineligible as a PRC member in accordance with the standard for disqualification found in ~~193—7.14(17A)~~ rule 193F—20.14(17A,272C).

ITEM 12. Amend rule 193F—8.13(17A,272C,543D) as follows:

**193F—8.13(17A,272C,543D) Disciplinary contested case procedures.** Unless in conflict with a provision of board rules in this chapter, all of the procedures set forth in ~~193—Chapter 7~~ 193F—Chapter 20 shall apply to disciplinary contested cases initiated by the board.

ITEM 13. Amend rule 193F—8.17(272C,543D), introductory paragraph, as follows:

**193F—8.17(272C,543D) Reinstatement.** In addition to the provisions of rule ~~193—7.38(17A,272C)~~ 193F—20.38(17A,272C), the following provisions shall apply to license reinstatement proceedings:

ITEM 14. Amend subrule 9.3(7) as follows:

**9.3(7)** *Denial of timely and sufficient application to renew.* If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant stating the grounds for denial. The procedures described in rule ~~193—7.40(546,272C)~~ 193F—20.40(543D,272C) shall apply.

ITEM 15. Amend rule 193F—11.13(272C,543D) as follows:

**193F—11.13(272C,543D) Hearings.** In the event of denial, in whole or in part, of any application for approval of a continuing education program or provider, or credit for a continuing education program, or withdrawal of approval of a continuing education program or provider, the provider or appraiser may, within 30 days of the date of mailing of the notice of denial or withdrawal, request a contested case hearing before the board, as provided in rule ~~193—7.8(17A)~~ 193F—20.8(17A).

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 16. Amend rule 193F—16.1(543D), introductory paragraph, as follows:

**193F—16.1(543D) Civil penalties against nonlicensees.** The board may impose civil penalties by order against a person who is not certified or registered by the board pursuant to ~~2007 Iowa Acts, Senate File 137, Iowa Code chapter 543D~~ based on the unlawful practices specified in ~~2007 Iowa Acts, Senate File 137, section 7 Iowa Code section 543D.21.~~

ITEM 17. Amend subrule 16.2(7) as follows:

**16.2(7)** Improperly influencing or attempting to improperly influence the development, reporting, result, or review of a real estate appraisal as provided in ~~2007 Iowa Acts, Senate File 137, section 7 Iowa Code section 543D.21.~~

ITEM 18. Amend rule 193F—16.3(543D) as follows:

**193F—16.3(543D) Investigations.** The board is authorized by Iowa Code ~~subsection~~ sections 17A.13(1) and 2007 Iowa Acts, Senate File 137, section 7, 543D.21 to conduct such investigations as are needed to determine whether grounds exist to make application to the district court pursuant to ~~2007 Iowa Acts, Senate File 137, section 7, Iowa Code section 543D.21~~ or to impose civil penalties against a person who is not certified or registered with the board. Such investigations shall conform to the procedures outlined in ~~193—Chapter 6 and 193F—Chapter 8~~ 193F—Chapters 8 and 19. The board is authorized to issue subpoenas and to compel the testimony of witnesses in connection with such investigations, pursuant to ~~2007 Iowa Acts, Senate File 137, section 7 Iowa Code section 543D.21.~~ Complaint and investigatory files solely concerning persons who are not certified or registered by the board are not confidential except as provided in Iowa Code chapter 22.

ITEM 19. Amend subrule 16.4(1) as follows:

**16.4(1)** The notice of the board's intent to issue an order to require compliance with ~~2007 Iowa Acts, Senate File 137, section 7, Iowa Code section 543D.21~~ and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel.

ITEM 20. Amend paragraph **16.4(2)“d”** as follows:

*d.* The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with ~~2007 Iowa Acts, Senate File 137, section 7 Iowa Code section 543D.21.~~

ITEM 21. Amend subrule 16.5(5) as follows:

**16.5(5)** The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in rule ~~193—7.30(17A,272C) 193F—20.30(17A,272C).~~

ITEM 22. Amend rule 193F—16.7(543D) as follows:

**193F—16.7(543D) Enforcement options.** In addition or as an alternative to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, enter into a consent order, issue an informal cautionary letter, refer the matter to the attorney general, or refer the matter to the licensing entity with regulatory authority over the nonlicensee and jurisdiction to take action against the person's real estate-related license as provided in ~~2007 Iowa Acts, Senate File 137, section 7 Iowa Code section 543D.21.~~

ITEM 23. Amend **193F—Chapter 16**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A and chapter 543D as ~~amended by 2007 Iowa Acts, Senate File 137.~~

ITEM 24. Amend subrule 17.2(3) as follows:

**17.2(3)** *Review or appeal of final, discretionary board action.*

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

*a.* Final, discretionary board action may be reviewed by or appealed to the superintendent within 20 days of the issuance of the board action. Such decisions shall be provided to the superintendent when issued to affected persons. If the final board action is not a contested case decision following hearing, ~~the a~~ written notice of appeal or request for review shall be filed with the superintendent and served upon the board within such 20-day period, and shall specify:

- (1) The name of the person initiating the appeal or requesting review;
- (2) The board action which is being appealed or for which review is requested;
- (3) The specific facts or law alleged to be in error in the board action, or other specific reason(s)

why such review is sought;

(4) and (5) No change.

*b.* No change.

ITEM 25. Amend subrule 17.2(4) as follows:

**17.2(4) Review or appeal of contested case decision.**

*a.* ~~All~~ Notwithstanding anything in these rules to the contrary, all board decisions in a contested case, ~~whether by consent or~~ following hearing, are proposed decisions and shall be provided to the superintendent when issued.

*b.* All board decisions in a contested case resolved by consent are final decisions, shall be provided to the superintendent when issued, and are subject to the review procedures set forth in subrule 17.2(3).

~~*b. c.*~~ Any aggrieved party may appeal ~~the a~~ proposed decision to the superintendent within 20 days after issuance of the proposed decision. ~~The superintendent may initiate a review of the proposed decision on the superintendent's own motion at any time within 20 days following issuance of such decision.~~

*d.* When a proposed decision is or may be anticompetitive, the board (regardless of whether the proposed decision is in favor of the state) may request review of the proposed decision.

*e.* The superintendent may initiate a review of the proposed decision on the superintendent's own motion at any time within 20 days following issuance of such decision.

~~*e. f.*~~ A notice of appeal or request for review must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The party or parties initiating the appeal or requesting review;
- (2) The proposed decision or order which is being appealed or for which review is requested;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) and (5) No change.

~~*f. g.*~~ A notice of superintendent's review shall identify the superintendent's concerns with sufficient detail from which the board or a party can respond.

~~*e. h.*~~ A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The superintendent may preside over the taking of additional evidence or may remand a case to the board for further hearing.

~~*f. i.*~~ The superintendent shall issue a schedule for consideration of the review or appeal.

~~*g. j.*~~ Unless otherwise ordered, within 20 days of the notice of appeal, request for review, or order for review, the board and each appealing party may file briefs. Within 20 days thereafter, the board or any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The superintendent may resolve the appeal or review on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

~~*h. k.*~~ The record on appeal or review shall be the entire record made at hearing.

~~*i. l.*~~ The superintendent shall issue a written decision as provided in subrule 17.1(4).

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 26. Amend **193F—Chapter 17**, implementation sentence, as follows:  
These rules are intended to implement ~~2016 Iowa Acts, House File 2436~~ Iowa Code chapter 543D.

ITEM 27. Adopt the following new 193F—Chapter 18:

CHAPTER 18  
WAIVERS AND VARIANCES FROM RULES

**193F—18.1(17A,543D) Definitions.** For purposes of this chapter, “a waiver or variance” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

**193F—18.2(17A,543D) Scope of chapter.** This chapter outlines generally applicable standards and a uniform process for granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

**193F—18.3(17A,543D) Applicability.** The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

**193F—18.4(17A,543D) Criteria for waiver or variance.** In response to a petition completed pursuant to rule 193F—18.6(17A,543D), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

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

**193F—18.5(17A,543D) Filing of petition.** A petition for waiver must be submitted in writing to the board as follows:

**18.5(1) License application.** If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

**18.5(2) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

**18.5(3) Other.** If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board’s executive officer.

**193F—18.6(17A,543D) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

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

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 193F—18.4(17A,543D). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

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

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

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

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

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

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

**193F—18.7(17A,543D) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive officer, a committee of the board, or a quorum of the board.

**193F—18.8(17A,543D) Notice.** The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided. Notice may be provided by email or similar electronic means.

**193F—18.9(17A,543D) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

**193F—18.10(17A,543D) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**18.10(1) Board discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

**18.10(2) Burden of persuasion.** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

**18.10(3) Narrowly tailored.** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**18.10(4) *Administrative deadlines.*** When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**18.10(5) *Conditions.*** The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

**18.10(6) *Time period of waiver.*** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

**18.10(7) *Time for ruling.*** The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**18.10(8) *When deemed denied.*** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

**18.10(9) *Service of order.*** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law. Service of the written notice shall be sent to the email address provided by the petitioner unless the petitioner specifically requests a mailed copy.

**193F—18.11(17A) Interim rulings.**

**18.11(1)** The executive officer shall, upon receipt of a petition that meets all applicable criteria established in this chapter, present the request to the board chairperson or vice chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

**18.11(2)** The board chair, or vice chair if the chair is unavailable, may rule on a petition for waiver or variance if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

**18.11(3)** The board chair or vice chair may call a special electronic meeting of the board when prior board precedent does not clearly resolve the request, input of the board is deemed required, a ruling is not authorized under subrule 18.11(2) and the practical result of waiting until the next regularly scheduled board meeting would be denial of the request due to timing issues.

**18.11(4)** Interim rulings are effective when made, but a waiver report shall be placed on the agenda at the next regularly scheduled board meeting and recorded in the minutes.

**18.11(5)** This rule on interim rulings does not apply if the waiver or variance was filed in a contested case.

**193F—18.12(17A,543D) Public availability.** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

**193F—18.13(17A,543D) Summary reports.** Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.



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**193F—18.14(17A,543D) Cancellation of a waiver.** A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

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

**193F—18.15(17A,543D) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**193F—18.16(17A,543D) Defense.** After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**193F—18.17(17A,543D) Judicial review.** Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and chapter 543D.

ITEM 28. Adopt the following new 193F—Chapter 19:

CHAPTER 19  
INVESTIGATORY SUBPOENAS

**193F—19.1(17A,272C,543D) Investigatory subpoena authority.** Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board has the authority to issue subpoenas to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with the investigation of a licensee disciplinary proceeding, or otherwise necessary for the board to determine whether to commence a contested case. When such an investigation involves licensee discipline, the board may subpoena such evidence whether or not privileged or confidential under law.

**193F—19.2(17A,272C,543D) Investigatory subpoena procedures.**

**19.2(1)** The board's executive officer or designee may, upon the written request of a board investigator or on the officer's own initiative, subpoena books, papers, records, and other real evidence which the officer determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

**19.2(2)** A written request for a subpoena or the executive officer's written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

*c.* An explanation of the reasons that the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

*d.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 19.2(1) have been satisfied.

**19.2(3)** Each subpoena shall contain the following:

- a.* The name and address of the person to whom the subpoena is directed;
- b.* A description of the books, papers, records or other real evidence requested;
- c.* The date, time and location for production, or inspection and copying;
- d.* The time within which a motion to quash or modify the subpoena must be filed;
- e.* The signature, address and telephone number of the executive officer or designee;
- f.* The date of issuance;
- g.* A return of service.

**19.2(4)** Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

**19.2(5)** Upon receipt of a timely motion to quash or modify a subpoena, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

**19.2(6)** A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 193F—20.31(17A) and 193F—20.32(17A), provided that all of the time frames are reduced by one-half.

**19.2(7)** If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of intra-agency appeal. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of intra-agency appeal until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

These rules are intended to implement Iowa Code chapters 17A, 272C, and 543D.

ITEM 29. Adopt the following new 193F—Chapter 20:

CHAPTER 20  
CONTESTED CASES

**193F—20.1(17A,543D) Definitions.** In addition to the defined terms set forth in 193F—Chapter 2, the following additional terms shall apply in the context of this chapter, except where otherwise specifically defined by law:

“*Contested case*” means any adversary proceeding before the board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 543D; an adversary proceeding against a nonlicensee pursuant to Iowa Code section 543D.21; or any other proceeding designated a contested case by any provision of law, including but not limited to adversary proceedings involving license applicants and the reinstatement of a suspended, revoked or voluntarily surrendered license.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified by rule or in the order.

“*License*” means a license, registration, or certificate authorized by Iowa Code chapter 543D and the board's implementing rules related thereto.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

“*Party*” means the state, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent or applicant, or an intervenor.

“*Presiding officer*” means the board and, when applicable, a panel of board members or an administrative law judge assigned to render a proposed decision in a nondisciplinary contested case.

“*Probable cause*” means a reasonable ground for belief in the existence of facts which would support a specified proceeding under applicable law and rules.

“*Quorum*” means a majority of the members of the board. Action may generally be taken upon a majority vote of board members present at a meeting who are not disqualified, although discipline may only be imposed by a majority vote of the members of the board who are not disqualified.

**193F—20.2(17A,543D) Scope and applicability of the Iowa Rules of Civil Procedure.** Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

**193F—20.3(17A,272C) Commencement of a contested case and probable cause.** A contested case in a disciplinary proceeding is commenced by the filing and service of a statement of charges and notice of hearing. A contested case in a nondisciplinary proceeding is commenced by the filing and service of a notice of hearing. A contested case may only be commenced by the board upon a finding of probable cause to do so by a quorum of the board.

**193F—20.4(17A,272C) Informal settlement.** The board, board staff or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board and the licensee agree to a settlement of the case, a statement of charges shall be filed simultaneously with a consent order. The statement of charges and consent order may be separate documents or may be combined in one document. By electing to sign a consent order, the licensee waives all rights to a hearing and all attendant rights. The consent order shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 193F—20.30(17A,272C). Matters not involving licensee discipline which may culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 193F—20.42(543D,272C).

**193F—20.5(17A) Statement of charges.** The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent’s defense. The statement of charges shall be incorporated within or attached to the notice of hearing. The statement of charges and notice of hearing are public records open for public inspection under Iowa Code chapter 22.

**193F—20.6(17A,272C) Notice of hearing.**

**20.6(1) Contents of notice of hearing.** Unless the hearing is waived, all contested cases shall commence with the service of a notice of hearing fixing the time and place for hearing. The notice, including any incorporated or attached statement of charges, shall contain those items specified in Iowa Code section 17A.12(2) and, if applicable, Iowa Code section 17A.18(3), and the following:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted;
- e. Identification of all parties, including the name, address and telephone number of the assistant attorney general designated as prosecutor for the state and the respondent’s counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement after charges are filed;

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*h.* Identification of the board or a panel of board members as the presiding officer, or statement that the presiding officer will be an administrative law judge from the department of inspections and appeals;

*i.* If applicable, notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 193F—20.10(17A,272C), that the presiding officer be an administrative law judge from the department of inspections and appeals;

*j.* A statement requiring or authorizing the respondent to submit an answer of the type specified in rule 193F—20.9(17A,272C) within 20 days after service of the notice of hearing;

*k.* If applicable, notification of the licensee's right to request a closed hearing in a licensee disciplinary proceeding;

*l.* Information on who to contact if, because of a disability, auxiliary aids or services are needed for a party to participate in the matter;

*m.* If applicable, the date, time, and manner of conduct of a prehearing conference under rule 193F—20.21(17A,272C); and

*n.* The mailing address and email address for filing with the board and notice of the option of email service as provided in subrule 20.17(6).

**20.6(2) Service of notice of hearing.** Service of notice of hearing on a licensee to commence a contested case which may affect the licensee's continued licensure, such as a licensee disciplinary case or challenge to the renewal of a license, shall be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the licensee or the licensee's duly authorized legal representative. Service of the notice of hearing to commence all other contested cases may additionally be made by certified mail, return receipt requested.

**193F—20.7(13,272C) Legal representation.**

**20.7(1)** Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

**20.7(2)** The respondent or applicant may be represented by an attorney. The attorney shall file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney shall comply with Iowa Court Rule 31.14.

**193F—20.8(17A) Requests for contested case proceeding.** Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

The request for a contested case proceeding shall state the name and address of the requester; identify the specific board action which is disputed; describe issues of material fact in dispute; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved. If the board grants the request, the board shall issue a notice of hearing. If the board denies the request, the board shall issue a written order specifying the basis for the denial.

**193F—20.9(17A,272C) Form of answer.**

**20.9(1)** Unless otherwise provided in the notice of hearing, the answer shall:

*a.* State the name, address, and telephone number of the person filing the answer, the person on whose behalf it is filed, and the attorney representing that person, if any.

*b.* Specifically admit, deny, or otherwise answer all material allegations of the statement of charges.

*c.* State any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

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Any allegation in the statement of charges not denied in the answer is considered admitted. Any affirmative defense not raised in the answer shall be deemed waived for purposes of any subsequent intra-agency appeal, judicial review and corresponding appeal(s).

**20.9(2)** The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the case, including explanations, remarks or statements of mitigating circumstances.

**193F—20.10(17A,272C) Presiding officer.**

**20.10(1)** The presiding officer in all licensee disciplinary contested cases shall be the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code sections 272C.6(1) and 272C.6(2). When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 20.10(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

**20.10(2)** In cases which do not pertain to licensee discipline, the board may act as presiding officer or may notify the parties that an administrative law judge will act as presiding officer at hearing and issue a proposed decision. The use of an administrative law judge as presiding officer is only an option in cases which do not pertain to licensee discipline because only the board may conduct licensee discipline hearings pursuant to Iowa Code section 272C.6. Any party to a nondisciplinary case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

- a.* Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c.* The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.
- d.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f.* Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.
- g.* The request was not timely filed.
- h.* The request is not consistent with a specified statute.

**20.10(3)** The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision in a nondisciplinary contested case shall have a J.D. degree unless waived by the board.

**20.10(4)** The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

**20.10(5)** All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 193F—20.31(17A) and 193F—20.32(17A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

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**20.10(6)** Unless otherwise provided by law, board members, when reviewing a proposed decision of a panel of the board or an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

**193F—20.11(17A) Time requirements.**

**20.11(1)** Time shall be computed as provided in Iowa Code section 4.1(34).

**20.11(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**193F—20.12(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

**193F—20.13(17A,272C) Telephone and electronic proceedings.** The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone or other electronic means. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone or other electronic means. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

**193F—20.14(17A) Disqualification.**

**20.14(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**20.14(2)** The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual

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information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. A person voluntarily appearing before the board or a committee of the board waives any objection to a board member or board staff both participating in the appearance and later participating as a decision maker or aid to the decision maker in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 20.28(9).

**20.14(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**20.14(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 20.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code sections 17A.11(3) and 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

**20.14(5)** If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

**20.14(6)** A motion to disqualify a board member or other person shall first be directed to the affected board member or other person for determination. If the board member or other person determines that disqualification is appropriate, the board member or other person shall withdraw from further participation in the case. If the board member or other person determines that withdrawal is not required, the presiding officer shall promptly review that determination, provided that, if the person at issue is an administrative law judge, the review shall be by the board. If the presiding officer determines that disqualification is appropriate, the board member or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 193F—20.31(17A), if applicable, and seek a stay under rule 193F—20.34(17A).

**193F—20.15(17A) Consolidation—severance.**

**20.15(1)** *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

**20.15(2)** *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

**193F—20.16(17A) Amendments.** Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**193F—20.17(17A) Service and filing of pleadings and other papers.**

**20.17(1)** *When service is required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state, simultaneously with their filing. Except for the original notice of hearing and statement of charges, and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties. A notice of hearing and statement of charges shall be served by the board as provided in subrule 20.6(2). Once a

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specific administrative law judge has been assigned to a case, copies of all prehearing motions shall also be served on the administrative law judge.

**20.17(2) Service—how made.** Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery, including through electronic transmission if reasonably calculated to reach the party or the party's attorney, or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**20.17(3) Filing—when required.** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

**20.17(4) Filing—how and when made.** Except where otherwise provided by law, a document is deemed filed at the time it is received by the board. Parties may file documents with the board by hand delivery or mail or by electronic transmission to the email address specified in the notice of hearing. If a document required to be filed within a prescribed period or on or before a particular date is received by the board after such period or such date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the board. The board will not provide a mailed file-stamped copy of documents filed by email or other approved electronic means.

**20.17(5) Proof of mailing.** Proof of mailing includes either a legible United States Postal Service nonmetered postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Real Estate Appraiser Examining Board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

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(Date)

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(Signature)

**20.17(6) Electronic service.** Email or similar electronic means, unless precluded by a provision of law, shall be permitted to accomplish service where such electronic transmission is reasonably calculated to reach the other party or the other party's attorney. Factors to consider in determining whether such electronic transmission is reasonably calculated to reach the other party include, but are not limited to, prior communication practices between the parties, whether consent has been given by a party or the party's attorney, and whether the presiding officer has previously entered an order authorizing service by electronic transmission. Service by electronic transmission is complete upon transmission unless the board or party making service learns that the attempted service did not reach the party to be served.

**193F—20.18(17A) Discovery.**

**20.18(1)** The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

**20.18(2)** The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rule of Civil Procedure govern those specific procedures.

*a.* Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition



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costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

*b.* Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

*c.* Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

*d.* Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in a contested case proceeding.

**20.18(3)** The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to a contested case proceeding. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceeding or impose an undue hardship. As a practical matter, the purpose of the disclosure requirements and discovery conference is served by the board's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 193F—20.21(17A,272C).

**20.18(4)** Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

**20.18(5)** Discovery shall be served on all parties to the contested case proceeding but shall not be filed with the board.

**20.18(6)** A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

**20.18(7)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

**193F—20.19(17A,272C) Issuance of subpoenas in a contested case.**

**20.19(1)** Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the executive officer or designee upon a written request that complies with this rule. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

*a.* The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;

*b.* Adequate safeguards have been established to prevent unauthorized disclosure;

*c.* An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

*d.* An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

**20.19(2)** A request for a subpoena shall include the following information, as applicable:

*a.* The name, address, email address, and telephone number of the person requesting the subpoena;

*b.* The name and address of the person to whom the subpoena shall be directed;

*c.* The date, time, and location at which the person shall be commanded to attend and give testimony;

*d.* Whether the testimony is requested in connection with a deposition or hearing;

*e.* A description of the books, papers, records or other real evidence requested;

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- f.* The date, time, and location for production, or inspection and copying; and
- g.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 20.19(1) have been satisfied.

**20.19(3)** Each subpoena shall contain, as applicable:

- a.* The caption of the case;
- b.* The name, address, and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time, and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records, or other real evidence the person is commanded to produce;
- g.* The date, time, and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address, and telephone number of the executive officer or designee;
- j.* The date of issuance; and
- k.* A return of service.

**20.19(4)** The executive officer or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena shall so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

**20.19(5)** Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then file a motion asking the presiding officer to issue an order compelling production.

**20.19(6)** Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

**20.19(7)** A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 193F—20.31(17A) and 193F—20.32(17A), provided that all of the time frames are reduced by one-half.

**20.19(8)** If the person contesting the subpoena is not a party to the contested case proceeding, the board's decision is final for purposes of further intra-agency appeal. If the person contesting the subpoena is a party to the contested case proceeding, the board's decision is not final for purposes of further intra-agency appeal until there is a proposed decision in the contested case.

**193F—20.20(17A) Motions.**

**20.20(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**20.20(2)** Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

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**20.20(3)** The presiding officer may schedule oral argument on any motion. If the board requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 193F—20.31(17A).

**20.20(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least seven days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

**20.20(5)** Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

**20.20(6)** Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within ten days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 193F—20.33(17A) and appeal pursuant to rule 193F—20.32(17A).

**193F—20.21(17A,272C) Prehearing conference and disclosures.**

**20.21(1)** Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date. The board shall set a prehearing conference in all licensee disciplinary cases and provide notice of the date and time in the notice of hearing. Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

**20.21(2)** Each party shall disclose at or prior to the prehearing conference:

- a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and
- b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

**20.21(3)** In addition to the requirements of subrule 20.21(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations on the admissibility of exhibits;
- c.* Identify matters which the parties intend to request be officially noticed;
- d.* Enter into stipulations for waiver of any provision of law; and
- e.* Consider any additional matters which will expedite the hearing.

**20.21(4)** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference. Unless otherwise provided in the order setting a prehearing conference, the prehearing conference shall be conducted by an administrative law judge.

**20.21(5)** The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 20.26(4) no later than three business days in advance of hearing, or as ordered by the presiding officer at the prehearing conference.

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**193F—20.22(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**20.22(1)** A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

**20.22(2)** In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance and may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

**20.22(3)** The board's executive officer or an administrative law judge may enter an order granting an uncontested application for a continuance. Upon consultation with the board chair or chair's designee, the board's executive officer or an administrative law judge may deny an uncontested application for a continuance, or rule on a contested application for continuance.

**193F—20.23(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing upon written notice filed with the board and served on all parties. Unless otherwise ordered by the board, a withdrawal shall be with prejudice.

**193F—20.24(17A) Intervention.**

**20.24(1) Motion.** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**20.24(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**20.24(3) Grounds for intervention.** The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

**20.24(4) Effect of intervention.** If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number

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of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

**193F—20.25(17A,272C) Hearings.** The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or other evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions. Parties have the right to participate or to be represented in all hearings. Any party may be represented by an attorney at the party's expense.

**20.25(1) Examination of witnesses.** All witnesses shall be sworn or affirmed by the presiding officer or the court reporter and shall be subject to cross-examination. Board members and the administrative law judge have the right to examine witnesses at any stage of a witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

**20.25(2) Public hearing.** The hearing shall be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

**20.25(3) Record of proceedings.** Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the board for at least five years from the date of decision.

**20.25(4) Order of proceedings.** Before testimony is presented, the record shall show the identities of any board members present, the identity of the administrative law judge, the identities of the primary parties and their representatives, and the fact that all testimony is being recorded. In contested cases initiated by the board, such as licensee discipline, hearings shall generally be conducted in the following order, subject to modification at the discretion of the board:

*a.* The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

*b.* The assistant attorney general representing the state interest before the board shall make a brief opening statement which may include a summary of charges and the names of any witnesses and documents to support such charges.

*c.* Each respondent shall be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

*d.* The presentation of evidence on behalf of the state.

*e.* The presentation of evidence on behalf of the respondent(s).

*f.* Rebuttal evidence on behalf of the state, if any.

*g.* Rebuttal evidence on behalf of the respondent(s), if any.

*h.* Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

The order of proceedings shall be tailored to the nature of the contested case. In license reinstatement hearings, for example, the respondent will generally present evidence first because the respondent is obligated to present evidence in support of the respondent's application for reinstatement pursuant to rule 193F—20.38(17A,272C). In license denial hearings, the state will generally first establish the basis for the board's denial of licensure, but thereafter the applicant has the burden of establishing the conditions for licensure pursuant to rule 193F—20.39(543D,272C).

**20.25(5) Decorum.** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**20.25(6) Immunity.** The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of

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all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

**20.25(7) *Sequestering witnesses.*** The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses.

**20.25(8) *Witness representation.*** Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

**20.25(9) *Depositions.*** Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

**20.25(10) *Witness fees.*** The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

**193F—20.26(17A) Evidence.**

**20.26(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**20.26(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**20.26(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**20.26(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies should also be furnished to members of the board. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The state's exhibits shall be marked numerically, and the applicant's or respondent's exhibits shall be marked alphabetically.

**20.26(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**20.26(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**20.26(7)** Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

**193F—20.27(17A) Default.**

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**20.27(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**20.27(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**20.27(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 193F—20.32(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**20.27(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**20.27(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**20.27(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

**20.27(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 193F—20.31(17A).

**20.27(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**20.27(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

**20.27(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 193F—20.34(17A).

**193F—20.28(17A) Ex parte communication.**

**20.28(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 20.14(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**20.28(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

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**20.28(3)** Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

**20.28(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 193F—20.17(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**20.28(5)** Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**20.28(6)** The executive officer or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the executive officer or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and the executive officer or other persons comply with subrule 20.28(1).

**20.28(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 193F—20.22(17A).

**20.28(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**20.28(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**20.28(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the superintendent for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**193F—20.29(17A) Recording costs.** Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

**193F—20.30(17A,272C) Final decisions, publication and client notification.**

**20.30(1) Final decision.** When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive officer. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to the licensee's or other respondent's last-known U.S. Postal Service address or may be served as in the manner of original notices. A party's attorney may waive formal service and accept service in writing for the party. Copies shall be mailed by interoffice mail or first-class mail to the prosecutor and counsel of record.



## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**20.30(2) *Publication of decisions.*** Final decisions of the board, including consent agreements and consent orders, are public documents, are available to the public and may be disseminated as provided in Iowa Code chapter 22 by the board or others. Final decisions relating to licensee discipline shall be published on the board's website, may be published in the board's newsletter, and may be transmitted to the appropriate professional association(s), national association(s), other states, and news media, or otherwise disseminated. The board may, in its discretion, issue a formal press release.

**20.30(3) *Notification of clients.*** Within 15 days (or such other time period specifically ordered by the board) of the licensee's receipt of a final decision of the board, whether entered by consent or following hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee shall notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within 30 days of receipt of the board's final order, the licensee shall file with the board copies of the notices sent. Compliance with this requirement shall be a condition for an application for reinstatement.

**193F—20.31(17A) *Interlocutory appeals.*** Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

**193F—20.32(17A) *Appeals and review.***

**20.32(1) *Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions.***

*a. Proposed decision.* Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. All licensee disciplinary decisions must be issued by the board. A proposed disciplinary decision issued by a panel of the board must be acted upon by the full board in order to become the board's final proposed decision for purposes of 193F—subrule 17.2(4). In nondisciplinary cases, a proposed decision issued by a panel of the board or an administrative law judge becomes a final proposed decision for purposes of 193F—subrule 17.2(4) if not timely appealed by any party or reviewed by the board.

*b. Appeal by party.* Any adversely affected party may appeal a proposed decision rendered by a panel of the board or administrative law judge to the board within 30 days after issuance of the proposed decision. Such an appeal is required prior to seeking further intra-agency appeal as set forth in subrule 20.32(2) and 193F—subrule 17.2(4), is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

*c. Review.* The board may initiate review of a proposed decision rendered by a panel of the board or administrative law judge on its own motion at any time within 30 days following the issuance of such a decision.

*d. Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The parties initiating the appeal;
- (2) The proposed decision or order which is being appealed;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- (4) The relief sought;
- (5) The grounds for relief.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

*e. Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

*f. Scheduling.* The board shall issue a schedule for consideration of the appeal.

*g. Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

*h. Record.* The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

**20.32(2) Intra-agency review or appeal to the superintendent.**

*a. Proposed decisions.* Notwithstanding anything in these rules to the contrary, all board decisions in a contested case following hearing are proposed decisions and shall be provided to the superintendent when issued as required by 193F—subrule 17.2(4). Decisions issued by a panel of less than a quorum of the board or by an administrative law judge shall not constitute a final proposed decision of the board for purposes of this subrule and 193F—subrule 17.2(4) until the appeal and review procedures outlined in subrule 20.32(1) are exhausted and the review process is complete.

*b. Procedures for intra-agency review or appeal to the superintendent.* Procedures for intra-agency review or appeal by or to the superintendent in a hearing following a contested case are outlined in 193F—subrule 17.2(4) and are incorporated by reference as if set forth herein.

*c. Intra-agency appeal to superintendent.* No person aggrieved by a proposed decision of the board may seek judicial review of that action without first appealing the action to the superintendent, as more fully described in this subrule and 193F—Chapter 17. Such intra-agency appeal to the superintendent is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

**193F—20.33(17A) Applications for rehearing.**

**20.33(1) By whom filed.** Any party to a contested case proceeding may file an application for rehearing from a final order.

**20.33(2) Content of application.** The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 20.33(3), the applicant requests an opportunity to submit additional evidence.

**20.33(3) Additional evidence.** A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

**20.33(4) Time of filing.** The application shall be filed with the board within 20 days after issuance of the final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for rehearing is deemed filed on the date it is received by the board unless the provisions of subrule 20.17(4) apply.

**20.33(5) Notice to other parties.** A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the application on all parties.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**20.33(6) *Disposition.*** An application for rehearing shall be deemed denied unless the board grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the board.

**20.33(7) *Proceedings.*** If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

**193F—20.34(17A) Stays of board actions.****20.34(1) *When available.***

*a.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

*b.* Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. Seeking a stay from the board is required to exhaust administrative remedies before a stay may be sought from the district court.

**20.34(2) *When granted.*** In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

**20.34(3) *Vacation.*** A stay may be vacated by the issuing authority upon application of the board or any other party.

**193F—20.35(17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**193F—20.36(17A) Emergency adjudicative proceedings.**

**20.36(1) *Necessary emergency action.*** To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

*a.* Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

*b.* Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

*c.* Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

*d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

*e.* Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**20.36(2) Issuance of order.**

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the board;
- (3) Certified mail to the last address on file with the board;
- (4) First-class mail to the last address on file with the board; or
- (5) Electronic service. Fax or email notification may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax or email and has provided a fax number or email address for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**20.36(3) Oral notice.** Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**20.36(4) Completion of proceedings.** After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

**193F—20.37(17A,272C) Judicial review.** Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

**20.37(1)** Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

**20.37(2)** If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 20.33(6).

**193F—20.38(17A,272C) Reinstatement.**

**20.38(1)** The term "reinstatement" as used in this rule shall include both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license. Reinstating a license to active status under this rule is a two-step process:

a. First, the board must determine whether the suspended, revoked, or surrendered license may be reinstated under the terms of the order revoking or suspending the license or accepting the surrender of the license and under the two-part test described in subrule 20.38(5).

b. Second, if the board grants the application to reinstate, the licensee must complete and submit an application to demonstrate satisfaction of all administrative preconditions for reinstatement of the license to active status, including verification of completion of all continuing education and payment of reinstatement and renewal fees.

**20.38(2)** Any person whose license has been revoked or suspended by the board, or who voluntarily surrendered a license in a disciplinary proceeding, may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension, or order accepting the voluntary surrender.

**20.38(3)** Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender of a license.

**20.38(4)** All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. In addition, the board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on the application if the applicant requests an informal appearance in the application and agrees not to seek to disqualify on the ground of personal investigation the board members or staff before whom the applicant appears.

**20.38(5)** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with subrule 20.30(3) must also be established. The burden of proof to establish such facts shall be on the respondent. An order of reinstatement may include such conditions as the board deems reasonable under the circumstances. The board may grant the application without hearing, but may not deny the application in whole or in part without setting the matter for hearing or providing the applicant the opportunity to request a contested case hearing if aggrieved by a term of the reinstatement order.

**20.38(6)** An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not less than a majority of the board. This order will be published as provided for in subrule 20.30(2).

**193F—20.39(543D,272C) Hearing on license denial.** If the board denies an application for an initial, reciprocal or comity license, the executive officer shall send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the board denies an application to renew an existing license, the provisions of rule 193F—20.40(543D,272C) shall apply.

**20.39(1)** An applicant who is aggrieved by the denial of an application for licensure and who desires to contest the denial must request a hearing before the board within 30 calendar days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors that the applicant contends were made by the board, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the board shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant.

**20.39(2)** The board, in its discretion, may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as presiding officer. The applicant may request that an administrative law judge act as presiding officer and render a proposed decision pursuant to rule 193F—20.10(17A,272C). A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to rule 193F—20.32(17A).

**20.39(3)** License denial hearings are contested cases open to the public. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

**20.39(4)** The board, after a hearing on license denial, may grant or deny the application for licensure. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for licensure might be granted, if applicable.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**20.39(5)** The notice of license denial, request for hearing, notice of hearing, record at hearing and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, collateral organizations and other persons or entities.

**20.39(6)** Following intra-agency appeal to the superintendent as required by subrule 20.32(2) and 193F—subrule 17.2(4), judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

**193F—20.40(543D,272C) Denial of application to renew license.** If the board denies a timely and sufficient application to renew a license, a notice of hearing shall be issued to commence a contested case proceeding.

**20.40(1)** Hearings on denial of an application to renew a license shall be conducted according to the procedural rules applicable to contested cases. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 20.39(2) and 20.39(4) to 20.39(6) shall generally apply, although license denial hearings which are in the nature of disciplinary actions will be subject to all laws and rules applicable to such hearings.

**20.40(2)** Pursuant to Iowa Code section 17A.18(2), an existing license shall not terminate or expire if the licensee has made timely and sufficient application for renewal until the last day for seeking judicial review of the board's final order denying the application, or a later date fixed by order of the board or the reviewing court.

**20.40(3)** Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

- a.* Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;
- b.* Signed by the licensee if submitted in paper form or certified as accurate if submitted electronically;
- c.* Fully completed; and
- d.* Accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

**20.40(4)** The administrative processing of an application to renew an existing license shall not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

**193F—20.41(543D,272C) Recovery of hearing fees and expenses.** The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated a statute or rule enforced by the board. Payment shall be made directly to the banking division of the department of commerce.

**20.41(1)** All hearing fees and costs assessed by the board shall be paid directly to the division of banking and shall be held in a separate fund administered by the superintendent. The superintendent shall distribute moneys held in this fund during the fiscal year in which those moneys are paid to the division of banking. Distributions from the fund shall be made upon the request of the board and in the sole discretion of the superintendent. A distribution received by the board under this chapter shall be used only for expenditures related to disciplinary hearings.

*a.* The superintendent shall consider the following factors in exercising discretion as to whether to distribute funds to the board:

(1) The remaining funds in the board's allocated budget appropriate for disciplinary hearings in that fiscal year;

(2) The number of disciplinary hearings the board has scheduled for the remainder of that fiscal year; the nature and seriousness of those hearings; and the public health, safety, and welfare interests implicated by those hearings;

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

(3) Whether the board has adopted and implemented hearing cost recovery rules.

*b.* The superintendent shall, within 45 days from the end of the fiscal year, distribute to the board a percentage of the remaining fees and costs that is equal to the percentage of the board's total allocated budget in relation to the divisionwide total budget governed by this chapter. The fees and costs allocated back to the board shall be considered repayment receipts as defined in Iowa Code section 8.2. The fees and costs allocated back to the board shall be applied to the costs incurred for prosecution of contested cases which could result in disciplinary action.

**20.41(2)** The board may assess the following costs under this rule:

*a.* For conducting a disciplinary hearing, an amount not to exceed \$75.

*b.* All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal or request for review, to the full board from a decision rendered by a panel of the board or administrative law judge or by or to the superintendent from a proposed decision of the board, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable in the circumstances.

*c.* All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses shall be guided by Iowa Code section 622.69. The cost for expert witnesses shall be guided by Iowa Code section 622.72. Mileage costs shall not be governed by Iowa Code section 625.2. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.

*d.* All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the services of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost shall include a reasonable expert witness fee. The expert witness fee shall not exceed the expert's customary hourly or daily rate, and shall include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

**20.41(3)** When imposed in the board's discretion, hearing fees (not exceeding \$75) shall be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule shall be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

*a.* When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by a majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

*b.* If the assessment and the time period are not included in the disciplinary order, the board shall have until the end of the sixth month after the date the state of Iowa paid the expenditures to assess the licensee for such expenditure. In order to rely on this provision, however, the final disciplinary order must notify the licensee that fees and expenses will be assessed once known.

**20.41(4)** Any party may object to the fees, costs or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within ten days of any subsequent order establishing the amount of the assessment. A party's failure to timely object shall be deemed a failure to exhaust administrative remedies. Orders which impose fees, costs or expenses shall notify the licensee of the time frame in which objections must be filed in order to exhaust administrative remedies.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**20.41(5)** Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

**20.41(6)** The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall constitute a violation of an order of the board, shall be grounds for discipline, and shall be considered prima facie evidence of a violation of Iowa Code section 272C.3(2)“a.” However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.

**193F—20.42(543D,272C) Settlement after notice of hearing.**

**20.42(1)** Settlement negotiations after the notice of hearing is served may be initiated by the licensee or other respondent, the prosecuting assistant attorney general, the board’s executive officer, or the board chair or chair’s designee.

**20.42(2)** The board chair or chair’s designee shall have authority to negotiate on behalf of the board but shall not have the authority to bind the board to particular terms of settlement.

**20.42(3)** The respondent is not obligated to participate in settlement negotiations. The respondent’s initiation of or consent to settlement negotiation constitutes a waiver of notice and opportunity to be heard during settlement negotiation pursuant to Iowa Code section 17A.17 and rule 193F—20.28(17A). Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or chair’s designee, and the designated board member is not disqualified from participating in the adjudication of the contested case.

**20.42(4)** Unless designated to negotiate, no member of the board shall be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal settlement shall be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive officer to have ex parte communications with the board related to the terms of settlement. If the board fails to approve the consent order, it shall be of no force and effect to either party and shall not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement which the respondent is free to accept or reject.

**20.42(5)** If the board and respondent agree to a consent order, the consent order shall constitute the final decision of the board. By electing to resolve a contested case through consent order, the respondent waives all rights to a hearing and all attendant rights. A consent order in a licensee disciplinary case shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 193F—20.30(17A,272C).

These rules are intended to implement Iowa Code chapters 17A, 272C, and 543D.

ITEM 30. Adopt the following new 193F—Chapter 21:

## CHAPTER 21

DENIAL OF ISSUANCE OR RENEWAL, SUSPENSION, OR REVOCATION OF LICENSE FOR  
NONPAYMENT OF CHILD SUPPORT, STUDENT LOAN, OR STATE DEBT

**193F—21.1(252J) Nonpayment of child support.** The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

**21.1(1)** The notice required by Iowa Code section 252J.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.



## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**21.1(2)** The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee or applicant.

**21.1(3)** The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 252J.8 upon the licensee or applicant.

**21.1(4)** Licensees and applicants shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**21.1(5)** All board fees for application, license renewal or license reinstatement must be paid by licensees or applicants and all continuing education requirements must be met before a license will be issued, renewed or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 252J.

**21.1(6)** In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**21.1(7)** The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

**193F—21.2(261) Nonpayment of student loan.** The board shall deny the issuance or renewal of a license or suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

**21.2(1)** The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

**21.2(2)** The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensee.

**21.2(3)** The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or licensee.

**21.2(4)** Applicants and licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

**21.2(5)** All board fees required for application, license renewal or license reinstatement must be paid by applicants or licensees and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 261.

**21.2(6)** In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**21.2(7)** The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the applicant or licensee when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

**193F—21.3(272D) Nonpayment of state debt.** The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

**21.3(1)** The notice required by Iowa Code section 272D.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

**21.3(2)** The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the licensee or applicant.

**21.3(3)** The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 272D.8 upon the licensee or applicant.

**21.3(4)** Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

**21.3(5)** All board fees required for application, license renewal or license reinstatement must be paid by licensees or applicants and all continuing education requirements must be met before a license will be issued, renewed or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 272D.

**21.3(6)** In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**21.3(7)** The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 252J and 272D and sections 261.126 and 261.127.

ITEM 31. Adopt the following **new** 193F—Chapter 22:

CHAPTER 22  
PETITION FOR RULE MAKING

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**193F—22.1(17A) Petition for rule making.** Any person, board or other state agency may file a petition for rule making with the board.

A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

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BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

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Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING
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The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board’s authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner’s arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names, addresses, and email addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 193F—22.4(17A).

**22.1(1)** The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, email address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**22.1(2)** The board may deny a petition because it does not substantially conform to the required form.

**193F—22.2(17A) Briefs.** The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

**193F—22.3(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the executive officer of the board at the board’s offices.

**193F—22.4(17A) Board consideration.**

**22.4(1)** Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

**22.4(2)** Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Service of the written notice shall be sent to the email address provided by the petitioner unless the petitioner specifically requests a mailed copy. Petitioner shall be

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

deemed notified of the denial or granting of the petition on the date when the board emails or delivers the required notification to petitioner.

**22.4(3)** Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 32. Adopt the following new 193F—Chapter 23:

CHAPTER 23  
DECLARATORY ORDERS

**193F—23.1(17A) Petition for declaratory order.** Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board's offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

Petition by (Name of Petitioner) for  
Declaratory Order on (Cite provisions  
of law involved).

}

PETITION FOR  
DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
3. The questions the petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.
7. The names, addresses, and email addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.
8. Any request by petitioner for a meeting provided for by rule 193F—23.7(17A). The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, email address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**193F—23.2(17A) Notice of petition.** Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 193F—23.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons. Notice may be provided by email or similar electronic means.

**193F—23.3(17A) Intervention.**

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**23.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**23.3(2)** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

**23.3(3)** A petition for intervention shall be filed at the board’s office. Such a petition is deemed filed when it is received by the office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

Petition by (Name of Original Petitioner) for Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

1. Facts supporting the intervenor’s standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor’s interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
5. The names, addresses, and email addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, email address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

**193F—23.4(17A) Briefs.** The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

**193F—23.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order may be made to the executive officer of the board at the board’s offices.

**193F—23.6(17A) Service and filing of petitions and other papers.**

**23.6(1) When service required.** Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**23.6(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board’s office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**23.6(3) *Method of service, time of filing, and proof of mailing.*** Method of service, time of filing, and proof of mailing shall be as provided by rule 193F—20.17(17A).

**193F—23.7(17A) Board consideration.** Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

**193F—23.8(17A) Action on petition.**

**23.8(1)** Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by Iowa Code section 17A.9. Within 30 days after receipt of a petition for a declaratory order, the board shall, in writing, do one of the following:

- a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;
- b. Set the matter for specified proceedings;
- c. Agree to issue a declaratory order by a specified time; or
- d. Decline to issue a declaratory order, stating the reasons for its action.

**23.8(2)** The date of issuance of an order or of a refusal to issue an order is as defined in rule 193F—20.1(17A).

**193F—23.9(17A) Refusal to issue order.**

**23.9(1)** The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(5) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- a. The petition does not substantially comply with the required form.
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- c. The board does not have jurisdiction over the questions presented in the petition.
- d. The questions presented by the petition are also presented in current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.
- e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
- i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
- j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

**23.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

**23.9(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

**193F—23.10(17A) Contents of declaratory order—effective date.** In addition to the ruling itself, a declaratory order must contain the date of its issuance; the name of petitioner; the names of intervenors;

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

the specific statutes, rules, policies, decisions, or orders involved; the particular facts upon which it is based; and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

**193F—23.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be emailed promptly to the original petitioner and all intervenors unless the petitioner specifically requests a mailed copy.

**193F—23.12(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 33. Adopt the following new 193F—Chapter 24:

CHAPTER 24  
SALES AND LEASES OF GOODS AND SERVICES

**193F—24.1(68B) Selling or leasing of goods or services by members of the board.** The board members shall not sell or lease, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the board except as authorized by this rule, and by the consent documents filed with the Iowa ethics and campaign disclosure board pursuant to Iowa Code section 68B.4 and the corresponding provisions of rule 351—6.11(68B).

**24.1(1) Conditions of consent for members.** Consent shall be given by a majority of the members of the board upon a finding that the conditions required by Iowa Code section 68B.4, as described in 351—subrule 6.11(4), have been satisfied. The board may grant a blanket consent for sales and leases to classes of individuals, associations, or corporations when such blanket consent is consistent with 351—subrule 6.11(4) and the granting of single consents is impractical or impossible to determine.

**24.1(2) Authorized sales and leases.**

*a.* A member of the board may sell or lease goods or services to any individual, association, or corporation regulated by any division within the department of commerce, other than the board on which that official serves. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. The board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board.

*b.* A member of the board may sell or lease goods or services to any individual, association, or corporation regulated by the board if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. In the event a complaint is filed with the board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the board in that case, as provided, for instance, in the code of administrative judicial conduct at 481—Chapter 15. The board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board. The board intends that the blanket consent be interpreted broadly to allow routine professional services offered directly to the general public and to licensees, such as continuing education instruction or peer review services. Such consent recognizes that those licensees most proficient and ethical in their professional careers may also be among those whose services are desirable to enrich the professional competence of licensees. Interpreting the blanket consent broadly accordingly removes a possible disincentive to board membership.

*c.* Individual application and approval are not required for the sales and leases authorized by this rule and by the consents filed with the ethics and campaign disclosure board unless there are unique facts

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

surrounding a particular sale or lease which would cause the sale or lease to affect the seller's or lessor's duties or functions, would give the buyer or lessee an advantage in dealing with the board, or would otherwise present a conflict of interest as defined in Iowa Code section 68B.2A or common law.

**24.1(3) Application for consent.** Prior to selling or leasing a good or service to an individual, association, or corporation subject to the regulatory authority of the department of commerce, an official must obtain prior written consent, as provided in 351—subrule 6.11(3), unless the sale or lease is specifically allowed in subrule 24.1(2) and in the consents filed with the ethics and campaign disclosure board. The request for consent must be in writing and signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale or lease. The application should identify the parties to the sale or lease and the amount of compensation. The application should also explain why the sale or lease should be allowed. All applications must conform to the requirements of 351—subrule 6.11(3).

**24.1(4) Limitation of consent.** Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this rule does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules. The board's ruling on each application, whether consent is conferred or denied or conditionally granted, shall be filed with the ethics and campaign disclosure board pursuant to 351—subrule 6.11(7). An official who receives a denial or conditional consent may appeal the ruling to the ethics and campaign disclosure board as provided in 351—subrule 6.11(6).

This rule is intended to implement Iowa Code chapter 68B.

ITEM 34. Adopt the following new 193F—Chapter 25:

CHAPTER 25  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

**193F—25.1(17A,22) Definitions.** As used in this chapter:

“Agency” in these rules means the real estate appraiser examining board within the Iowa division of banking.

“Confidential record” in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” in these rules means the real estate appraiser examining board within the Iowa division of banking.

“Personally identifiable information” in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“Record” in these rules means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

“Record system” in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

**193F—25.2(17A,22) Statement of policy.** The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling



## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

**193F—25.3(17A,22) Requests for access to records.**

**25.3(1) Location of record.** A request for access to a record should be directed to the agency. The request shall be directed to the board at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, c/o executive officer of the real estate appraiser examining board. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

**25.3(2) Office hours.** Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

**25.3(3) Request for access.** Requests for access to open records may be made in writing, in person, by facsimile, email, or other electronic means or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, email address, and telephone number of the person requesting the information to facilitate the board's response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

**25.3(4) Response to requests.** Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 193F—25.4(17A,22) and other applicable provisions of law.

**25.3(5) Security of record.** No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

**25.3(6) Copying.** A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

**25.3(7) Fees.**

*a. When charged.* The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

*b. Copying and postage costs.* Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

*c. Supervisory fee.* An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged to the same rate as and under the same conditions as are applicable to supervisory fees.

*d. Advance deposits.*

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

**193F—25.4(17A,22) Access to confidential records.** Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 193F—25.3(17A,22).

**25.4(1) Proof of identity.** A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

**25.4(2) Requests.** The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**25.4(3) Notice to subject of record and opportunity to obtain injunction.** After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address, email address, or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**25.4(4) Request denied.** When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

*a.* The name and title or position of the custodian responsible for the denial; and

*b.* A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

**25.4(5) Request granted.** When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

**193F—25.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.** The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

**25.5(1) Persons who may request.** Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

**25.5(2) Request.** A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address,

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

email address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

**25.5(3) *Failure to request.*** Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

**25.5(4) *Timing of decision.*** A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed or when the custodian receives a request for access to the record by a member of the public.

**25.5(5) *Request granted or deferred.*** If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

**25.5(6) *Request denied and opportunity to seek injunction.*** If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

**193F—25.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the agency at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, c/o executive officer of the real estate appraiser examining board. The request to review such a record or the written statement of such a record of additions, dissents, or objections

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

**193F—25.7(17A,22) Consent to disclosure by the subject of a confidential record.** To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

This rule does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release.

**193F—25.8(17A,22) Disclosures without the consent of the subject.**

**25.8(1)** Open records are routinely disclosed without the consent of the subject.

**25.8(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

*a.* For a routine use as defined in rule 193F—25.9(17A,22) or in the notice for a particular record system.

*b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

*c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

*d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

*e.* To the legislative services agency.

*f.* Disclosures in the course of employee disciplinary proceedings.

*g.* In response to a court order or subpoena.

*h.* To other licensing authorities inside and outside Iowa as described in Iowa Code section 272C.6(4).

**25.8(3)** Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying registrants or applicants subject to enforcement under Iowa Code chapter 252J or 598.

**25.8(4)** Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services, centralized collection unit of the department of revenue for state debt, and college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code chapters 252J and 272D and sections 261.126 and 261.127.

**193F—25.9(17A,22) Routine use.** "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

**25.9(1)** Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

**25.9(2)** Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

**25.9(3)** Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

**25.9(4)** Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

**25.9(5)** Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

**25.9(6)** Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**25.9(7)** Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in licensee disciplinary proceedings.

**25.9(8)** Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

**25.9(9)** Name and address of licensees, date of licensure, type of license, status of licensure and related information are routinely disclosed to the public upon request.

**25.9(10)** Name and license numbers of licensees are routinely disclosed to the public upon request.

**193F—25.10(17A,22) Consensual disclosure of confidential records.**

**25.10(1)** *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 193F—25.7(17A,22).

**25.10(2)** *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**193F—25.11(17A,22) Release to subject.**

**25.11(1)** The subject of a confidential record may file a written request to review confidential records about that person. However, the agency need not release the following records to the subject:

*a.* The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

*b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

*c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5))

*d.* All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding.

*e.* As otherwise authorized by law.

**25.11(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

**193F—25.12(17A,22) Availability of records.**

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**25.12(1) General.** Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**25.12(2) Confidential records.** The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

*a.* Personal related information in confidential personnel records of board staff and board members. (Iowa Code section 22.7(11))

*b.* All information in complaint and investigation files maintained by the board for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing. Unlicensed complaint files are open to the public.

*c.* The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. Unlicensed hearing files are open to the public.

*d.* Information relating to the contents of an examination for licensure.

*e.* Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

*f.* Information or records received from a restricted source and any other information or records made confidential by law, such as academic transcripts or substance abuse treatment information.

*g.* References for examination or licensure applicants. (Iowa Code section 22.7(18))

*h.* Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 272C.6(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

*i.* Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

*j.* Those portions of agency staff manuals, instructions or other statements issued which set forth the criteria or guidelines to be used by agency staff in auditing, making inspections, or in selecting or handling cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the board. (Iowa Code sections 17A.2 and 17A.3)

*k.* Email addresses of licensees when solicited for the purpose of mass communication. An email address may be open to the public when given as part of a specific, individual email correspondence.

**25.12(3) Authority to release confidential records.** The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 193F—25.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 25.4(3).

**193F—25.13(17A,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 193F—25.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information. Records are stored on paper and in electronic form. The board's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format. Data regarding licensees is stored in a data processing system that permits the comparison of personally identifiable information in one record system with personally identifiable information in another system. Some information may also be placed on the board's website or in its newsletter or shared with others to display in databases, national registries, and similar systems. The record systems maintained by the agency are:

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**25.13(1)** Information in complaint and investigation files maintained by the board for purposes of licensee discipline. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing. Only charges and final orders are maintained electronically.

**25.13(2)** Information on nonlicensee investigation files maintained by the board. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7(18) or other provision of law.

**25.13(3)** The following information regarding licensee disciplinary proceedings:

- a. Formal charges and notices of hearing.
- b. Complete records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4).
- c. Final written decisions, including informal stipulations and settlements.

**25.13(4)** Licensure. Records pertaining to licensure by examination may include:

- a. Transcripts from education programs. This information is collected pursuant to Iowa Code sections 542.5, 542.8, 542B.13, 543B.15, 543D.9, 544A.8, 544B.9, and 544C.5.
- b. Applications for examination. This information is collected pursuant to Iowa Code sections 542.4, 542.8, 542B.13, 543B.20, 543D.7, 544A.8, 544B.9, and 544C.5.
- c. References. These may be requested from applicants pursuant to Iowa Code section 542B.13 or 544A.8.
- d. Past criminal and disciplinary record. This information is collected pursuant to Iowa Code sections 542.5, 542B.13, 543B.15, 543D.12, 544A.27, 544B.9, and 544C.9.
- e. Examination scores. This information is collected pursuant to Iowa Code sections 542.5, 542.8, 542B.14, 543B.20, 543D.8, 544A.8, 544B.9, and 544C.5.
- f. Social security numbers of license applicants and licensees as required by Iowa Code section 252J.8(1).

**25.13(5)** In addition to the above records, records pertaining to licensure by reciprocity or comity may include:

- a. Disciplinary actions taken by other boards. This information is collected pursuant to Iowa Code sections 542.10, 542B.21, 543B.15, 543D.10, 544A.8, 544B.15, and 544C.6.
- b. Verification of licensure by another board. This information is collected pursuant to Iowa Code sections 542.8, 542.19, 542B.20, 543B.21, 543D.11, 544A.8, 544B.10, and 544C.6.
- c. Verification of experience and other licensure qualifications.

**25.13(6)** Firm and business entity registrations and renewals. This information is collected pursuant to Iowa Code sections 542.7, 542.8, 543B.28, and 544A.21.

**25.13(7)** Renewal forms. This information is collected pursuant to Iowa Code sections 542.6, 542B.18, 543B.28, 543D.16, 544A.10, 544B.13, and 544C.3(5). Some renewal forms are only stored in data processing systems when licensees renew electronically.

**25.13(8)** Continuing education records. This information is collected pursuant to Iowa Code section 272C.2.

**193F—25.14(22) Other groups of records.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 193F—25.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, the records listed in rule 193F—25.13(17A,22) may contain information about individuals. Records are paper and electronic and may be stored in automated data processing systems. The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format.

**25.14(1)** Rule-making records. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not generally stored in an automated data processing system, although rule-making dockets may also be found on the board's website.

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

**25.14(2)** Board records. Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the office of the board, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system, although minutes and other information may be found on the board's website.

**25.14(3)** Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the office of the board. Information concerning examinations and registration is available from the board office. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system, although some board publications may be found on the board's website.

**25.14(4)** Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to paragraphs 25.12(2) "b" and "c." These records may contain information about individuals collected under the authority of Iowa Code section 543D.17.

**25.14(5)** Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in the office of the agency. Policy manuals do not contain information about individuals.

**25.14(6)** Other records. All other records that are not exempted from disclosure by law.

**25.14(7)** Waivers and variances. Requests for waivers and variances, board proceedings and rulings on such requests, and reports prepared for the administrative rules committee and others.

**25.14(8)** Declaratory orders.

**25.14(9)** Rule-making initiatives. All boards maintain both paper and electronic records on rule-making initiatives in accordance with Executive Order Numbers 8 and 9.

**25.14(10)** Personnel records of board staff and board members which may be confidential pursuant to Iowa Code section 22.7(11). The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files may include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

**25.14(11)** General correspondence, reciprocity agreements with other states, and cooperative agreements with other agencies.

**25.14(12)** Administrative records. These records include documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, and printing and supply requisitions.

**25.14(13)** All other records that are not confidential by law.

**193F—25.15(17A,22) Data processing systems.** All data processing systems used by the board permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

**193F—25.16(17A,22) Applicability.** This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by a person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.



## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

**193F—25.17(17A,22) Notice to suppliers of information.** When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

**25.17(1) License and examination applicants.** License and examination applicants are requested to supply a wide range of information depending on the qualifications for licensure or sitting for an examination, as provided by board statutes, rules and application forms. Failure to provide requested information may result in denial of the application. Some requested information, such as college transcripts, social security numbers, examination scores, and criminal histories, are confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information, freely available for public examination.

**25.17(2) Home address.** License applicants and licensees are requested to provide both home and business addresses. Both addresses are treated as open records. The board will honor the “safe at home” address issued by any state’s program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person’s physical location. If a license applicant or licensee has a basis to shield a home address from public disclosure, such as a domestic abuse protective order, written notification should be provided to the board office. Absent a court order, the board may not have a basis under Iowa Code chapter 22 to shield the home address from public disclosure, but the board may refrain from placing the home address on its website and may notify the applicant or licensee before the home address is released to the public to provide an opportunity for the applicant or licensee to seek injunction.

**25.17(3) License renewal.** Licensees are requested to supply a wide range of information in connection with license renewal, including continuing education information, criminal history and disciplinary actions, as provided by board statutes, rules and application forms, both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information, such as credit card numbers, may be confidential under state or federal law.

**25.17(4) Investigations.** Licensees are required to respond to board requests for information involving the investigation of disciplinary complaints against licensees. Failure to timely respond may result in disciplinary action against the licensee to whom the request is made. Information provided in response to such a request is confidential pursuant to Iowa Code section 272C.6(4) but may become public if introduced at a hearing which is open to the public, contained in a final order, or filed with a court of judicial review.

These rules are intended to implement Iowa Code chapters 22, 252J and 261.

**ARC 4222C****SECRETARY OF STATE[721]****Notice of Intended Action****Proposing rule making related to nominations by write-in votes  
and providing an opportunity for public comment**

The Secretary of State hereby proposes to amend Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 17A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 43.66.

*Purpose and Summary*

This proposed rule making rescinds rule 721—21.602(43) relating to nominations by write-in votes for certain offices in a primary election. This rule making is made at the direction and with the guidance of the Attorney General's office.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Secretary of State no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Molly Widen  
Office of the Secretary of State  
Lucas State Office Building, First Floor  
321 East 12th Street  
Des Moines, Iowa 50319  
Phone: 515.281.5864  
Email: [molly.widen@sos.iowa.gov](mailto:molly.widen@sos.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

SECRETARY OF STATE[721](cont'd)

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind and reserve rule **721—21.602(43)**.

**ARC 4235C**

**SOIL CONSERVATION AND WATER QUALITY DIVISION[27]**

**Notice of Intended Action**

**Proposing rule making related to funding rates for eligible soil and water protection practices and providing an opportunity for public comment**

The Soil Conservation and Water Quality Division hereby proposes to amend Chapter 10, "Iowa Financial Incentive Program for Soil Erosion Control," and Chapter 12, "Water Protection Practices—Water Protection Fund," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 161A.4(1).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 161A.2.

*Purpose and Summary*

The proposed amendments increase the eligible total cost from \$450 to \$600 for tree planting and related activities, from \$1,500 to \$1,600 for windbreaks, and from \$450 to \$600 for field windbreaks. Other technical updates are made.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 27—Chapter 8.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

## SOIL CONSERVATION AND WATER QUALITY DIVISION[27](cont'd)

Mike Franklin  
 Division of Soil Conservation and Water Quality  
 Iowa Department of Agriculture and Land Stewardship  
 Wallace State Office Building  
 502 East 9th Street  
 Des Moines, Iowa 50319  
 Email: [mike.franklin@iowaagriculture.gov](mailto:mike.franklin@iowaagriculture.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

- ITEM 1. Rescind the definition of “Edge-of-field practice” in rule ~~27—10.20(161A)~~.
- ITEM 2. Amend subparagraph **10.60(1)“b”(1)**, introductory paragraph, as follows:  
 (1) Fifty percent of the actual cost, not to exceed ~~\$450~~ \$600 per acre, including the following:
- ITEM 3. Amend subparagraph **10.60(1)“b”(2)** as follows:  
 (2) Fifty percent of the actual cost, not to exceed \$150 per acre, for ~~wood~~ woody plant competition control.
- ITEM 4. Amend subrules 12.84(1) and 12.84(2) as follows:  
**12.84(1) Windbreaks.** 75 percent of the eligible or estimated cost, whichever is less, not to exceed ~~\$1500~~ \$1,600 for the total cost of the establishment or restoration of the windbreak.  
**12.84(2) Field windbreaks.** 75 percent of the eligible or estimated cost, whichever is less, not to exceed ~~\$450~~ \$600 per acre for the total cost of the establishment or restoration of the field windbreak.
- ITEM 5. Amend paragraph **12.84(7)“c,”** introductory paragraph, as follows:  
 c. 75 percent of the eligible or estimated cost, whichever is less, not to exceed ~~\$450~~ \$600 per acre, for plantation replanting including the following:

**ARC 4236C****TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action****Proposing rule making related to purchasing practices and processes and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 20, “Procurement of Equipment, Materials, Supplies and Services,” and Chapter 25, “Competition with Private Enterprise,” Iowa Administrative Code.

## TRANSPORTATION DEPARTMENT[761](cont'd)

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 307.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 8A.302(1); section 8A.311(20) as amended by 2018 Iowa Acts, Senate File 2416, section 25; and sections 23A.2, 73.15 to 73.21, 307.12 and 307.21.

*Purpose and Summary*

This proposed rule making amends Chapter 20 to update the rules to reflect current purchasing practices, add definitions, and clarify the procurement and professional and technical services consultant selection process. Professional and technical services contracts may be procured in two manners:

- First, by way of the general purchasing process where contracts are awarded competitively with cost as a factor.
- Second, by awarding a professional and technical services contract based on the qualifications of the vendor, with contract costs being negotiated after the selection of a vendor.

Chapter 20 incorrectly addresses only professional and technical services contracts as qualification-based contracts. This rule making proposes wording to distinguish between both types of scenarios listed above.

The proposed amendments also modify the qualification-based awards process to remove the prequalification wording and insert registration requirements. These amendments are proposed because evaluation for prequalification will occur once the vendor has been selected for consideration. This evaluation will allow the Department to prequalify only those vendors considered for award versus trying to qualify all vendors who registered.

The following further explains the proposed amendments to Chapter 20. The proposed amendments:

- Clarify that this chapter also applies to procurements financed with other program funds authorized for Department use. Current rule 761—20.1(307) omits purchases procured from other program funds the Department is responsible for administering. It is the intent of the Department that all procurements, regardless of fund, follow the procedures as outlined in this chapter.
- Rescind existing rule 761—20.2(307) and adopt new rule 761—20.2(307) concerning definitions. The amendments make the following changes to this rule:
  - o Correct the formatting, retain existing definitions, and modify the definition of “methods of procurement” to include updated references to “solicitations” and “responses.”
  - o Add the terms “bidder,” “response,” and “solicitation” to update the rule language for situations involving quotations, bids and proposals. Current rule language addresses a purchase only as an opportunity to bid; it does not include the opportunity to propose or offer.
  - o Add a new definition of “professional and technical services” to identify the two types of “professional and technical services” situations in which a contract is awarded: first, by way of general purchasing processes where contracts are awarded competitively with cost as a factor (outlined in rules 761—20.3(307) through 761—20.5(307) and proposed rule 761—20.6(307)). Second, a professional and technical services contract may be awarded based on qualifications of the vendor, with contract costs being negotiated after the selection of a vendor (outlined in renumbered rule 761—20.10(307)). Both are professional and technical services contracts, awarded in different manners. The definition of “professional and technical services” was inserted to define the term as applying to both types of contracts awarded in differing manners as defined by the rules referenced.
- Amend subrule 20.3(3) concerning the negotiation method of procurement to:
  - o Add a new paragraph to state that the negotiation method of procurement may be used when cost is one of many factors considered to determine the award. This amendment acknowledges there are several factors which can be used to determine an award which is in the best interest of the state.
  - o Add terminology to reflect current purchasing practices.

## TRANSPORTATION DEPARTMENT[761](cont'd)

- o Update rules to include the terms “bidder,” “response” and “solicitation.”
- Amend rule 761—20.4(307) to:
  - o Correct the state agency responsible for certifying targeted small businesses for eligibility and participation in the program as a result of 2017 Iowa Acts, chapter 160, section 5. The Iowa Economic Development Authority is now responsible for certification instead of the Iowa Department of Inspections and Appeals.
  - o Revise the rule to use updated and consistent terminology, include electronic means of communication where applicable, and remove an outdated communication mode.
  - o Make changes to state that the protest must be in writing and must be received by the director of purchasing within seven days after the contract award has been posted. This amendment is proposed to clearly identify an award date and to indicate that protests could be filed within seven days of that date. The current rule states that “a written protest must be received by the director of purchasing at least three days prior to the posting of the recommended contract award.” Vendors do not know for sure when the Department is going to “make an award” as it could be anytime up until the final deadline. Vendors could easily miss the three-day window of opportunity. The amendment clarifies the deadline for the submission of the protest based on a known date and to state the contract terms may provide for liquidated damages to be assessed for any other reason as specified in the contract.
  - o Incorporate the amendment to Iowa Code section 8A.311(20) made by 2018 Iowa Acts, Senate File 2416, section 25, which added new language requiring the purchase of certain vehicles to be awarded to the lowest responsive and responsible bidder based solely on bid price.
- Amend rule 761—20.5(307) to reflect current purchasing practices, include the terms “solicitation” and “response,” and allow for submission of responses electronically using a variety of modes of submission to accommodate current technologies.
- Add rule 761—20.6(307) concerning professional and technical services procured through the purchasing procurement process outlined in rules 761—20.3(307) through 761—20.5(307). Rule 761—20.6(307) is added to identify procedures related to professional and technical services contracts awarded through the procurement process when cost is a factor. This process is separate from the process of an award based on qualifications as outlined in renumbered rule 761—20.10(307) and therefore requires the Department to establish a new rule to address this situation. Previously, this process was interpreted to be part of renumbered rule 761—20.10(307), which was incorrect.
- Move the content of current subrule 20.8(7) concerning sole source or emergency selection to proposed rule 761—20.7(307) and move the content of current subrule 20.8(11) concerning conflicts with federal requirements to proposed rule 761—20.8(307) because both of these rules apply to all contracts covered by Chapter 20 and not just to rules that were previously included under current rule 761—20.8(307), which is now renumbered rule 761—20.10(307). The amendment also removes qualification wording and adds wording related to work categories and satisfactory completion. The prequalification wording was replaced with registration requirements because evaluation for prequalification will occur once the vendor has been selected for consideration. This evaluation will allow the Department to prequalify only those vendors considered for award versus trying to qualify all vendors who register. Vendors sign up to be registered for future award opportunities; they do not sign up to be automatically reviewed for prequalification.
- Amend renumbered rule 761—20.10(307) to add other types of professional and technical services to the series of services listed. Surveying, general engineering consultant, and construction inspection were omitted from the rule previously. Wording was added to the introductory paragraph to clarify that the firm selection is based on qualifications, and contract costs are negotiated after selection is determined based on qualifications. This clarification was added to differentiate professional and technical services contracts procured in accordance with 23 CFR Part 172 when cost is not a factor from professional and technical services contracts procured when cost is a factor, but not the only factor, as outlined in proposed rule 761—20.6(307). The amendment also incorporates the information about registration of firms and updates the information to comply with changes to 23 CFR Part 172.

The proposed amendments to Chapter 25 update the activities that are exempted from the provisions of Iowa Code section 23A.2(1) to remove “state aircraft pool operations” and “daycare.” The Department

## TRANSPORTATION DEPARTMENT[761](cont'd)

has not owned state aircraft since the 1990s, and 2015 Iowa Acts, chapter 123, section 1, updated Iowa Code section 23A.2(9) to remove state aircraft pool operations. Since the early 2000s, the Department has not provided facilities for daycare services on Department property.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

February 7, 2019  
9 a.m.

Department of Transportation  
Administration Building  
First Floor, South Conference Room  
800 Lincoln Way  
Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

## TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 1. Amend rule 761—20.1(307) as follows:

**761—20.1(307) Scope of chapter and applicability.**

**20.1(1) Scope.** ~~Unless otherwise provided herein, this~~ This chapter of rules pertains only to the procurement of equipment, materials, supplies and services by the Iowa department of transportation with funds from the department's operating budget or from the materials and equipment revolving fund established in Iowa Code section 307.47 or other program funds authorized for department use. ~~Also, this chapter applies only to procurement from firms, as defined in subrule 20.2(2) herein.~~

**20.1(2) Applicability.** Rules 761—20.4(307) through 761—20.6(307) apply to professional and technical services procured using the general purchasing process where contracts are awarded competitively and cost is a factor. Rule 761—20.10(307) applies to professional and technical services contracts that are awarded based on qualifications when the cost is negotiated after the vendor is selected.

ITEM 2. Rescind rule 761—20.2(307) and adopt the following new rule in lieu thereof:

**761—20.2(307) Definitions.** As used in this chapter, unless the context otherwise requires:

*"Bidder"* means a respondent to a solicitation as a bidder, offeror or contractor.

*"Competition"* means the efforts of three or more parties acting independently to secure a contract with the department to provide equipment, materials, supplies or services to the department by offering or being in a position to offer the most favorable terms. "Favorable terms" includes, but is not limited to: price, speed of execution, anticipated quality of the product to be provided judged according to the expertise and experience of the provider, or ability to produce a desired result or to provide a desired commodity.

*"Department"* means the Iowa department of transportation.

*"Firm"* means any bona fide contracting entity, including individuals and educational institutions. Except for educational institutions, the term shall not include governmental agencies or political subdivisions.

*"Methods of procurement"* means formal advertising, limited solicitation, or negotiation as follows:

1. *"Formal advertising"* means procurement by competition and awards involving the following basic steps:

- Preparing a solicitation that describes the requirements of the department clearly, accurately and completely but avoids unnecessarily restrictive specifications or requirements which might unduly limit the number of responses.

- Distributing the solicitation to prospective bidders and advertising in appropriate media in sufficient time to enable prospective bidders to prepare and submit responses before the time set for public opening of responses.

- Receiving responses submitted by prospective contractors.

- Awarding the contract, after responses are publicly opened, to that responsible bidder whose response conforms to the solicitation and is the most advantageous to the department, price and other factors considered.

2. *"Limited solicitation"* means procurement by obtaining a sufficient number of quotations, bids or proposals from qualified sources:

- As is deemed necessary to ensure that the procurement is fair to the department, price and other factors considered, including the administrative costs of the procurement.

- As is consistent with the nature and requirements of the particular procurement.

- So that the procurement is competitive to the maximum practicable extent.

3. *"Negotiation"* means any method of procurement other than formal advertising or limited solicitation to seek the best and final offer which is most advantageous to the department.

*"Professional and technical services"* means services that are unique, technical, or infrequent functions performed by independent contractors whose occupation is the rendering of such services. Contracts may go to partnerships, firms, or corporations as procured through formal advertising, solicitation or negotiation methods outlined in rules 761—20.3(307) through 761—20.6(307)



## TRANSPORTATION DEPARTMENT[761](cont'd)

and architectural, landscape architectural, surveying, general engineering consultant, construction inspection, or engineering services and other related professional and technical services as outlined in rule 761—20.10(307).

“*Response*” means the submittal of written documents by a prospective bidder, offeror or contractor as a response to any type of solicitation issued by the department for a quotation, bid or proposal.

“*Solicitation*” means the request by the department for a quotation, bid or proposal. This includes but is not limited to the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of responding to a solicitation.

ITEM 3. Amend subrule 20.3(3) as follows:

**20.3(3) *Negotiation.*** The negotiation method of procurement may be used if formal advertising or limited solicitation is not feasible or practicable, or in any of the following instances:

- a.* and *b.* No change.
- c.* The procurement is for architectural, landscape architectural, engineering, or related professional ~~or~~ and technical services.
- d.* The procurement is for other professional and technical services.
- e.* When cost is only one of many factors considered to determine the award.
- ~~*e.*~~ *f.* The procurement is for services to be rendered by an educational institution.
- ~~*f.*~~ *g.* It is impracticable to secure competition through formal advertising or limited solicitation, such as when:

(1) and (2) No change.

(3) ~~Bids or quotations have been solicited,~~ Solicitations have been made available to prospective bidders and no responsive bids or quotations responses to the solicitation have been received.

(4) ~~Bids or quotations have been solicited,~~ Solicitations have been made available and the responsive bids or quotations submitted responses do not cover the quantity requirements of the solicitation. In this case, negotiation is permitted for the remaining quantity requirements.

(5) No change.

(6) The procurement is for ~~technical or professional~~ and technical services in connection with the assembly, installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature.

(7) to (11) No change.

~~*g.*~~ *h.* The procurement is for experimental, developmental or research work or for the manufacture or furnishing of property for experimentation, development, research or testing.

~~*h.*~~ *i.* It is determined that the ~~bids or quotations~~ responses received are not reasonable or have not been independently arrived at.

~~*i.*~~ *j.* Procurement by negotiation is otherwise authorized by law including, but not limited to, Iowa Code section 73.19.

~~*j.*~~ *k.* The manufacturer is willing to sell directly to the state at distributor cost.

ITEM 4. Amend rule 761—20.4(307) as follows:

**761—20.4(307) Formal advertising procedures and requirements.**

**20.4(1) *Bidders list.*** The department’s purchasing ~~office~~ section shall maintain current bidders lists by commodity classification.

*a.* These lists are developed using available sources such as technical publications, telephone books, trade journals, commercial vendor registers, advertising literature, Internet resources and targeted small businesses certified by the ~~department of inspections and appeals~~ Iowa economic development authority. Solicitations will be posted as required on the Iowa economic development authority’s targeted small business website no later than 48 hours prior to the issuance of the solicitation.

*b.* Any firm legally doing business in Iowa may be placed on an appropriate bidders list or lists by submitting a written request to: DOT Director of Purchasing, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

*c.* and *d.* No change.

## TRANSPORTATION DEPARTMENT[761](cont'd)

**20.4(2) ~~Request for proposals and solicitation of bids~~ Solicitation documents.** The department shall prepare a ~~request for proposals~~ the solicitation documents complete with ~~bidding documents requirements~~, specifications and instructions ~~to bidders and send (or deliver) the request for proposals to prospective bidders~~, as applicable, to be sent (or publicly posted) for the purpose of bidding procuring goods or services.

*a.* In special situations (e.g., the procurement of new model equipment), the ~~request for proposals solicitation~~ may be marked “preliminary” and sent to prospective bidders requesting their review of the ~~proposal solicitation~~ to determine their ability to bid respond and meet the requirements of the procurement request. The “preliminary” ~~proposal solicitation~~ process involves the following steps:

(1) A ~~vendor's~~ conference may be held to discuss the “preliminary” ~~proposal solicitation requirements with prospective bidders~~ when the item in question is a new acquisition for the department.

(2) Written requests for variations, deviations or approved equal substitutions to the ~~proposal solicitation~~ shall be accepted, evaluated and answered by the department.

(3) The ~~proposal solicitation requirements~~ may be ~~amended by the department~~ revised to incorporate approved changes.

(4) A final ~~request for proposals solicitation~~ shall be sent to prospective bidders that participated in the preliminary process.

*b.* The method to be used by the department in evaluating bids responses received shall be disclosed in the ~~request for proposals solicitation~~.

*c.* The ~~request for proposals solicitation~~ shall be sent to a sufficient number of prospective bidders so as to promote adequate competition commensurate with the dollar value of the procurement.

(1) Generally, the ~~request for proposals solicitation~~ shall be sent to all bidders listed on the appropriate bidders list for the item to be procured.

(2) No change.

(3) The fact that less than an entire bidders list is used shall not in itself preclude the furnishing of ~~requests for proposals the solicitation~~ to others upon request, or the consideration of bids responses received from bidders who were not ~~invited to bid~~ originally included in the bidders list.

*d.* The department shall publicize the procurement by advertising in appropriate media, ~~giving~~ providing the date and time set for public opening of bid opening submitted responses, a general description of the item to be procured, and the name and address of the person to contact to obtain a copy of the ~~request for proposals solicitation~~.

**20.4(3) ~~Instructions to bidders~~ Response instructions.** Each bidder shall prepare the bidding documents response to the solicitation in the manner prescribed and furnish all information and samples requested in the ~~request for proposals solicitation~~. The following shall be adhered to by all bidders when preparing and submitting bids responses:

*a.* Bid Response preparation. Bids Responses shall be signed and prepared in ink or typewritten ~~on~~ in the bidding solicitation documents provided. ~~Telegraphic, telephonic~~ Telephonic, E-mail email or facsimile bids responses shall not be considered. When available, bidders may respond electronically to a secure authorized system as instructed in the solicitation.

*b.* No change.

*c.* New merchandise. Unless otherwise specified, all items bid offered shall be new, of the latest model or manufacture, and shall be at least equal in quality to that specified.

*d.* Bid Response price. Where requested, the unit and total price for each separate item, and the total price for all items, shall be provided ~~on~~ in the bidding documents bidder's response. Alternate prices for approved substitutions may be submitted by attaching a bid response marked as an alternate bid to the bidding documents original response. In case of error, the unit price shall prevail. If unit price is not requested ~~on the bidding documents~~ in the solicitation, the total price per item shall prevail.

*e.* No change.

*f.* Time of acceptance. The bidder shall hold the bid offered prices open for action by the department at least 30 days past the ~~bid opening date~~ time set for public opening of submitted responses.

*g.* Escalator clauses. Unless specifically provided for in the ~~request for proposals solicitation~~, a bid response containing an escalator clause shall not be considered.

## TRANSPORTATION DEPARTMENT[761](cont'd)

*h. Federal and state taxes.* Except for specific items that will be noted in the request for proposals solicitation, the department is exempt from payment of federal and state taxes. These taxes shall not be included in the bid price bidder's response. Exemption certificates shall be furnished to bidders upon request.

*i. Delivery dates.* In the space provided, the bidder shall show the earliest date on which delivery can be made. When the request for proposals solicitation shows the acceptable delivery date for an item, the proposed delivery date may be used as a factor in determining the successful bidder.

*j. Ties and reservations.* No ties or reservations by the bidder are permitted. Any tie or reservation stipulated by the bidder shall be sufficient grounds ~~for rejection of the bid to reject the submitted response.~~

*k. Changes and additions.* No changes in or additions to the request for proposals solicitation shall be permitted unless a written request for a change or an addition is submitted to the department's purchasing office section in sufficient time to allow an appropriate analysis and response to all bidders, and the change or addition is approved by the purchasing office section. The purchasing office section shall notify all bidders of approved changes or additions by means of addenda.

Any unauthorized change in or addition to the request for proposals solicitation shall be sufficient grounds ~~for rejection of the bid to reject the submitted response.~~

*l. ~~Submission of bids~~ Response submission.* All bids responses shall be submitted in sufficient time to reach the department's purchasing office section prior to the time set for ~~the opening of bids~~ public opening of submitted responses. Any bid response received after the time set for ~~bid opening~~ public opening of submitted responses shall be returned to the bidder unopened. Bids Responses received shall be dated and time-stamped by the purchasing office section showing the date and hour received. By submitting a bid response, the bidder:

(1) Agrees that the contents of the bid response will become part of the contract if the bidder receives the award.

(2) Shall be assumed to have become familiar with the contents and requirements of the request for proposals solicitation.

*m. Proposal guaranty.* A proposal guaranty may be required as security that the bidder will execute the contract if awarded ~~to the bidder~~. If required, each bid response shall be supported by a proposal guaranty in the form and amount prescribed in the request for proposals solicitation. Bids Responses not so supported shall not be read.

*n. Withdrawal of bids responses prior to opening.* Bids Responses may be withdrawn prior to the time set for ~~the opening of bids~~ forth in the solicitation. Prior to opening, a bidder who withdraws ~~a bid~~ the response to a solicitation may submit a new bid response if desired.

*o. Modification or withdrawal of bids responses after opening.* After opening, no bid response may be modified. A bid response may be withdrawn after opening only if:

(1) The bidder submits, at least three days prior to ~~contract~~ award, a sworn statement asserting that the bid response contains a substantial inadvertent error and that the bidder would suffer a serious financial loss if required to perform under the bid response, and

(2) No change.

**20.4(4) ~~Public opening of bids responses.~~** Bids Responses shall be opened publicly and read aloud at the time stipulated in the request for proposals solicitation.

**20.4(5) ~~Consideration of bids responses.~~** The department reserves the right to accept or reject any or all bids responses. Individual bids responses may be rejected for any of the following reasons:

*a.* Noncompliance with the requirements of this rule or of the request for proposals solicitation.

*b. to d.* No change.

**20.4(6) ~~Contract Recommendation of award.~~**

*a. Time frame.* Unless otherwise specified by the department in the request for proposals solicitation, an award shall be made within 30 days after ~~bid opening~~ the date and time set for public opening of submitted responses if it is in the best ~~interests~~ interest of the state. If an award is not made within the applicable time frame, the procurement shall be canceled unless an extension of time is mutually agreed to by the department and the apparent successful bidder.

## TRANSPORTATION DEPARTMENT[761](cont'd)

*b. Tied bids responses.* Bids Responses which are equal in all respects and are tied in price shall be resolved among the tied bidders by giving first preference to an Iowa bidder and second preference to the bidder who satisfactorily performed a contract the previous year for the same item at the same location. If the tie involves bidders with equal standing, the award shall be determined by lot among these bidders. A tied bidder or the bidder's representative may witness the determination by lot.

~~*c. Small business.* Rescinded IAB 11/29/89, effective 1/3/90.~~

~~*d. c. Tabulation of bids responses.*~~ A tabulation of bids responses with an award recommendation shall be sent to all interested parties including bidders at least ten days prior to contract award.

~~*e. d. Protests.*~~ Any protest of the recommended contract award shall be submitted in writing to: Director of Purchasing, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. A written protest must be received by the director of purchasing at least three days prior to contract award within seven days after the recommended award has been posted. The protest shall be considered by the authority making the contract award. This is not a contested case as defined in Iowa Code section 17A.2.

~~*f. e. Return of proposal guaranty.*~~ Unsuccessful bidders' proposal guaranties shall be promptly returned by the department after award is made. The proposed guaranty of the successful bidder shall be returned in accordance with subrule 20.4(7).

**20.4(7) Contract execution and performance.**

*a. and b.* No change.

*c. Return of awarded bidder's proposal guaranty.* The proposal guaranty of the successful bidder shall be returned following execution of the contract. However, if the successful bidder fails to execute the contract and file an acceptable performance bond and certificate of insurance (if they are required) within 14 days after award, or fails to comply with Iowa Code chapter 490, the award may be annulled and the proposal guaranty forfeited.

*d. Assignment of contract.* The contractor may not assign the contract to another party without written authorization from the department's purchasing office section.

*e. Strikes, lockouts or acts of God.* If the contractor's business or source of supply has been disrupted by a strike, lockout or act of God, the contractor shall promptly advise the department's purchasing office section. The department may elect to cancel the contract without penalty to either the contractor or to the department.

~~*f. Removal of trade ins.* Rescinded IAB 2/5/03, effective 3/12/03.~~

~~*g. f. Payment.*~~ Unless otherwise stated in the contract, payment terms shall be net following the department's receipt and acceptance of the item(s) procured and receipt of an original invoice.

~~*h. g. Liquidated damages.*~~ The contract terms may provide for liquidated damages to be assessed if the contractor fails to complete the contract within the contract period or for any other reason as specified in the contract.

**20.4(8) Additional requirements.**

~~*a.*~~ The department's standard specifications as referenced and adopted in rule 761—125.1(307A) for highway and bridge construction, as available on the department's website at [www.iowadot.gov](http://www.iowadot.gov), where applicable and not in conflict with this rule or with the requirements of a particular procurement, shall apply to formal advertising procurement activities.

*b.* No change.

~~*c.*~~ Procurement of motor vehicles shall include the calculation and reduction of life cycle costs as specified in ~~be in accordance with~~ Iowa Code section 48.3(1) 8A.311(20).

ITEM 5. Amend rule 761—20.5(307) as follows:

**761—20.5(307) Limited solicitation of bids procedures and requirements.**

**20.5(1)** No change.

**20.5(2) Form of solicitation.** The documents soliciting bids solicitation shall be as detailed and complete as practicable for the time and resources available.

**20.5(3) Form of bid response.** Bids Responses shall be submitted in writing or electronically when practicable. Written bids responses will prevail over oral bids responses in case of discrepancies, disputes or errors. Following is the order of preference:

## TRANSPORTATION DEPARTMENT[761](cont'd)

1. Original, signed ~~bid~~ submitted response.
2. ~~Electronic bid~~ Electronically submitted response (facsimile, ~~E-mail~~ email, Internet).
3. Oral ~~bid response~~ (e.g., telephonic).

**20.5(4) Award.** The award shall be offered to that responsible bidder whose bid response meets the requirements of the solicitation and is the most advantageous to the department. An Iowa bidder will be given preference over an out-of-state bidder when bids responses are equal in all respects and are tied in price.

ITEM 6. Adopt the following new rule 761—20.6(307):

**761—20.6(307) Professional and technical services.** This rule applies to professional and technical services procured through the purchasing section using formal advertising, solicitation or negotiation methods outlined in rules 761—20.3(307) to 761—20.6(307). Professional and technical services procured based on qualifications are covered by rule 761—20.10(307).

**20.6(1) Request for proposal (RFP).** A solicitation prepared by the department shall include at least the minimum requirements for the type of goods or services sought. The solicitation is sent to prospective offerors and is publicly posted on the department's website.

**20.6(2) Evaluation committee.** A committee is established for the purpose of reviewing and evaluating proposed responses based on a set of criteria as outlined in the RFP. "Evaluation criteria" will define categories with assigned weighted values to be used as a scoring measure to determine the best overall solution for the department based on technical expertise and price, including but not limited to:

- a. Overall content of written submitted proposal information.
- b. Business knowledge.
- c. Work experience in required skills sets.
- d. Presentation or demonstration.
- e. Cost.

**20.6(3) Award.** The award shall be offered to a firm whose properly submitted compliant response best meets the requirements of the solicitation and receives the highest overall score of the weighted criteria.

ITEM 7. Adopt the following new rule 761—20.7(307):

**761—20.7(307) Sole source or emergency selection.** Sole source or emergency selection applies to all services, including professional and technical services. The department shall fully document and include in the contract file the justification for use of sole source or emergency selection and the basis on which a particular firm is selected.

**20.7(1) Sole source selection.** The department may select a single firm which meets the requirements of the required work categories to perform the work with which to negotiate when one of the following conditions exists:

- a. Only a single firm is determined qualified or eligible to perform the contemplated services or is eminently more likely to most satisfactorily complete the work than another firm.
- b. The services involve work that is of such a specialized character or nature, or related to a specific geographical location, that only a single firm, by virtue of experience, expertise, proximity to or familiarity with the project or ownership of intellectual property rights, could most satisfactorily complete the work.

**20.7(2) Emergency selection.** The department may select a single firm which meets the requirements of the required work categories to perform the work when there is an emergency that will not permit the time necessary to use normal selection procedures. An emergency includes, but is not limited to, one of the following:

- a. A condition that threatens the public health, welfare or safety.
- b. A need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement.
- c. A situation in which the department must act to preserve critical services or programs.

## TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 8. Renumber rule **761—20.8(307)** as **761—20.10(307)**.

ITEM 9. Adopt the following new rule 761—20.8(307):

**761—20.8(307) Conflicts with federal requirements.** If any provision of this chapter would cause a denial of federal funds or services or would otherwise be inconsistent with federal law, federal law shall be adhered to, but only to the extent necessary to prevent denial of the federal funds or services or to eliminate the inconsistency with federal law.

ITEM 10. Reserve rule **761—20.9**.

ITEM 11. Amend renumbered rule 761—20.10(307) as follows:

**761—20.10(307) Negotiation—architectural, landscape architectural, engineering and related professional and technical services.** This rule prescribes procedures for the procurement of architectural, landscape architectural, surveying, general engineering consultant, construction inspection, engineering and related professional and technical services by negotiation where selection is based on qualifications in compliance with 23 CFR Part 172. Contract costs are negotiated after a qualification-based selection.

**20.10(1) Prequalification Registration of firms providing professional and technical services.**

*a.—General information.*

(1) ~~When procuring any of these services, the department shall consider for contract award only those firms that are prequalified with the department in the category of work to be contracted.~~

(2) ~~Prequalification of subconsultants is also required if a work category exists for the services to be provided by the subconsultant. If no category exists, normal methods of acceptance shall be used such as experience, typical licensure, certification or registration, or seals of approval by others. A subconsultant is a firm contracted to the “prime” firm for the performance of work contracted by the department to the prime firm.~~

(3) ~~When another party (e.g., a political subdivision), under agreement with the department or as prescribed by law, must obtain the department’s approval of a contract between the party and a firm for provision of any of these services, the firm to be awarded the contract must be prequalified with the department in the category of work to be contracted.~~

*b.—Web site.* ~~Application forms, descriptions of the categories of work for which firms may be prequalified, the minimum qualification standards for each work category, and a list of firms prequalified in each work category are available on-line on the department’s Web site. The home page is [www.dot.state.ia.us](http://www.dot.state.ia.us). Prequalification information is found by clicking on the link “Doing Business with the DOT” and then the link “Professional and Technical Consultant Utilization.”~~

*c.—Consultant coordinator.* ~~Information regarding prequalification is also available from the Consultant Coordinator, Engineering Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.~~

*d.—Application forms.* ~~A firm wishing to prequalify with the department in one or more categories of work must submit Forms 102111 and 102113. An applicant firm may either submit the forms on-line or complete hard copies of the forms and mail them to the consultant coordinator. On-line submission is encouraged.~~

(1) ~~On Form 102111, the applicant firm shall provide general information regarding the firm.~~

(2) ~~On Form 102113, the applicant firm shall provide detailed information regarding the firm’s qualifications to perform a specific category of work. A separate Form 102113 must be submitted for each category. The firm shall support its application for prequalification for a particular category of work on the basis of adequacy and expertise of personnel, specialized experience in the field or fields required, performance records, and the minimum qualification standards set forth for the category.~~

(3) ~~The department does not recognize joint ventures for the purpose of prequalification. Each firm will be prequalified in terms of its own capabilities; i.e., the major, significant aspects of the work can be accomplished using the firm’s own personnel and equipment.~~

## TRANSPORTATION DEPARTMENT[761](cont'd)

This requirement does not preclude consideration during the department's selection process of joint ventures or firms in the practice of subcontracting for specialized services.

*e. Initial prequalification.*

(1) A firm may apply for prequalification at any time.

(2) The department shall evaluate each Form 102113 submitted in terms of the minimum qualification standards for the work category and, if applicable, the past performance of the firm on contracts with the department for work falling within the category.

(3) If the department prequalifies a firm for a particular category of work, the department will update its Web site to indicate the firm is prequalified for that category. If prequalification is denied, the department shall notify the firm; see paragraph "h" of this subrule.

(4) A firm's prequalification status for all approved categories of work is effective during the calendar year of application and for one year thereafter, to expire on December 31.

*f. Reapplication and renewal.* At least two months but not more than three months prior to the expiration date, the department shall advise affected prequalified firms to reapply. A firm that reapplies on-line need only revise its on-line forms. A firm that does not reapply on-line must submit new Forms 102111 and 102113. The department shall process reapplications in the same manner as initial prequalification. A firm's renewal of prequalification is effective for two more years, to expire on December 31.

*g. Amendment or expansion of prequalification.* A prequalified firm may submit amended prequalification forms or apply for prequalification for additional categories of work at any time.

(1) Amended forms shall be accompanied by a separate statement explaining the submission. The firm must first contact the consultant coordinator for instructions on how to proceed.

(2) If the submission affects the minimum qualification standards or if it is an application for prequalification for an additional category of work, the department shall process the submission in the same manner as initial prequalification. However, the prequalification expiration date assigned to the firm will remain the same.

*h. Denial or cancellation of prequalification.* Prequalification may be denied or canceled if the firm fails to meet the minimum qualification standards or if the firm's performance on a contract with the department was unacceptable. Prequalification may also be denied or canceled for good cause including, but not limited to, omissions or misstatements of material fact on the application forms that could affect the prequalification status of the firm.

The department shall notify the firm by E-mail or in writing of denial or cancellation, the reason(s) therefor, and the person to contact in writing to protest the department's action.

*a.* A firm wishing to provide professional and technical services to the department as a consultant may register to receive information through the GovDelivery portal available at the department's website at [www.iowadot.gov](http://www.iowadot.gov). The firm is responsible for keeping the firm's information updated. For information, persons may contact the consultant coordinator at the Office of Project Management, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or by telephone at (515)239-1803.

*b.* The department shall maintain a list of work categories, descriptions and requirements for each work category online.

**20.10(2)** and **20.10(3)** Reserved.

**20.10(4)** *Preselection Request for professional and technical services.* Prior to selecting a firm with which to initiate negotiations under this rule, the department shall document the need for outside services, a description of the needed services, the time frame within which the work must be performed, and the method of selection to be used. One of the following methods shall be used to select a firm with which to initiate negotiations:

*a.* Selection committee—complete Complete process. See subrule 20.8(5) 20.10(5).

*b.* Selection committee—small Small contract process. See subrule 20.8(6) 20.10(6).

*c.* Sole source or emergency selection. See subrule 20.8(7) rule 761—20.7(307).

**20.10(5)** *Selection committee—complete Complete process.* This method of selection is used The complete process method will use the following process and will be used unless another selection method is justified.

## TRANSPORTATION DEPARTMENT[761](cont'd)

a. Request for proposal (RFP). The department shall prepare a RFP which will include the scope of the work, duration of the contract, list of applicable work categories, evaluation criteria (excluding cost), any established disadvantaged business enterprise or targeted small business goal for the proposed work, type of contract anticipated, submission details including the point of contact for the RFP for any questions, the time by which the RFP should be received by the department and anticipated date of selection. The RFP will not require any cost information to be submitted by the proposing firms.

b. Website.

(1) The RFP will be posted on the Iowa department of administrative services' website no later than 48 hours prior to the issuance of the RFP.

(2) The RFP will be posted on the department's website. The notification of the RFP being posted will be sent to all users who have signed up to receive the notification via GovDelivery. The notification will include the link to the website where the RFP is posted. See subrule 20.10(1).

(3) The department will post any questions received on the RFP and answers thereto on the website indicated in the GovDelivery notification.

~~a. c. Selection committee.~~ The department shall appoint a selection committee to: become familiar with the RFP, review the firms that have responded to the RFP to determine if they meet the requirements of the work to be performed, and evaluate the firms that meet the qualifications per the evaluation criteria. The selection committee will, if necessary, interview the firms, score the firms, document the committee's decision and provide the scoring to the consultant steering committee.

~~(1) Review the credentials of the firms prequalified to perform the services needed.~~

~~(2) Determine which firms will be sent a request for proposals (RFP). The committee may limit the number of firms sent an RFP to eliminate the effort required by a firm that submits a proposal for the work but, based on the evaluation criteria, would have a limited possibility of being selected.~~

~~(3) Establish weighted criteria for evaluating the firms submitting proposals. See paragraph "b" of this subrule.~~

~~(4) Prepare an RFP and send it to the firms identified in subparagraph (2). The department shall also notify all prequalified firms that an RFP has been issued and post the RFP on the department's Web site.~~

~~(5) If necessary, interview firms submitting proposals.~~

~~(6) Evaluate the firms submitting proposals. Select the top (three or more) firms.~~

~~(7) Document the committee's decision-making process.~~

~~b. Evaluation criteria.~~ The selection committee is responsible for establishing criteria for evaluating each firm submitting a proposal, assigning weighted values to the criteria, and rating each firm on each criterion. Evaluation criteria are tailored to the needed services. Typical evaluation criteria are listed below. The list is not exhaustive, nor is each criterion mandatory.

~~(1) Staffing expertise consistent with special project needs.~~

~~(2) Past experience with similar types of work.~~

~~(3) Performance evaluations by the department and references included in a firm's proposal.~~

~~(4) Proximity to the project area, particularly when extensive field services are required.~~

~~(5) Current workload and commitment of key personnel.~~

~~(6) Specific qualifications of key staff who will be forming the firm's project team.~~

~~(7) Resources the firm has available and proposes to use on the project, including the firm's use of equipment and automated technology and their compatibility with equipment and technology used by the department.~~

~~(8) Identification of proposed subconsultants and the work they will perform.~~

d. Evaluation criteria. The selection committee is responsible for establishing criteria for evaluating each firm submitting a proposal, assigning weighted values to the criteria, and rating each firm on each criterion. Evaluation criteria are tailored to the needed services. Typical evaluation criteria are listed below. The list is intended as a guideline only; it is not exhaustive, nor is each criterion mandatory.

(1) Staffing expertise consistent with special project needs.

(2) Past experience with similar types of work.



## TRANSPORTATION DEPARTMENT[761](cont'd)

(3) Current workload and commitment of key personnel.

(4) Specific qualifications of key staff who will be forming the firm's project team.

(5) Resources the firm has available and proposes to use on the project, including the firm's use of equipment and automated technology and the firm's compatibility with equipment and technology used by the department.

(6) Identification of proposed subconsultants and the work the subconsultants will perform.

*e. e.* *Consultant steering committee.* A consultant steering committee is responsible for reviewing the top firms selected as scored by the selection committee, determining the order of preference for negotiations, and documenting its decision-making process decision. The number of firms selected shall include at least two alternate firms. The committee shall document its reasoning when the number of selected firms is less than the minimum requirement. The consultant steering committee shall consider not only the selection committee's scoring but other factors such as:

(1) to (4) No change.

*f.* *Completion of selection process.* After selection committee and consultant steering committee activities are complete, the department shall determine whether negotiations may begin. If negotiations are approved, the department shall proceed to negotiate with the firm that is first in order of preference.

*g.* *Notification to firms.* The department shall ~~notify those firms submitting proposals of the names of the top firms selected and the order of negotiations. Along with the notification, post the results of the selection on the website identified in the GovDelivery notification. For firms not included on the ranked list of firms,~~ the department shall also provide each firm other than the top firms a matrix showing the high, low and average scores for each item evaluated and that firm's score for each item.

**20.10(6) Selection committee—small *Small contract process.*** The small contract process may be used to identify a single firm with which to negotiate when the estimated work under the contract can normally be completed within a 12-month period and the estimated cost of the contract will not exceed \$100,000 \$150,000.

*a.* *Selection committee.* The department shall appoint a selection committee to: identify at least three firms that meet the requirements of the work categories involved in performing the work; document the names of the firms considered, if necessary; interview the firms; select a firm with which to initiate negotiations; and document the committee's decision.

~~(1) Review the credentials of the firms prequalified to perform the services needed.~~

~~(2) If necessary, interview firms.~~

~~(3) Select a well-qualified firm with which to initiate negotiations.~~

~~(4) Document the committee's decision-making process.~~

*b.* No change.

**20.10(7) Sole source or emergency selection.** ~~The department shall fully document and include in the contract file the justification for use of sole source or emergency selection and the basis on which a particular firm is selected.~~

*a.* ~~*Sole source selection.* The department may select a single prequalified firm with which to negotiate when one of the following conditions exists:~~

~~(1) Only a single firm is determined qualified or eligible to perform the contemplated services or is eminently more qualified than other firms.~~

~~(2) The services involve work that is of such a specialized character or related to a specific geographical location that only a single firm, by virtue of experience, expertise, proximity to or familiarity with the project or ownership of intellectual property rights, could most satisfactorily complete the work.~~

*b.* ~~*Emergency selection.* The department may select a single prequalified firm with which to negotiate when there is an emergency that will not permit the time necessary to use normal selection procedures. An emergency includes, but is not limited to, one of the following:~~

~~(1) A condition that threatens the public health, welfare or safety.~~

~~(2) A need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement.~~

TRANSPORTATION DEPARTMENT[761](cont'd)

~~(3) A situation in which the department must act to preserve critical services or programs.~~

**20.10(7) Selection dispute resolution.** Any dispute of the recommended selection shall be submitted in writing to the consultant coordinator. A written notice of the dispute with supporting evidence must be received by the consultant coordinator within 15 calendar days from the date the selection is posted on the department's website. This is not a contested case as defined in Iowa Code section 17A.2. The department will inform the selected firm(s) of the dispute and inform the firm(s) that the department reserves the right to proceed with negotiations with the selected firm(s) pending resolution of the dispute or claim.

**20.10(8) Negotiation of contract.** The purpose of negotiations is to develop a contract that is mutually satisfactory to the department and the selected firm.

a. No change.

b. The department may perform a preaudit. A preaudit typically includes:

(1) No change.

(2) An analysis of the firm's proposed direct costing rates and indirect overhead factors to ensure ~~their~~ the firm's propriety and allowability.

c. For contracts with federal funding, the department shall verify federal suspension and debarment actions and eligibility status of firms prior to entering into an agreement or contract.

**20.10(9) Unsuccessful negotiations.** If a mutually satisfactory contract cannot be negotiated, the department shall formally terminate the negotiations and notify the firm in writing. Termination of negotiations is without prejudice and at the department's discretion. The substance of terminated negotiations is confidential.

~~When a selection committee was used, the~~ The department shall then initiate negotiations with the firm given ~~second~~ next preference, and this procedure ~~shall~~ may be continued until a mutually satisfactory contract has been negotiated. If a satisfactory contract cannot be negotiated with any of the selected firms, the department shall either:

a. No change.

b. Redefine the scope of the project or work and start over ~~(preselection).~~ See subrule 20.10(4). Once negotiations are terminated, negotiations cannot be reopened with the same firm.

**20.10(10) Evaluation of performance ~~under a contract.~~**

a. The department shall evaluate all ~~contracts~~ firms under this rule ~~after completion of the work.~~ Those contracts which exceed one year in duration shall also be evaluated annually based on the contracts that were active during the fiscal year. Both the firm's performance and quality of the final product shall be evaluated. The evaluation shall consider:

(1) to (7) No change.

b. ~~The evaluation may include a recommendation that the firm's prequalification be canceled (see paragraph 20.8(1) "h").~~ The firm shall be given an opportunity to review, comment on and sign the evaluation. ~~The evaluation is confidential.~~

~~**20.10(11) Conflicts with federal requirements.** If any provision of this rule would cause a denial of federal funds or services or would otherwise be inconsistent with federal law, federal law shall be adhered to, but only to the extent necessary to prevent denial of the federal funds or services or to eliminate the inconsistency with federal law.~~

ITEM 12. Amend **761—Chapter 20**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~48.3(1), 18.6(10),~~ 8A.302(1), 8A.311(20), 73.15 to 73.21, ~~307.10, 307.12 and 307.21.~~

ITEM 13. Rescind and reserve subrule **25.2(9)**.

ITEM 14. Amend subrule 25.2(14) as follows:

**25.2(14)** Use of departmental facilities or services by persons providing services to or representing departmental employees including, but not limited to, the following services or persons: food, credit union, ~~day care~~ and employee organizations.

**ARC 4228C****TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action****Proposing rule making related to early release of retained funds  
and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 180, “Public Improvement Quotation Process for Governmental Entities for Vertical Infrastructure,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 314.1A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 26 and 573 and section 314.1A and 2018 Iowa Acts, House File 2233.

*Purpose and Summary*

This proposed rule making reflects the changes needed in Chapter 180 due to 2018 legislation concerning the early release of retained funds. The proposed amendments implement the changes made by 2018 Iowa Acts, House File 2233, which repealed Iowa Code section 26.13 and added new Iowa Code section 573.28.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

TRANSPORTATION DEPARTMENT[761](cont'd)

February 7, 2019  
11 a.m.

Department of Transportation  
Administration Building  
First Floor, North Conference Room  
800 Lincoln Way  
Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—180.10(314) as follows:

**761—180.10(314) Retained funds.** In addition to requiring the contractor to submit a performance and payment bond, the governmental entity ~~is required to~~ shall also retain funds from each payment to the contractor for the benefit of subcontractors and suppliers, and apply or release such funds, as ~~provided in required by~~ Iowa Code chapter 573, and ~~is required to release retained funds upon substantial completion of the work, as provided in Iowa Code section 26.13.~~

ITEM 2. Amend **761—Chapter 180**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 26.2, ~~26.13~~, 26.14, 314.1A, 314.1B, ~~and 573.2, and 573.28.~~

**ARC 4230C**

**TRANSPORTATION DEPARTMENT[761]**

**Notice of Intended Action**

**Proposing rule making related to final-stage manufacturers, motor vehicle dealer books and records, and security interest cancellation notations on certificate of title and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 400, "Vehicle Registration and Certificate of Title," and Chapter 425, "Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 322.13.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 321.1, 321.50, 321.63, 322.2 and 322.3; 2018 Iowa Acts, Senate File 2325, section 1; 2018 Iowa Acts, Senate File 2293, sections 1 and 3; and 2018 Iowa Acts, Senate File 2262, sections 1 to 5.

TRANSPORTATION DEPARTMENT[761](cont'd)

*Purpose and Summary*

This proposed rule making amends Chapters 400 and 425 to align the rules with Iowa Code sections 321.1, 321.50, 321.63, 322.2 and 322.3 as amended by 2018 Iowa Acts, Senate File 2325, section 1; 2018 Iowa Acts, Senate File 2293, sections 1 and 3; and 2018 Iowa Acts, Senate File 2262, sections 1 to 5. The specific Iowa Acts referenced amended Iowa Code sections related to notation of cancellation of a security interest on a motor vehicle title, the location of motor vehicle dealer books and records, and the ability of a final-stage motor vehicle manufacturer to sell a completed multi-stage manufactured vehicle to a retail buyer. The following paragraphs describe the proposed amendments in more detail.

**Final-stage manufacturers:** The proposed amendments conform the rules to 2018 Iowa Acts, Senate File 2262, sections 1 to 5, which changed the definition of “manufacturer” to include a final-stage motor vehicle manufacturer, and defines “final-stage manufacturer” to mean a person who performs such manufacturing operations on an incomplete motor vehicle that it becomes a completed motor vehicle. Prior to the legislation, a final-stage manufacturer was prohibited from holding a motor vehicle dealer’s license and thus could not sell a multi-stage manufactured vehicle directly to a retail buyer. The legislation allows a final-stage manufacturer holding either a new or used motor vehicle dealer license to assign an incomplete motor vehicle manufacturer’s certificate of origin to a retail buyer for purposes of issuance of a certificate of title by a county treasurer as a new motor vehicle, which may have the same make as the incomplete motor vehicle. The rules implement the legislation by addressing the eligibility and application requirements for a final-stage manufacturer motor vehicle dealer license. Specifically, the applicant for a final-stage manufacturer’s motor vehicle dealer license must meet the definition of a final-stage manufacturer in the Iowa Code, must meet the final-stage manufacturer certification responsibilities under federal regulation in 49 CFR Section 567.5, and must already be licensed as a manufacturer under Iowa Code chapter 322 and 761—Chapter 425. The applicant must also follow the same standards and meet the same criteria for a motor vehicle dealer license as already established in rule 761—425.10(322).

**Motor vehicle dealer books and records:** The proposed amendments add a new rule to incorporate the requirements of Iowa Code sections 321.1 and 321.63 as enacted by 2018 Iowa Acts, Senate File 2293, sections 1 and 3, for motor vehicle dealer books and records when the motor vehicle dealer has more than one licensed location. The rule specifies that a motor vehicle dealer may keep the dealer’s collective business records together at any of the dealer’s licensed locations, but the records must be stored in a manner so the records are distinguishable to each licensee and may be accurately identified in any audit proceeding. Also, the dealer must notify the Department when the dealer intends to move business records to another licensed location, which complies with the statutory requirement to notify the Department of the records location.

**Security interest cancellation title notations:** The proposed amendments also incorporate the requirements of Iowa Code section 321.50, as enacted by 2018 Iowa Acts, Senate File 2325, section 1, allowing for the cancellation of a security interest to be submitted either on the title itself or on a separate notarized statement from the lienholder. This provision is a favorable alternative to the previous process, which only allowed the security interest cancellation to be noted on the title and did not accommodate the common practice of banks or lienholders sending a notarized letter canceling the security interest along with the unsigned title.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

TRANSPORTATION DEPARTMENT[761](cont'd)

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

February 7, 2019  
1 p.m.

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Boulevard  
Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following new definition of "Final-stage manufacturer" in rule **761—400.1(321)**:

"*Final-stage manufacturer*" means as defined in Iowa Code section 322.2.

ITEM 2. Amend rule **761—400.1(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23, 321.24, 321.40, 321.45, 321.50, 321.117, 321.123, 321.134, ~~and~~ 321.157 and 322.2.

ITEM 3. Amend subrule 400.4(1) as follows:

**400.4(1) *New vehicle***. If application is made for a new vehicle, a manufacturer's certificate of origin, properly assigned to the applicant, shall be submitted. A manufacturer's certificate of origin shall not be accepted if the assignment to the applicant is made by any person other than the manufacturer, importer;

## TRANSPORTATION DEPARTMENT[761](cont'd)

or distributor, or a licensed motor vehicle dealer franchised to sell that ~~line-make~~ line-make of vehicle, or a final-stage manufacturer motor vehicle dealer licensed under rule 761—425.11(322).

*a.* The first person, including a dealer not franchised to sell that ~~line-make~~ line-make of vehicle, who is assigned the manufacturer's certificate of origin shall obtain a certificate of title and register the vehicle.

*b.* No change.

*c.* If a 1980 or subsequent model year vehicle is manufactured by a person other than the original manufacturer, both the original manufacturer's certificate of origin and the ~~final~~ final-stage manufacturer's certificate of origin shall be submitted if the vehicle's original line-make is changed by the final-stage manufacturer. All assignments or reassignments of ownership of the vehicle shall be made on the ~~final~~ final-stage manufacturer's certificate of origin. The face of the original manufacturer's certificate of origin shall be stamped in bold type with the statement: "~~Final~~ Final-stage manufacturer's MCO has been issued on this vehicle." The original manufacturer's vehicle identification number shall be listed on the ~~final~~ final-stage manufacturer's certificate of origin.

*d.* If a final-stage manufacturer is a motor vehicle dealer licensed under rule 761—425.11(322), the final-stage manufacturer may reassign the original manufacturer's certificate of origin to the retail buyer.

ITEM 4. Amend rule **761—400.4(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.30, 321.31, 321.45 to 321.50, ~~and~~ 321.67 and 322.3.

ITEM 5. Amend subrule 400.8(2) as follows:

**400.8(2)** The secured party may also note the cancellation in a statement written on the secured party's letterhead if the statement is notarized and contains the following information: county that issued the title; title number; security interest number; vehicle identification number; vehicle owner's name; secured party's name, street address, city, state and ZIP code; date the security interest was canceled; and signature of an authorized representative of the secured party.

ITEM 6. Adopt the following **new** paragraph **425.10(3)“c”**:

*c.* Nothing in this subrule shall be construed to require a franchise agreement from a final-stage manufacturer applying for a motor vehicle dealer license under rule 761—425.11(322).

ITEM 7. Adopt the following **new** rule 761—425.11(322):

**761—425.11(322) Motor vehicle dealer licensing for final-stage manufacturers.**

**425.11(1) Eligibility.** A final-stage manufacturer may be licensed as a motor vehicle dealer if the final-stage manufacturer:

- a.* Meets the definition of “final-stage manufacturer” in Iowa Code section 322.2.
- b.* Meets the requirements of a final-stage manufacturer in 49 CFR Section 567.5.
- c.* Is licensed as a manufacturer under Iowa Code chapter 322 and this chapter.

**425.11(2) Application.** A final-stage manufacturer shall apply for a motor vehicle dealer license in the manner described in rule 761—425.10(322) and shall certify that the final-stage manufacturer meets the eligibility requirements under subrule 425.11(1).

This rule is intended to implement Iowa Code sections 322.2 and 322.3.

ITEM 8. Amend rule **761—425.12(322)**, catchwords, as follows:

**761—425.12(322) Motor vehicle dealer's principal place of business.**

ITEM 9. Adopt the following **new** rule 761—425.13(321,322):

**761—425.13(321,322) Business records of a motor vehicle dealer with multiple licenses.**

**425.13(1) Applicability.** A motor vehicle dealer licensed under Iowa Code chapter 322 and this chapter who holds more than one motor vehicle dealer license may maintain the dealer's collective business records together at any of the dealer's licensed locations.

TRANSPORTATION DEPARTMENT[761](cont'd)

**425.13(2) *Separation of records.*** Business records of licensed motor vehicle dealers kept at a single licensed location under this rule shall be stored separately and distinctly, in a manner distinguishable to each licensee, and shall not be commingled.

**425.13(3) *Notification to the department.*** A motor vehicle dealer shall notify the office of vehicle and motor carrier services in writing no fewer than ten days before moving the dealer's business records to another licensed location.

This rule is intended to implement Iowa Code sections 321.63 and 322.2 to 322.15.

**ARC 4232C**

## **TRANSPORTATION DEPARTMENT[761]**

### **Notice of Intended Action**

#### **Proposing rule making related to application for firefighter plates and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 401, "Special Registration Plates," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 307.12.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 321.34.

#### *Purpose and Summary*

The proposed amendment to Chapter 401 revises the process by which a member of a fire department applies for firefighter license plates in order to allow the applicant to submit an application with the required signatures, without requiring those signatures to be original and notarized. Iowa Code section 321.34(10) allows a current or retired member of a paid or volunteer fire department to order special registration license plates which signify that the applicant is a current or retired member of a fire department. The Department established the application process for special registration plates in administrative rules, and currently, subrule 401.9(1) provides that an application for firefighter license plates must contain the original, notarized signatures of the fire chief and another fire officer certifying that the applicant is a current or retired member of the fire department.

The Department recognizes, after consultation with the Iowa Firefighters Association, that the requirement to have the signatures of the fire chief and another fire officer to be original and notarized for each application can be an administrative burden, especially for very large fire departments with a large number of applicants, as well as for smaller fire departments that may not always have a notary public available. Removing the requirement that the signatures on the application be original and notarized does not in any way diminish the authenticity of the application, as the application is still being signed and certified by not only the chief of the fire department but also another fire officer. Rather, the proposed amendment reduces the administrative burden of having a notary public available any time an application is being signed and allows applications to be submitted electronically, which will further streamline the application process.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

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



## TRANSPORTATION DEPARTMENT[761](cont'd)

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

February 7, 2019  
4 p.m.

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Boulevard  
Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 401.9(1) as follows:

**401.9(1) Initial application for firefighter plates.** Application for firefighter plates shall be submitted to the department ~~on a form~~ in a manner prescribed by the department. Both the fire chief and another fire officer of the paid or volunteer fire department shall sign the application ~~form~~, certifying that the applicant is a current or retired member of the fire department. ~~The signatures must be original and notarized.~~ If the fire chief and fire officer deny an application, the department may conduct an investigation and make a determination to approve or deny the application.

**ARC 4231C****TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action****Proposing rule making related to permitted tandem axle weights and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 511, “Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321E.9A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 321E.7.

*Purpose and Summary*

This proposed rule making adds a new subrule to rule 761—511.13(321,321E) in order to align with Iowa Code section 321E.7, which was amended by 2016 Iowa Acts, chapter 1098, section 35. The proposed amendment implements the statutory requirement that a vehicle operating under a permit issued pursuant to Iowa Code section 321E.8, 321E.9 or 321E.9A may have a gross weight not to exceed 46,000 pounds on a single-tandem axle of the truck tractor and a gross weight not to exceed 46,000 pounds on a single-tandem axle of the trailer or semitrailer if each axle of each tandem group has at least four tires. The legislative change brought Iowa in closer alignment with surrounding states’ permit-issuing processes.

The proposed subrule provides that no single axle of a tandem group may exceed 24,000 pounds. This limitation is necessary to prevent a tandem axle from having a lopsided weight configuration (30,000 pounds + 16,000 pounds, for example) as a lopsided weight configuration would unduly damage road and bridge infrastructure. The limit of 24,000 pounds aligns with the maximum weight the Department allows for axles currently (except for construction equipment with special tires) and is consistent with the weight limits of other Midwest states.

The proposed subrule also provides that a permitted tandem axle cannot be part of a larger group of axles whose centers are greater than 96 inches apart, which is the maximum length between the centers of consecutive axles in a tandem axle as defined in Iowa Code section 321.1(80). This provision is necessary as the above-referenced legislative change was implemented to allow stand-alone tandem axles, which are typically the back two axles of a truck or trailer, to be permitted at the higher weight. The proposed amendment is not intended to allow a person to select two axles from within a larger group of axles and designate them as the tandem axles. For example, selecting two axles out of a group of three and calling them “tandem” could exceed the weight limits for the larger axle group. This example is further illustrated by considering the fact that a triple-axle maximum weight is 60,000 pounds, while a single-axle maximum weight is 20,000 pounds. Therefore, if a person were able to designate two axles out of the triple axle as a tandem axle, then the person could end up with the designated tandem axle at 46,000 pounds and the single axle at 20,000 pounds. This designation would result in a total weight equal to 66,000 pounds, which exceeds the maximum weight for a triple axle. The proposed amendment, therefore, prevents improper interpretation of the 2016 legislative change that would result in excessive axle weights and unduly damage road and bridge infrastructure and aligns with the Department’s current permitting process. The proposed amendment will provide clarity for both motor vehicle enforcement officers as well as motor carriers.

## TRANSPORTATION DEPARTMENT[761](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

February 11, 2019  
10 a.m.

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Boulevard  
Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** subrule 511.13(6):

**511.13(6)** *Permitted tandem axle weights.*

a. Vehicles operating under an annual oversize permit, annual oversize/overweight permit, single-trip permit, or multitrip permit may have a gross weight not to exceed 46,000 pounds on

## TRANSPORTATION DEPARTMENT[761](cont'd)

a single-tandem axle of the truck tractor and a gross weight not to exceed 46,000 pounds on a single-tandem axle of the trailer or semitrailer if each axle of each tandem group has at least four tires.

b. The maximum weight of any single axle within a permitted tandem axle group shall be 24,000 pounds.

c. A permitted tandem axle shall not be a part of a larger group of axles whose centers are greater than 96 inches apart.

**ARC 4233C****TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action****Proposing rule making related to taxicab motor carrier certification  
and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 524, "For-Hire Intrastate Motor Carrier Authority," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 325A.10.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 325A as amended by 2018 Iowa Acts, Senate File 2271.

*Purpose and Summary*

This proposed rule making amends Chapter 524 to align the rules with Iowa Code chapter 325A as amended by 2018 Iowa Acts, Senate File 2271. The legislation requires taxicab companies to apply to the Department for a taxicab motor carrier passenger certificate and to meet certification requirements.

The proposed amendments add a reference to Iowa Code chapter 325A, which governs motor carrier authority. Iowa Code chapter 325A was significantly amended during the 2018 Legislative Session to incorporate new requirements related to regulation of taxicab service companies in Iowa. Prior to enactment of the legislation, a taxicab company could only be regulated by the local authority the company operated within. However, when regulation of transportation network companies was established by 2016 Iowa Acts, chapter 1101 (House File 2414), many local authorities opted out of regulating taxicab companies. This decision left a void in oversight as the Department did not have the authority to regulate taxicab companies until 2018 Iowa Acts, Senate File 2271, became effective July 1, 2018. Now, taxicab companies are required to apply to the Department for a motor carrier passenger certificate and to meet all applicable certification requirements.

Specifically, the proposed amendments provide for an electronic application process for persons applying for a motor carrier permit or certificate and require the application to contain the U.S. DOT number only if a U.S. DOT number is required by the Federal Motor Carrier Safety Administration (FMCSA). FMCSA requires a U.S. DOT number for motor carriers but does not provide one for passenger vehicles designed to transport eight passengers or less, including the driver. This provision means that certain taxicab companies do not qualify for a U.S. DOT number under federal law, so the Department is conforming application requirements accordingly.

The proposed amendments allow a motor carrier certificate to be issued either in a physical or electronic format prescribed by the Department and mirror efficiencies the Department is seeking in other motor vehicle division processes by allowing more transactions and issuances to be completed electronically. The proposed amendments also require the motor carrier certificate number to be included with the request for a duplicate permit or certificate to allow for more accurate record keeping and processing efficiency.

## TRANSPORTATION DEPARTMENT[761](cont'd)

Finally, the proposed amendments require a motor carrier operating intrastate only to display the U.S. DOT number if the motor carrier was issued a U.S. DOT number by FMCSA. As noted above, FMCSA requires a U.S. DOT number for a motor carrier but does not provide one for passenger vehicles designed to transport eight passengers or less, including the driver. This provision means that certain taxicab companies do not qualify for a U.S. DOT number under federal law, so the Department is conforming the motor carrier marking requirements accordingly.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

February 7, 2019  
2 p.m.

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Boulevard  
Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's

## TRANSPORTATION DEPARTMENT[761](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—524.1(325A) as follows:

**761—524.1(325A) Purpose and applicability.**

**524.1(1)** This chapter establishes requirements concerning for-hire intrastate motor carriers as authorized by Iowa Code chapter 325A.

**524.1(2)** This chapter applies to motor carriers of household goods, bulk liquid commodities, all other property, and passengers being transported for hire on any highway of this state other than a transportation network company or transportation network company driver as both are defined in Iowa Code section 321N.1 and provided for in 761—Chapter 540.

ITEM 2. Amend rule 761—524.2(325A) as follows:

**761—524.2(325A) General information.**

**524.2(1) Information and location.** Applications, forms and information on motor carrier permits and motor carrier certificates are available by mail from the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)237-3224 (515)237-3268; or by facsimile at (515)237-3354 (515)237-3225; or by email at omcs@iowadot.us.

**524.2(2)** No change.

**524.2(3) Complaints.** Complaints against motor carriers pertaining to the provisions of this chapter shall be submitted in writing to the office of vehicle and motor carrier services.

ITEM 3. Amend rule 761—524.3(325A) as follows:

**761—524.3(325A) Applications and supporting documents.**

**524.3(1) Application.** An application for a motor carrier permit or motor carrier certificate shall be made to the office of vehicle and motor carrier services on a form prescribed for that purpose and furnished upon request. The department may require application forms and supporting documentation to be submitted electronically.

**524.3(2) Application fee.** An application for a motor carrier permit or motor carrier certificate shall be accompanied by the statutory application fee. This fee shall be paid by credit card or by cash, check or money order made payable to the Iowa Department of Transportation.

**524.3(3) Supporting documents.** An application for a motor carrier permit or motor carrier certificate must be accompanied by the following:

a. and b. No change.

c. ~~Form MCS 150, if the motor carrier does not have a~~ A U.S. DOT number if required by the Federal Motor Carrier Safety Administration.

d. and e. No change.

ITEM 4. Amend rule 761—524.4(325A) as follows:

**761—524.4(325A) Issuance of credentials.** When all requirements are met, the department shall issue the motor carrier permit or certificate. The motor carrier shall make a copy of the permit or certificate and carry it in each motor vehicle at all times. The copy may be in either a physical or an electronic format as prescribed by the department. The permit or certificate shall be available for display to any peace officer upon request.

ITEM 5. Amend rule 761—524.5(325A) as follows:

**761—524.5(325A) Duplicate motor carrier permit or motor carrier certificate.** Written requests for a duplicate motor carrier permit or motor carrier certificate shall be sent to the office of vehicle and motor

## TRANSPORTATION DEPARTMENT[761](cont'd)

carrier services. Requests shall include the carrier name, certificate number, or U.S. DOT number. Any motor carrier in good standing shall be issued a duplicate document upon payment of the required fee.

ITEM 6. Amend rule 761—524.6(325A) as follows:

**761—524.6(325A) Amendment to a motor carrier permit or certificate.**

**524.6(1) *Update to a motor carrier permit.*** To change the commodities being transported under a permit, an updated application must be submitted to the office of vehicle and motor carrier services. The updated application shall include the permit number and the required fee for a duplicate permit. Transporting of commodities not listed on the permit shall not commence until a new permit or temporary permit has been issued and is carried in the vehicle.

**524.6(2) *Change of name or address for a motor carrier permit or certificate.*** Notification of a name or address change shall be sent to the office of vehicle and motor carrier services within 30 days after the change. Notification shall include the permit or certificate number, old name or address, new name or address, and the required fee.

ITEM 7. Amend subrule 524.7(2) as follows:

**524.7(2) *Self-insurance.*** In lieu of maintaining the above insurance, intrastate carriers that also operate interstate and have been approved by a federal agency to self-insure may apply to the department to self-insure by submitting a written request to the office of vehicle and motor carrier services. The written request shall include a copy of the federal agency's approval. The department shall allow self-insurance as long as a federal agency has approved the carrier to self-insure and the motor carrier provides the department with copies of any information required by that federal agency. The department must be notified immediately by the motor carrier if there is any change in the status of the self-insurance for interstate operation.

ITEM 8. Amend rule 761—524.8(325A) as follows:

**761—524.8(325A) Self-insurance for motor carriers of passengers.**

**524.8(1) *Applications for self-insurance.*** A motor carrier of passengers with more than 25 motor vehicles may request self-insurance by submitting a written request to the office of vehicle and motor carrier services. The written request shall include a copy of the most recent audited financial statement and a vehicle list.

**524.8(2) *Review by the department.*** The department may request additional information. The department shall deny the request to self-insure or suspend existing approval if the motor carrier fails to meet the self-insurance standard. Approval of self-insurance is continuous. However, the motor carrier shall annually file audited financial statements with the office of vehicle and motor carrier services within 60 days after the end of the motor carrier's fiscal year.

**524.8(3)** No change.

ITEM 9. Amend rule 761—524.11(325A) as follows:

**761—524.11(325A) Safety education seminar.**

**524.11(1)** No change.

**524.11(2) *Availability.*** The department shall provide an approved safety education seminar periodically. Information on the seminar schedule is available by mail from the Office of ~~Motor Vehicle Enforcement~~ Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10473 10382, Des Moines, Iowa ~~50306-0473~~ 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; or by telephone at ~~(800)925-6469~~ (515)237-3268.

**524.11(3)** No change.

**524.11(4) *Exemption.*** Passenger carriers with vehicles not meeting the definition of a commercial vehicle as defined in Iowa Code section 321.1 are exempt from attending the safety education seminar and paying the seminar fee. A motor carrier certificate issued for such a carrier contains the statement: "limited to noncommercial vehicles only." If a motor carrier wishes to start operating vehicles that meet the definition of a commercial motor vehicle, the motor carrier must update its authority with the office

## TRANSPORTATION DEPARTMENT[761](cont'd)

of vehicle and motor carrier services. A motor carrier must pay the seminar fee and attend the seminar within six months of updating the certificate. A new motor carrier certificate removing the limitation would then be issued.

ITEM 10. Amend paragraph **524.12(1)“b”** as follows:

*b.* U.S. DOT number followed by the letters “IA-” if the motor carrier has been issued a number by the Federal Motor Carrier Safety Administration.

ITEM 11. Amend rule 761—524.15(325A) as follows:

**761—524.15(325A) Tariffs.**

**524.15(1) Requirements.** All motor carriers of household goods shall maintain on file with the office of vehicle and motor carrier services a tariff stating the rates and charges that apply for the services performed under the permit.

**524.15(2)** No change.

**524.15(3) Filing date.** All changes to tariffs and supplements must be filed with the office of vehicle and motor carrier services at least seven days prior to the effective date. Tariffs, supplements or adoption notices issued in connection with applications for motor carriers of household goods may become effective on the date the permits are issued.

**524.15(4) Copy to department.** To file a tariff with the office of vehicle and motor carrier services, motor carriers of household goods or their agents shall submit a transmittal letter listing all the enclosed tariffs and include one copy of each tariff, supplement or revised page.

**524.15(5) to 524.15(7)** No change.

**524.15(8) Tariff changes.** All rates and charges which have been filed with the office of vehicle and motor carrier services must be allowed to become effective and remain in effect for a period of at least seven days before being changed, canceled or withdrawn. All tariffs, supplements and revised pages shall indicate changes from the preceding issue by use of the following symbols:

(R) to denote reductions

(A) to denote increases

(C) to denote changes, the result of which is neither an increase nor a reduction.

The proper symbol must be shown directly in connection with each change.

**524.15(9)** No change.

**524.15(10) Application for special permission.** Motor carriers of household goods and agents when making application for permission to establish rates, charges, or rules of the tariff on less than the statutory seven days’ notice shall use the form prescribed by the office of vehicle and motor carrier services.

**524.15(11) Powers of attorney and participation notices.**

*a.* No change.

*b.* The original power of attorney shall be filed with the office of vehicle and motor carrier services and a copy sent to the agent or motor carrier of household goods on whose behalf the document was issued.

*c.* No change.

**524.15(12) Nonconforming tariffs.** The office of vehicle and motor carrier services shall review tariffs that do not conform with subrules 524.15(1) to 524.15(11) to determine if ~~they~~ the tariffs contain the necessary information and ~~if they~~ are acceptable. Tariffs that are unacceptable shall be returned with an explanation.

ITEM 12. Amend rule 761—524.18(325A) as follows:

**761—524.18(325A) Hearings.** A person whose application for a motor carrier permit or certificate has been denied for a reason other than noncompliance with insurance requirements or whose motor carrier permit or certificate has been suspended or revoked for a reason other than noncompliance with insurance requirements may contest the decision in accordance with Iowa Code chapter 17A and 761—Chapter 13, ~~Iowa Administrative Code~~. The request for a hearing shall be submitted in writing to the director



TRANSPORTATION DEPARTMENT[761](cont'd)

of the office of vehicle and motor carrier services. The request shall include, as applicable, the motor carrier's name, permit or certificate number, complete address and telephone number. The request must be submitted within 20 days after the date of the notice of suspension, revocation or denial.

**ARC 4229C**

## **TRANSPORTATION DEPARTMENT[761]**

### **Notice of Intended Action**

#### **Proposing rule making related to a temporary restricted license and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 620, "OWI and Implied Consent," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 307.12.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 321J as amended by 2018 Iowa Acts, House File 2338, sections 2 to 9.

#### *Purpose and Summary*

This proposed rule making updates Chapter 620 to align with existing legal authority and Department practice. The proposed amendment conforms rule 761—620.3(321J) with 2018 Iowa Acts, House File 2338, which significantly altered the requirements for obtaining a temporary restricted license (TRL) and installation of an ignition interlock device (IID) for operating while intoxicated (OWI) revocations.

Specifically, the legislation extended the requirement to install an IID as a condition of a TRL to a subset of OWI offenders who had not previously been required to install an IID as a condition of a TRL, for example, applicants whose test results demonstrated a blood-alcohol content of .08 to .10. The legislation also removed the periods of ineligibility for most OWI offenses so that an applicant no longer must wait a specified period of time after committing an OWI offense before the applicant may apply for a TRL. Finally, the legislation removed the driving location restrictions for an applicant obtaining a TRL authorized under Iowa Code chapter 321J.

The proposed amendment also reflects a new TRL application form number and conforms the rule to requirements in Iowa Code chapter 321J requiring an IID to be installed in all vehicles owned or operated by the applicant as a condition of the TRL.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

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

#### *Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests

## TRANSPORTATION DEPARTMENT[761](cont'd)

to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Tracy George  
 Department of Transportation  
 DOT Rules Administrator, Strategic Communications and Policy  
 800 Lincoln Way  
 Ames, Iowa 50010  
 Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

February 7, 2019  
 3 p.m.

Department of Transportation  
 Motor Vehicle Division  
 6310 SE Convenience Boulevard  
 Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule 761—620.3(321J) as follows:

**761—620.3(321J) Issuance of temporary restricted license.**

**620.3(1) Eligibility and application.**

*a.* The department may issue a temporary restricted license to a person who is eligible under and for the purposes listed in Iowa Code section ~~321J.4 (except subsection 8), 321J.9, 321J.12 or 321J.20~~ chapter 321J. The department shall not issue a temporary restricted license to a person ~~who has a current suspension or revocation for any other reason, or~~ who is otherwise ineligible.

*b.* To apply for a temporary restricted license, an applicant shall, at any time before or during the revocation period, submit application Form ~~430100~~ 430400 to driver and identification services at the address in 761—620.2(321J). The application form should be furnished by the arresting officer. It may also be obtained upon oral or written request to driver and identification services ~~or by submitting Form 432018 to driver and identification services with the appropriate box checked.~~

*c.* ~~A temporary restricted license issued for employment may include permission for the licensee to transport dependent children to and from a location for child care when that activity is essential to continuation of the licensee's employment.~~

*d. c.* A temporary restricted license issued for any purpose may include permission for the licensee to participate in the sobriety and drug monitoring program established pursuant to Iowa Code chapter 901D. For purposes of this chapter, a sobriety and drug monitoring program means the sobriety and

TRANSPORTATION DEPARTMENT[761](cont'd)

drug monitoring program established pursuant to Iowa Code chapter 901D. If the licensee is required to participate in and comply with the sobriety and drug monitoring program as a condition of the license, the licensee shall notify the department of the jurisdiction to which the licensee is reporting in compliance with the program.

~~620.3(2) Statements.~~ A person applying for a temporary restricted license shall submit all of the following statements that apply to the person's situation. Each statement shall explain the need for the license and shall list specific places and times for the activity which can be verified by the department.

~~a.~~ A statement from the person's employer unless the person is self-employed including, when applicable, verification that the person's use of a child care facility is essential to the person's continued employment.

~~b.~~ A statement from the person.

~~c.~~ A statement from the health care provider if the person or the person's dependent requires continuing health care.

~~d.~~ A statement from the educational institution in which the person is enrolled.

~~e.~~ A statement from the substance abuse treatment program in which the person is participating.

~~f.~~ A copy of the court order for community service and a statement describing the assigned community service from the responsible supervisor.

~~g.~~ A statement from the child care provider.

~~620.3(3) 620.3(2) Additional requirements.~~ A person applying for a temporary restricted license shall also comply with all of the following requirements:

~~a.~~ Provide a description of all motor vehicles ~~to be~~ owned or operated under the temporary restricted license.

~~b.~~ Submit proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles ~~to be~~ owned or operated under the temporary restricted license.

~~c.~~ Provide certification of installation of an approved ignition interlock device on every motor vehicle owned or operated.

~~d.~~ No change.

~~620.3(4) 620.3(3) Issuance and restrictions.~~

~~a. and b.~~ No change.

~~620.3(5) 620.3(4) Denial.~~ A person who has been denied a temporary restricted license or who contests the restrictions imposed by the department may request an informal settlement conference by submitting a written request to the director of driver and identification services at the address given in 761—620.2(321J). Following an unsuccessful informal settlement or instead of that procedure, the person may request a contested case hearing in accordance with rule 761—620.4(321J).

## TREASURER OF STATE

### Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Ronald L. Hansen, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for January is 5.00%.

#### INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of

## TREASURER OF STATE(cont'd)

comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

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

New official state interest rates, effective January 10, 2019, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS		
7-31 days	.....	Minimum .45%
32-89 days	.....	Minimum .45%
90-179 days	.....	Minimum .65%
180-364 days	.....	Minimum .75%
One year to 397 days	.....	Minimum 1.00%
More than 397 days	.....	Minimum 1.10%

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

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

**ARC 4243C**

**ACCOUNTANCY EXAMINING BOARD[193A]**

**Adopted and Filed**

**Rule making related to review of rules, online licensing  
and renewals, and accountancy designations**

The Accountancy Examining Board hereby amends Chapter 3, “Certification of CPAs,” Chapter 4, “Licensure of LPAs,” Chapter 5, “Licensure Status and Renewal of Certificates and Licenses,” Chapter 7, “Certified Public Accounting Firms,” Chapter 8, “Licensed Public Accounting Firms,” Chapter 9, “Reciprocity and Substantial Equivalency,” Chapter 10, “Continuing Education,” and Chapter 15, “Disciplinary Investigations,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 542.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 542.

*Purpose and Summary*

The amendments to Chapters 3, 4, 5, 7, 8, 9, 10 and 15 reflect partial compliance with Iowa Code section 17A.7(2), which states that beginning July 1, 2012, over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency’s rules. The goal of the review is to identify and eliminate all rules that are outdated, redundant, or inconsistent or incompatible with statute or the agency’s rules or the rules of other agencies. The amendments also reflect changes in the Professional Licensing and Regulation Bureau’s administrative processes due to the installation of a new online licensing and renewal system. Additionally, the amendment to Chapter 9 provides for recognition of a broader scope of accountancy designations outside of the United States.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 12, 2018, as **ARC 3988C**. A public hearing was held on October 3, 2018, at 9 a.m. at the Professional Licensing Bureau offices, 200 East Grand Avenue, Suite 350, Des Moines, Iowa. No one attended the public hearing. Written comments were received. None were in opposition of the amendments. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on December 13, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, a positive impact on jobs is found in the amendment to subrule 9.5(2). By recognizing a broader scope of acceptable accountancy designations outside of the United States, Iowa demonstrates a welcoming perspective to individuals from other countries who seek licensure in Iowa.

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 193—Chapter 5.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 3.14(1) as follows:

**3.14(1)** A candidate who successfully passes the examination, completes the ethics course and examination and meets all of the requirements outlined in rule 193A—3.1(542) shall make application for the certificate on a form which may be obtained ~~from the board office or on the board's Web site website.~~ An applicant for a certificate may be denied the certificate for reasons outlined in subrule 3.4(3), 3.4(4), or 3.4(5) regardless of when the incident occurred.

ITEM 2. Rescind and reserve rule **193A—4.5(542)**.

ITEM 3. Amend rule 193A—4.15(542) as follows:

**193A—4.15(542) Obtaining the license.** A candidate who successfully passes the examination and completes the requirements outlined in rules 193A—4.12(542), 193A—4.13(542) and 193A—4.14(542) shall make application for licensure on a form available ~~from the board office~~ through the online application process. An applicant shall list on the application all states in which the applicant has applied for or holds a certificate, license or permit and shall also list any past denial, revocation, suspension, refusal to renew, or voluntary surrender to avoid disciplinary action of a certificate, license or permit. An applicant shall notify the board in writing within 30 days after the occurrence of any issuance, denial, revocation, suspension, refusal to renew, or voluntary surrender to avoid disciplinary action of a certificate, license or permit by another state. An applicant for licensure may be denied the license for reasons outlined in subrule 4.1(2) regardless of when the incident occurred.

ITEM 4. Amend subrule 4.16(3) as follows:

**4.16(3)** A person desiring a license as a licensed public accountant in this state on the basis of a licensed public accountant license issued by another state must apply ~~upon a form that may be obtained from the board office~~ through the online application process. The burden is on the applicant to obtain information satisfactory to the board that the applicant's license in such other state is in full force and effect and that the requirements for obtaining such license were substantially equivalent to those of this state to obtain a license as a licensed public accountant.

ITEM 5. Amend rule 193A—5.3(542) as follows:

**193A—5.3(542) License renewal.**

**5.3(1)** Licenses issued pursuant to Iowa Code section 542.6 (CPA certificates), 542.8 (LPA licenses), or 542.19 (CPA certificates by substantial equivalency) shall be renewed on an annual basis and shall expire on June 30 of each year. Licenses shall be renewed through ~~electronic on-line~~ the online renewal, ~~except that licensees who are ineligible to renew on-line because they must disclose a criminal conviction~~

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

~~or disciplinary order, or for other cause, shall renew upon forms that may be obtained from the board office or on the board's Web site process.~~ An annual renewal fee will be charged.

~~5.3(2) The board plans to develop a renewal process in which a firm permit to practice and the individual licenses associated with the firm may be renewed together. The board shall adopt rules governing the combined renewal process when further details are known and the technological means to implement the process are in place.~~

ITEM 6. Amend subrule 5.4(1) as follows:

**5.4(1)** The board typically ~~mails~~ sends, by electronic means, a notice to licensees in the May preceding license expiration, but neither the failure of the board to ~~mail~~ send nor a licensee's failure to receive a renewal notice shall excuse the requirement to timely renew a license.

ITEM 7. Amend subrule 5.5(1) as follows:

**5.5(1)** A licensee shall submit an electronic ~~on-line~~ online renewal ~~or file a timely and sufficient renewal application with the board by the June 30 deadline in the renewal year. An application shall be deemed filed on the date of electronic renewal or when received by the board or, if mailed, on the date postmarked, but not the date metered.~~

ITEM 8. Amend subrule 5.5(4) as follows:

**5.5(4)** Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

- a. Received by the board in ~~person or~~ electronic form ~~or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;~~
- b. ~~Signed by the licensee if submitted in person or mailed, or certified~~ Certified as accurate if ~~submitted electronically through the online renewal process;~~
- c. Fully completed, including continuing education, if applicable; and
- d. Accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.

ITEM 9. Amend subrule 5.9(2), introductory paragraph, as follows:

**5.9(2) Eligibility.** A person holding a lapsed or active certificate or license which has not been revoked or suspended may apply ~~on forms provided by the board to renew in inactive status through the online application process~~ if the person is not engaged in the state of Iowa or for clients with a home office in Iowa in any practice for which an active certificate or license is required, including:

ITEM 10. Amend subrule 7.2(1) as follows:

**7.2(1)** ~~Application forms may be obtained from the board office or on the board's Web site~~ All applications shall be submitted through the board's online application process. The board shall ~~only~~ process fully completed applications accompanied by the proper fee. A nonrefundable application fee shall be charged.

ITEM 11. Amend rule 193A—7.4(542) as follows:

**193A—7.4(542) Annual renewal of permit.** Permits to practice must be renewed annually and shall expire on June 30 of each year. Applications to renew a permit to practice may be obtained ~~from the board office or on the board's Web site or~~ through electronic ~~on-line~~ online renewal. While the board generally ~~mails~~ sends, by electronic means, a renewal notice in the May preceding permit expiration, neither the board's failure to ~~mail~~ send a notice nor a permit holder's failure to receive a notice shall excuse the requirement to timely renew and pay the renewal fee.

ITEM 12. Amend subrule 7.5(1) as follows:

**7.5(1)** The permit holder shall submit an electronic ~~on-line~~ online renewal ~~or file a timely and sufficient renewal application with the board~~ by the June 30 deadline each year. Applications shall be

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

deemed filed on the date of electronic renewal ~~or when received by the board or, if mailed, on the date postmarked, but not the date metered.~~

ITEM 13. Amend subrule 7.5(3) as follows:

**7.5(3)** Within the meaning of Iowa Code chapters 17A, 272C and 542, a timely and sufficient renewal application shall be:

a. Received by the board in ~~person or~~ electronic form ~~or postmarked with a nonmetered United States Postal Service postmark~~ on or before the date the permit is set to expire or lapse;

b. ~~Signed by the licensee in charge of the firm's practice if submitted in person or mailed, or certified~~ Certified as accurate if ~~submitted electronically through the online renewal process;~~

c. Fully completed and accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.

ITEM 14. Amend subrule 8.1(2) as follows:

**8.1(2)** The application ~~may be obtained from the board office or on the board's Web site~~ shall be completed and submitted through the online application process and shall provide sufficient information from which the board can determine that a simple majority of owners hold licenses issued under Iowa Code section 542.8 or certificates issued under Iowa Code section 542.6 or 542.19, are eligible to practice under practice privilege pursuant to Iowa Code section 542.20, or otherwise hold a license or certificate to practice public accounting in another state. At least one owner must be licensed under Iowa Code section 542.8.

ITEM 15. Amend rule 193A—8.2(542) as follows:

**193A—8.2(542) Annual renewal of permit.** A permit issued under the provisions of Iowa Code section 542.8 shall be renewed annually by June 30 ~~upon forms provided by the board.~~ Applications to renew a permit to practice ~~may be obtained from the board office or on the board's Web site or shall be completed and submitted through electronic on-line~~ the online renewal process. While the board generally ~~mails~~ sends, by electronic means, a renewal notice in the May preceding permit expiration, neither the board's failure to ~~mail send~~ a notice nor a permit holder's failure to receive a notice shall excuse the requirement to timely renew and pay the renewal fee.

ITEM 16. Amend subrule 8.3(1) as follows:

**8.3(1)** The permit holder shall submit an ~~electronic on-line~~ online renewal ~~or file a timely and sufficient renewal application~~ with the board by the June 30 deadline each year. Applications shall be deemed filed on the date of ~~electronic renewal or when received by the board or, if mailed, the date postmarked, but not the date metered.~~

ITEM 17. Amend subrule 8.3(3) as follows:

**8.3(3)** Within the meaning of Iowa Code chapters 17A, 272C, and 542, a timely and sufficient renewal application shall be:

a. Received by the board in ~~person or~~ electronic form, ~~or postmarked with a nonmetered United States Postal Service postmark~~ on or before the date the permit is set to expire or lapse;

b. ~~Signed by the licensee in charge of the firm's practice if submitted in person or mailed, or certified~~ Certified as accurate if ~~submitted electronically through the online renewal process;~~

c. Fully completed and accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.



## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

ITEM 18. Amend rule 193A—9.2(542) as follows:

**193A—9.2(542) Application forms.** Application forms ~~may be obtained from the board office or on the board Web site~~ shall be completed and submitted through the online application process. An applicant shall attest that all information provided on the form is true and accurate. An application may be denied based on a false statement of material fact. A nonrefundable fee shall be charged each applicant as provided in 193A—Chapter 12.

ITEM 19. Amend subrule 9.5(2) as follows:

**9.5(2)** A person who holds in good standing a certificate, license or designation from a foreign authority that is substantially equivalent to an Iowa CPA certificate shall be deemed qualified for an Iowa CPA certificate if the person satisfies all of the provisions of Iowa Code section 542.19(3). The burden is on the applicant to demonstrate that such certificate, license or foreign designation is in full force and effect and that the requirements for that certificate, license or foreign designation are comparable or superior to those required for a CPA certificate in this state. Original verification from the foreign authority which issued the certificate, license or designation shall be required to demonstrate that such certificate, license or designation is valid and in good standing. If the applicant cannot establish comparable or superior qualifications, the board shall require that the applicant pass the uniform certified public accountant examination designed to test the applicant's knowledge of practice in this state and country. If the applicant is a Canadian Chartered Accountant, Australian Chartered Accountant, Hong Kong CPA, Ireland Chartered Accountant, Mexico Contador Público Certificado (CPC), ~~or~~ New Zealand Chartered Accountant, or Scottish Chartered Accountant, the applicant may be required to take the International Uniform CPA Qualification Examination (IQEX) in lieu of the uniform certified public accountant examination.

ITEM 20. Amend paragraph **10.5(1)“a”** as follows:

a. On each ~~online or paper~~ renewal, a CPA or LPA shall self-select December 31 or June 30 as the date by which continuing education requirements must be satisfied in order to be eligible to renew the certificate or license.

ITEM 21. Amend subrule 10.9(1), introductory paragraph, as follows:

**10.9(1)** An applicant for renewal may be requested to provide, in such manner, including but not limited to the online renewal process, and at such time as prescribed by the board, ~~a signed statement, under penalty of perjury, on forms provided by the board, verification and documentation~~ setting forth the continuing professional education in which the licensee has participated. The board, ~~in certain instances~~, may allow for attestation that the licensee has met the requirements in lieu of providing a listing. If the applicant for renewal is requested to provide a listing of the continuing professional education completed, the documentation shall include:

ITEM 22. Amend subrule 10.11(2) as follows:

**10.11(2) Alternative cycle.** ~~Starting with the 2013 renewal cycle, a~~ A CPA or LPA may self-select December 31 or June 30 as the date by which continuing education requirements must be satisfied in order to be eligible to renew the license or certificate. ~~Online and paper renewal forms~~ will require the renewal applicant to declare whether the continuing education was satisfied within the three-year period preceding December 31 or the three-year period preceding June 30. When declaring a June 30 date, licensees must be cautious to ensure the continuing education is fully completed on or prior to the date the renewal application is submitted. Licensees who renew with penalty during the 30-day grace period following June 30 must declare either December 31 or June 30 and may not extend the deadline beyond June 30.

ITEM 23. Amend subrule 15.5(1), introductory paragraph, as follows:

**15.5(1) Contents of a written complaint.** Written complaints may be submitted ~~on forms provided by the board which are available from the board office and on the board's Web site~~ through the online

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

complaint process. Written complaints, whether submitted on a board complaint form or in other written medium, shall contain the following information:

[Filed 12/14/18, effective 2/20/19]

[Published 1/16/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.

**ARC 4244C**

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

**Adopted and Filed**

**Rule making related to update of human resources policies and procedures**

The Administrative Services Department hereby amends Chapter 68, "Equal Employment Opportunity and Affirmative Action," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 8A.104, 8A.413, 19B.3 and 19B.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 8A.402 and 8A.413 and chapter 19B.

*Purpose and Summary*

These rules are being amended to update policies and procedures relating to reporting and investigation of sexual harassment, discrimination, equal opportunity and affirmative action complaints in the State of Iowa Executive Branch. The amendments provide that these complaints may be made directly to the Administrative Services Department or the Office of the Governor, rather than just within an agency. They also provide that the Administrative Services Department shall conduct investigations of such conduct unless otherwise directed by the Office of the Governor. In addition, the amendments clarify the confidentiality of the complaint and investigation process. These amendments are consistent with the revised policies that were issued simultaneously with the adoption of these amendments.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 21, 2018, as **ARC 4122C**. This rule making was also adopted and filed emergency and published in the Iowa Administrative Bulletin as **ARC 4121C** on the same date.

A public hearing was held on December 11, 2018, at 9 a.m. in the Procurement Conference Room, A Level, Hoover State Office Building, Des Moines, Iowa. Two people spoke at the hearing. Daniel Zeno, who identified himself as the policy director of the American Civil Liberties Union of Iowa, commented on Items 1, 2, and 3 of the Notice. Mr. Zeno addressed the topics of the definition of sexual harassment, training, investigations, a timeline regarding investigations, retaliation, and confidentiality of complaints. Kerri True-Funk, who identified herself as director of operations and special projects with the Iowa Coalition Against Sexual Assault, also spoke at the hearing. Ms. True-Funk commented on the topics of confidentiality, cooperation in investigations, retaliation, and policies in the State of Iowa Employee Handbook.

After the hearing, the Department received written comments from Mr. Zeno that addressed Items 1, 2, and 3 of the rules and addressed the topics of the definition of sexual harassment, training, the mechanics of investigations, a timeline related to investigations, confidentiality of complaints, and

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

retaliation. The Department also received written comments after the hearing from Ms. True-Funk. Ms. True-Funk's written comments addressed the topics of policies in the State of Iowa Employee Handbook, the definition of sexual harassment, investigation timelines and processes, training, confidentiality of complaints, and retaliation.

In Item 1, examples have been added to the definition of sexual harassment, as those examples are listed in Iowa Code section 19B.12. In Item 3, subrule 68.6(4), complaint investigation procedures have been detailed and a timeline included. In Item 3, subrule 68.6(5), the word "may" has been replaced with the word "shall" pertaining to discipline of executive branch employees who engage in retaliatory behavior. A new Item 4, adopting new rule 11—68.7(19B) regarding mandatory training, has been added.

*Adoption of Rule Making*

This rule making was adopted by the Department on December 26, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following rule-making actions are adopted:

ITEM 1. Amend rule **11—68.1(19B)**, definition of "Sexual harassment," as follows:

"Sexual harassment" means persistent, repetitive, or highly egregious conduct directed at a specific individual or group of individuals that a reasonable person would interpret as intentional harassment of a sexual nature, taking into consideration the full context in which the conduct occurs. It may be directed at a specific individual or group of individuals. Conduct of a sexual nature will be considered harassing if it (1), which conduct threatens to impair the ability of a person to perform the duties of employment; (2) promises, threatens or in some manner affects a tangible employment benefit; or (3) threatens to impair the ability of a person to, or otherwise function normally within an institution responsible for the person's care, rehabilitation, education, or training. "Sexual harassment" may include, but is not limited to, the following: (1) unsolicited sexual advances by a person toward another person who has clearly communicated the other person's desire not to be the subject of those advances; (2) sexual advances or propositions made by a person having superior authority toward another person within the workplace or institution; (3) instances of offensive sexual remarks or speech or graphic sexual displays directed at a person in the workplace or institution, who has clearly communicated the person's objection to that

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

conduct, and where the person is not free to avoid that conduct due to the requirements of the employment or the confines or operations of the institution; (4) dress requirements that bear no relation to the person's employment responsibilities or institutional status.

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

**68.2(2)** Each agency shall adhere to the provisions of the “State of Iowa Equal Opportunity, Affirmative Action and Anti-Discrimination Policy for Executive Branch Employees,” ~~made effective by the governor on November 1, 2001.~~ and the “Policy Prohibiting Sexual Harassment for Executive Branch Employees.”

ITEM 3. Rescind rule 11—68.6(19B) and adopt the following new rule in lieu thereof:

**11—68.6(19B) Discrimination complaints, including disability-related and sexual harassment complaints.** The director shall have the authority to investigate practices prohibited under the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” and the “Policy Prohibiting Sexual Harassment for Executive Branch Employees,” adopted in accordance with Iowa Code section 19B.12. The director shall investigate any complaint pertaining to the policies specified in this rule unless directed by the governor to be investigated by another agency or entity.

**68.6(1) Confidentiality.** Complaints and records related to complaints, regardless of where the records are located, are confidential. These confidential records include, but are not limited to, all information gathered in the course of an investigation and investigative reports. Confidential records shall not be released unless ordered by a court of competent jurisdiction. This rule does not supersede the remedies provided under Iowa Code chapter 216.

**68.6(2) General procedures.**

*a.* Any person who feels that he or she has been subjected to, or who witnesses or has knowledge of, a violation of the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” or the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” is encouraged to make a complaint pursuant to the complaint procedure outlined in the respective policies.

*b.* An agency shall immediately report all complaints pertaining to the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” or the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” to the department.

**68.6(3) Sexual harassment complaint procedures.** All employees shall have access to internal grievance procedures as authorized by Iowa Code section 19B.12 for reporting complaints of sexual harassment as set forth in the “Policy Prohibiting Sexual Harassment for Executive Branch Employees.”

*a.* Any employee who believes that he or she has been subjected to, or who witnesses or has knowledge of, a violation of the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” is encouraged to bring a complaint to:

- (1) The employee's immediate supervisor;
- (2) The next higher supervisor; or
- (3) The agency director or the employee identified by the agency to receive complaints of sexual harassment.

*b.* A complaint, including those concerning senior agency officials or agency directors, may be made directly to the department or the office of the governor without reporting the matter internally to the agency.

**68.6(4) Complaint investigation procedures.** The department shall investigate all complaints arising under the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” and the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” unless directed by the governor to be investigated by another agency or entity. All executive branch employees must cooperate fully with any investigation and may be subject to discipline up to and including termination of employment for failure to cooperate with an investigation. The department shall submit findings for an investigation conducted under this rule to the applicable agency or the office of the governor.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

a. A complaint may be submitted on the form prescribed by the department or through other means, either orally or in writing. The complaint should at least contain the following:

- (1) The name and contact information of the person submitting the complaint;
- (2) The name(s) and contact information, if known, of the alleged harasser;
- (3) A statement of the allegations, including dates, if known, constituting the alleged discriminatory or harassing conduct; and
- (4) Any witnesses or persons to whom the allegations were reported.

b. Upon receipt or referral of a complaint, the department shall acknowledge the receipt of the complaint to the person submitting the complaint within five business days of receipt.

c. The investigation shall be initiated within ten days of the receipt of the complaint.

d. The investigation shall be completed within 30 days of the receipt of the complaint unless good cause can be shown that additional time is required. Reasons for additional time to complete the investigation beyond 30 days shall be documented in the investigation file. Extensions beyond 60 days must have prior approval by the director.

e. The investigation report shall include at least the following:

- (1) Background of the complaint;
- (2) Allegations;
- (3) Persons interviewed;
- (4) Analysis and findings; and
- (5) Conclusion.

f. Upon completion of the investigation, written correspondence regarding the conclusion of the investigation shall be sent to all parties interviewed during the course of the investigation.

**68.6(5) Retaliation prohibited.** Any form of retaliation against an employee for resisting discriminatory or harassing behavior, reporting a complaint of discriminatory or harassing behavior, assisting a complainant who reports discriminatory or harassing behavior, or who cooperates in an investigation regarding discriminatory or harassing behavior is prohibited. Executive branch employees who engage in retaliatory behavior shall be subject to discipline up to and including termination of employment. An employee who experiences retaliation prohibited under this subrule may report the retaliation through any of the avenues identified in this rule.

ITEM 4. Adopt the following new rule 11—68.7(19B):

**11—68.7(19B) Training.** The department shall provide training to all executive branch state employees relating to sexual harassment awareness, prevention and reporting. Executive branch state employees shall complete sexual harassment training on an annual basis as provided by the department.

[Filed 12/26/18, effective 2/20/19]

[Published 1/16/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.

**ARC 4245C**

**AUDITOR OF STATE[81]**

**Adopted and Filed**

**Rule making related to organization and procedures**

The Auditor of State hereby amends Chapter 25, "Organization and Procedures," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 11 and section 17A.3.

AUDITOR OF STATE[81](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 11.6, 11.31, 536A.2, and 536A.6.

*Purpose and Summary*

These amendments reflect the Office of Auditor of State's compliance with Iowa Code section 17A.7(2), which states that, as of July 1, 2012, "over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency's rules" with the objective of "the identification and elimination of all rules of the agency that are outdated, redundant, or inconsistent or incompatible with statute or its own rules or those of other agencies." The amendments to Chapter 25 are intended to reflect the Office's current organizational structure of three divisions and to rescind or amend rules to reflect various changes to the Iowa Code.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 21, 2018, as **ARC 4125C**. A public hearing was held on December 11, 2018, at 10 a.m. in the State Capitol Building, Room 116, 1007 East Grand Avenue, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Auditor of State on December 26, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Office for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 81—25.4(17A,11) as follows:

**81—25.4(17A,11) Distribution of duties.** The office of auditor of state has ~~four~~ three principal divisions, namely:

AUDITOR OF STATE[81](cont'd)

**25.4(1)** ~~The executive and administrative division, under the direct control of the auditor of state, assisted by a deputy and administrative assistants, which exercises control and supervision of all activities of the auditor's office.~~

**25.4(2)** ~~The state financial audit division, supervised and directed by a supervisor deputy appointed by the auditor of state, which is charged with the responsibilities of annual audit of all agencies of the state receiving or expending state funds, as well as audits of local governments such as counties, cities and schools as provided by statute. This division also performs reaudits and provides technical assistance to private citizens, CPA firms, government officials and other governmental agencies.~~

**25.4(3)** ~~The county audit performance investigation division, directed by a supervisor appointed by the auditor of state, which is charged with the responsibilities of the annual audit of each county of the state conducting performance audits of state agencies, investigating suspected embezzlements, and conducting special studies as provided by statute.~~

**25.4(4)** ~~The municipal and school audit division, directed by a supervisor appointed by the auditor of state, which is responsible for the audit of cities and schools as provided by statute.~~

ITEM 2. Rescind and reserve rule **81—25.5(17A,11)**.

ITEM 3. Rescind and reserve rule **81—25.6(17A,11)**.

ITEM 4. Amend rule 81—25.7(17A,11) as follows:

**81—25.7(17A,11) Staffing.** Each of the divisions and agencies of the auditor's office is staffed by auditors and assistants appointed by the auditor of state, as provided for by Iowa Code sections ~~11.7 and 11.8~~ section 11.31, and other personnel necessary to fulfill the requirements of the auditor's office.

ITEM 5. Amend rule 81—25.8(17A,11) as follows:

**81—25.8(17A,11) Annual audit.** The statutes of Iowa provide for annual audit of all state offices and departments of the state and the counties and cities and city offices, merged areas and educational agencies and all school districts and school offices except that cities having a population of ~~700 or more, but less than 2,000, shall be audited at least once every four years and cities having a population of less than 700 may be examined as otherwise provided.~~

[Filed 12/26/18, effective 2/20/19]

[Published 1/16/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.

**ARC 4246C**

## **MEDICINE BOARD[653]**

**Adopted and Filed**

**Rule making related to application and licensure fees for acupuncturists and genetic counselors**

The Board of Medicine hereby amends Chapter 8, "Fees," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 147.76.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 147, 148 and 272C.

MEDICINE BOARD[653](cont'd)

*Purpose and Summary*

This rule making amends Chapter 8, which establishes the application and licensure fees for acupuncturists and genetic counselors. New subrule 8.14(1) references 653—Chapter 20, “Licensure of Genetic Counselors,” which is proposed in **ARC 4095C** (IAB 10/24/18).

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4094C**. A public hearing was held on November 20, 2018, at 11:30 a.m. at the Board’s office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on December 14, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Licensure and examination fees in Chapter 8 are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019.

The following rule-making actions are adopted:

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

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

*a. to f.* No change.

*g.* Penalty for failure to renew before expiration, \$50.

ITEM 2. Adopt the following **new** rule 653—8.14(147,148,272C):

**653—8.14(147,148,272C) Application and licensure fees for genetic counselors.**

**8.14(1) Licensure provisions for genetic counselors.** Licensure provisions for genetic counselors can be found at 653—Chapter 20, “Licensure of Genetic Counselors.”

**8.14(2) Fees for genetic counselors.** The following fees apply to licensure and provisional licensure for genetic counselors.

*a.* Initial application fee for licensure, \$200.

*b.* Reactivation of application for licensure, \$100.

*c.* Renewal of an active license, \$200.



## MEDICINE BOARD[653](cont'd)

- d. Penalty for failure to renew before expiration, \$50.
- e. Upon written request and payment of the designated fee, the board shall provide the following information about the status of a genetic counselor's license:
  - (1) Certified statement that verifies the status of licensure in Iowa that requires the board seal or a letter of good standing, \$25.
  - (2) Verification of the status of licensure in Iowa that does not require a certified statement or letter, \$20.
- f. Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, \$45.
- g. Fee for reinstatement of a license, \$300.

[Filed 12/19/18, effective 2/20/19]

[Published 1/16/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.

**ARC 4247C**

**MEDICINE BOARD[653]**

**Adopted and Filed**

**Rule making related to standards of practice for medical directors for medical spas**

The Board of Medicine hereby amends Chapter 13, "Standards of Practice and Principles of Medical Ethics," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 147.76.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 148 and 272C.

*Purpose and Summary*

This rule making amends rule 653—13.8(148,272C), which establishes the minimum requirements for a physician who serves as a medical director at a medical spa.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4093C**. A public hearing was held on November 20, 2018, at 10 a.m. at the Board's office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. The Iowa Society of Plastic Surgeons expressed written opposition to allowing qualified laser technicians to use lasers in the performance of delegated services in medical spas. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on December 14, 2018.

*Fiscal Impact*

This rule making will likely increase the pool of potential providers at medical spas and increase access to medical aesthetic services provided at medical spas. It will likely have a positive fiscal impact, which is difficult to measure at this time.

MEDICINE BOARD[653](cont'd)

### *Jobs Impact*

This rule making will likely increase the pool of potential providers at medical spas and increase access to medical aesthetic services provided at medical spas. It will likely have a positive jobs impact, which is difficult to measure at this time.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rule making will become effective on February 20, 2019.

The following rule-making action is adopted:

Amend rule 653—13.8(148,272C) as follows:

**653—13.8(148,272C) Standards of practice—medical directors at medical spas—delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians.** This rule establishes standards of practice for a physician or surgeon or osteopathic physician or surgeon who serves as a medical director at a medical spa.

**13.8(1) Definitions.** As used in this rule:

“*Alter*” means to change the cellular structure of living tissue.

“*Capable of*” means any means, method, device or instrument which, if used as intended or otherwise to its greatest strength, has the potential to alter or damage living tissue below the superficial epidermal cells.

“*Damage*” means to cause a harmful change in the cellular structure of living tissue.

“*Delegate*” means to entrust or transfer the performance of a medical aesthetic service to qualified licensed or certified nonphysician persons or qualified laser technicians.

“*Medical aesthetic service*” means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities of the skin, hair, nails and mucous membranes by any means, methods, devices, or instruments including the use of a biological or synthetic material, chemical application, mechanical device, or displaced energy form of any kind if it alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells, with the exception of hair removal. Medical aesthetic service includes, but is not limited to, the following services: ablative laser therapy; vaporizing laser therapy; nonsuperficial light device therapy; injectables; tissue alteration services; nonsuperficial light-emitting diode therapy; nonsuperficial intense pulse light therapy; nonsuperficial radiofrequency therapy; nonsuperficial ultrasonic therapy; nonsuperficial exfoliation; nonsuperficial microdermabrasion; nonsuperficial dermaplane exfoliation; nonsuperficial lymphatic drainage; collagen induction therapy (microneedling); fat-freezing treatment (cool sculpting); botox injections; collagen injections; and tattoo removal.

“*Medical director*” means a physician who assumes the role of, or holds oneself out as, medical director ~~or a physician who serves as a medical advisor for~~ at a medical spa. The medical director is responsible for implementing policies and procedures to ensure quality patient care and for the delegation

## MEDICINE BOARD[653](cont'd)

and supervision of medical aesthetic services ~~to performed by~~ qualified licensed or certified nonphysician persons or qualified laser technicians at a medical spa. The medical director is ultimately responsible for all medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians at a medical spa.

*“Medical spa”* means any entity, however organized, which is advertised, announced, established, or maintained for the purpose of providing medical aesthetic services. Medical spa shall not include a dermatology practice which is wholly owned and controlled by one or more Iowa-licensed physicians if at least one of the owners is actively practicing at each location.

*“Nonsuperficial”* means that the therapy alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells.

*“Qualified laser technician”* means any person, licensed or unlicensed, who has successfully completed a minimum of 120 hours of training, including a minimum of 40 hours of didactic study and 80 hours of clinical training, in the safe and effective use of lasers in the performance of medical aesthetic services at an accredited laser training program. For the purposes of this rule, a qualified laser technician may only use lasers in the performance of delegated medical aesthetic services under the supervision of a qualified supervising physician at a medical spa. An unlicensed qualified laser technician may not perform any other medical aesthetic services defined in this rule.

*“Qualified licensed or certified nonphysician person”* means any person who is not licensed to practice medicine and surgery or osteopathic medicine and surgery but who is licensed or certified by another health- or skin care-related licensing board in Iowa and is qualified to perform delegated medical aesthetic services under the supervision of a qualified supervising physician at a medical spa.

*“Supervision”* means the oversight of qualified licensed or certified nonphysician persons or qualified laser technicians who perform medical aesthetic services delegated by a medical director.

**13.8(2) Practice of medicine.** The performance of medical aesthetic services is the practice of medicine. A medical aesthetic service shall only be performed by qualified licensed or certified nonphysician persons or qualified laser technicians if the service has been delegated by the a medical director who is responsible for supervision of the services performed at a medical spa in Iowa. A medical director shall not delegate medical aesthetic services to nonphysician persons who are not appropriately licensed or certified in Iowa.

**13.8(3) Medical director.** A physician who serves as medical director at a medical spa shall:

- a. Hold an active unrestricted Iowa medical license to supervise each delegated medical aesthetic service;
- b. Possess the appropriate education, training, experience and competence to safely supervise each delegated medical aesthetic service;
- c. Retain responsibility for the supervision of each medical aesthetic service performed by qualified licensed or certified nonphysician persons or qualified laser technicians;
- d. Ensure that advertising activities do not include false, misleading, or deceptive representations; and
- e. Be clearly identified as the medical director in all advertising activities, Internet websites and signage related to the medical spa.

**13.8(4) Delegated medical aesthetic service.** When a medical director delegates a medical aesthetic service to qualified licensed or certified nonphysician persons or qualified laser technicians, the service shall be:

- a. Within the medical director’s scope of practice and medical competence to supervise;
- b. Of the type that a reasonable and prudent physician would conclude is within the scope of sound medical judgment to delegate; and
- c. A routine and technical service, the performance of which does not require the skill of a licensed physician.

**13.8(5) Supervision.** A medical director who delegates performance of a medical aesthetic service to qualified licensed or certified nonphysician persons or qualified laser technicians is responsible for providing appropriate supervision. The medical director shall:

## MEDICINE BOARD[653](cont'd)

- a. Ensure that all licensed or certified nonphysician persons or qualified laser technicians are qualified and competent to safely perform each delegated medical aesthetic service by personally assessing the person's education, training, experience and ability;
- b. Ensure that a qualified licensed or certified nonphysician person does not perform any medical aesthetic services which are beyond the scope of that person's license or certification unless the person is supervised by a qualified supervising physician;
- c. Ensure that all qualified licensed or certified nonphysician persons or qualified laser technicians receive direct, in-person, on-site supervision from the medical director or other qualified licensed physician at least four hours each week and that the regular supervision is documented;
- d. Provide on-site review of medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians each week and review at least 10 percent of patient charts for medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians;
- e. Be physically located, at all times, within 60 miles of the location where ~~qualified licensed or certified nonphysician persons perform~~ delegated medical aesthetic services are performed;
- f. Be available, in person or electronically, at all times, to consult with qualified licensed or certified nonphysician persons or qualified laser technicians who perform delegated medical aesthetic services, particularly in case of injury or an emergency;
- g. Assess the legitimacy and safety of all equipment or other technologies being used by qualified licensed or certified nonphysician persons or qualified laser technicians who perform delegated medical aesthetic services;
- h. Develop and implement protocols for responding to emergencies or other injuries suffered by persons receiving delegated medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians;
- i. Ensure that all qualified licensed or certified nonphysician persons or qualified laser technicians maintain accurate and timely medical records for the delegated medical aesthetic services they perform;
- j. Ensure that each patient provides appropriate informed consent for medical aesthetic services performed by the medical director or other qualified licensed physician and all qualified licensed or certified nonphysician persons or qualified laser technicians and that such informed consent is timely documented in the patient's medical record;
- k. Ensure that the identity and licensure and certification of the medical director, other qualified licensed physicians, and all qualified licensed or certified nonphysician persons or qualified laser technicians are visibly displayed at each medical spa where they perform medical aesthetic services and provided in writing to each patient receiving medical aesthetic services at a medical spa; and
- l. Ensure that the board receives written verification of the education and training of all qualified licensed or certified nonphysician persons or qualified laser technicians who perform delegated medical aesthetic services at a medical spa, within 14 days of a request by the board.

**13.8(6)** *Continuing medical education.* All medical directors, qualified licensed or certified nonphysician persons and qualified laser technicians who practice at a medical spa in Iowa shall complete a minimum of 20 hours of continuing medical education in the safe and effective performance of medical aesthetic services each year.

~~13.8(6)~~ **13.8(7)** *Exceptions.* This rule is not intended to apply to physicians who serve as medical directors of licensed medical facilities, clinics or practices that provide medical aesthetic services as part of or incident to their other medical services.

~~13.8(7)~~ **13.8(8)** *Physician assistants.* Nothing in ~~these rules~~ this rule shall be interpreted to contradict or supersede the rules established in 645—Chapters 326 and 327.

[Filed 12/19/18, effective 2/20/19]

[Published 1/16/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.

**ARC 4248C****MEDICINE BOARD[653]****Adopted and Filed****Rule making related to standards of practice for medical cannabidiol**

The Board of Medicine hereby amends Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapters 124E, 148 and 272C.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 124E.

*Purpose and Summary*

This rule making amends rule 653—13.15(124E,147,148,272C), which establishes the standards of practice for the use of medical cannabidiol, by adding “ulcerative colitis” to the list of debilitating medical conditions for which medical cannabidiol may be used.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4082C**. A public hearing was held on November 20, 2018, at 9 a.m. at the Board’s office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on December 14, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019.

## MEDICINE BOARD[653](cont'd)

The following rule-making action is adopted:

Amend subrule **13.15(1)**, definition of “Debilitating medical condition,” as follows:

“*Debilitating medical condition*” means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:
  - Severe or chronic pain.
  - Nausea or severe vomiting.
  - Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.
5. Crohn’s disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
  - Severe or chronic pain.
  - Nausea or severe vomiting.
  - Cachexia or severe wasting.
8. Parkinson’s disease.
9. Untreatable pain.
10. Ulcerative colitis.

[Filed 12/19/18, effective 2/20/19]

[Published 1/16/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.

**ARC 4249C**

**MEDICINE BOARD[653]**

**Adopted and Filed**

**Rule making related to prescribing psychologists**

The Board of Medicine hereby adopts new Chapter 19, “Prescribing Psychologists,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapters 148 and 272C and section 147.76.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 154B; Iowa Code sections 123.3, 124.101, 147.107, 148.13A, 148.13B, 155A.3, 155A.23, 155A.24 and 155A.27; and 2016 Iowa Acts, Senate File 2188.

*Purpose and Summary*

This rule making establishes a new Chapter 19 for a set of joint rules with the Iowa Board of Psychology to implement 2016 Iowa Acts, Senate File 2188, which gives prescriptive authority for certain psychologists. These joint rules were developed in a joint rule-making process involving both boards over the past 18 months. Identical joint rules have been published by the Board of Psychology herein (see Professional Licensure Division[645] **ARC 4251C**, IAB 1/16/19).

MEDICINE BOARD[653](cont'd)

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 1, 2018, as **ARC 3905C**. A public hearing was held on August 21, 2018, at 10 a.m. in the Board's office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa.

The Board received extensive public comment regarding this rule making. The public comments from the psychology community were generally highly supportive of the rules. The public comments from the medical community were generally highly critical of the rules.

Since publication of the Notice, language has been added regarding releases of information, consultation between the prescribing psychologist and the supervising or collaborating physician and consultation between the supervising or collaborating physician and the primary care physician.

*Adoption of Rule Making*

This rule making was adopted by the Board on December 14, 2018.

*Fiscal Impact*

2016 Iowa Acts, Senate File 2188, broadens the scope of practice for certain psychologists, allowing them to provide mental health care services previously provided by other health care practitioners, such as physicians, nurse practitioners and physician assistants. Consequently, it is difficult to determine the actual fiscal impact of the legislation and corresponding rules.

*Jobs Impact*

2016 Iowa Acts, Senate File 2188, broadens the scope of practice for certain psychologists, allowing them to provide mental health care services previously provided by other health care practitioners, such as physicians, nurse practitioners and physician assistants. Consequently, it is difficult to determine the actual jobs impact of the legislation and corresponding rules.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019.

The following rule-making action is adopted:

Adopt the following **new** 653—Chapter 19:

CHAPTER 19  
PRESCRIBING PSYCHOLOGISTS

**653—19.1(148,154B) Definitions—joint rule.**

“*APA*” means the American Psychological Association.

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*“Applicant”* means a psychologist applying for a conditional prescription certificate.

*“Board”* means the Iowa board of psychology.

*“Board of medicine”* means the Iowa board of medicine.

*“Collaborating physician”* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who serves as a resource for a prescribing psychologist pursuant to a collaborative practice agreement. A collaborating physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

*“Conditional prescribing psychologist”* means a person licensed to practice psychology in Iowa who holds an active conditional prescription certificate. This term does not include prescribing psychologists.

*“Conditional prescription certificate”* means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication under the supervision of a supervising physician.

*“CSA registration”* means a Controlled Substance Act registration issued by the Iowa board of pharmacy authorizing a psychologist to possess and prescribe controlled substances.

*“DEA registration”* means a mid-level practitioner registration with the Drug Enforcement Administration authorizing a psychologist to possess and prescribe controlled substances.

*“Joint rule”* means a rule adopted by agreement of the board of psychology and the board of medicine through the joint rule-making process.

*“Mental disorder”* means a disorder which is defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or contained within the mental and behavioral disorders chapter of the most recent version of the International Classification of Diseases.

*“Prescribing psychologist”* means a person licensed to practice psychology in Iowa who holds an active prescription certificate. This term does not include conditional prescribing psychologists.

*“Prescription certificate”* means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication.

*“Primary care physician”* means a person licensed to practice medicine and surgery or osteopathic medicine in Iowa who is responsible for the ongoing medical care of a patient.

*“Psychologist”* means a person licensed to practice psychology in Iowa.

*“Psychotropic medication”* means a medication that shall not be dispensed or administered without a prescription and that has been explicitly approved by the federal Food and Drug Administration for the treatment of a mental disorder, as defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or the most recent version of the International Classification of Diseases. “Psychotropic medication” does not include narcotics.

*“Supervising physician”* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who supervises a conditional prescribing psychologist. A supervising physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

*“Training director”* means an employee of the psychopharmacology training program who is primarily responsible for directing the training program.

*“Training physician”* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who provides training to a psychologist as part of the clinical experience and practicum described in rule 653—19.2(148,154B). A training physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry. A training physician shall be approved by the psychopharmacology training program.

**653—19.2(148,154B) Educational requirements for conditional prescription certificate—joint rule.** An applicant for a conditional prescription certificate shall have completed a program of study



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designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The program must have included didactic instruction, a clinical experience, and a practicum satisfying the requirements of this rule. A minimum of 40 hours of basic training on clinical assessment skills shall be included as part of the program's didactic instruction.

**19.2(1) Degree.** An applicant shall possess a postdoctoral master of science degree in clinical psychopharmacology from a program designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The degree program must be a minimum of 30 credit hours not including the practicum and shall include coursework in basic science, neuroscience, clinical medicine, pathological basis of disease, clinical pharmacology, psychopharmacology, and professional, ethical and legal issues. A minimum of one-third of the coursework must be completed in a live interactive format. The date the degree is conferred must be within the five-year period immediately preceding the application for a conditional prescription certificate. A program must be designated by the APA at the time the degree is conferred.

**19.2(2) Clinical experience.** An applicant shall have completed a clinical experience in accordance with the requirements of this subrule. During the clinical experience, a psychologist shall learn clinical assessment techniques and pathophysiology through direct observation and hands-on training with a training physician. During the clinical experience, a psychologist shall become competent in health history interviews, physical examinations, and neurological examinations with a medically diverse patient population. The clinical experience must be associated with the psychopharmacology training program from which the psychologist obtained the postdoctoral master of science degree in clinical psychopharmacology.

*a. Scope.* At the beginning of the clinical experience, the psychologist shall directly observe the training physician performing clinical assessments of patients. After the training physician determines the psychologist has gained sufficient knowledge, the clinical experience shall transition to the psychologist's performance of clinical assessments of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may perform clinical assessments of patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients and is reviewing all medical records. A psychologist and a training physician shall have ongoing discussions regarding the psychologist's clinical assessment skills and progress in the clinical experience.

*b. Minimum experience.* The clinical experience shall consist of a minimum of 600 patient encounters that shall be completed by the end of the practicum.

*c. Conflict of interest.* A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

*d. Milestones.* To satisfactorily complete the clinical experience, a psychologist shall demonstrate competency in each of the following:

(1) Perform a health history interview to obtain pertinent information regarding a patient's chief complaint, history of the present illness, past medical and surgical history, family history, allergies, medications, and psychosocial history. The psychologist shall perform a review of systems to elicit a health history and shall appropriately document the health history.

(2) Perform a physical examination in a logical sequence, ensuring appropriate positioning of the patient, proper patient draping, and proper application of the principles of asepsis throughout the examination. The psychologist shall verbalize and assess the components of a general survey and be able to accurately assess all of the following: vital signs, including pulse, respiration, and blood pressure; skin, hair and nails; head, face and neck; eyes; ears, nose, mouth and throat; thorax, lungs and axillae; heart; peripheral vascular system; abdomen; and musculoskeletal system. The psychologist shall be proficient in utilizing any equipment needed to conduct a physical examination.

(3) Complete a neurological examination demonstrating knowledge of the history related to the neurological system and the ability to assess the following: mental status, cranial nerves, motor system, sensory system, and reflexes. The psychologist shall differentiate normal laboratory values

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from abnormal laboratory values and correlate abnormal laboratory values with impaired physiological systems. The psychologist shall identify adverse drug reactions and identify laboratory data and physical signs indicating an adverse drug reaction.

*e. Informed consent.* At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the clinical experience. The psychologist shall provide sufficient information regarding the expectations and requirements of the clinical experience to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

*f. Training documentation.* The psychologist and the training director shall maintain documentation accounting for all clinical experience patient encounters, including the dates, times, and locations of all clinical experience patient encounters, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

*g. Certification.* The training physician(s) and the training director shall certify on forms provided by the board that the applicant has successfully completed the minimum number of clinical experience patient encounters required and demonstrated competence in clinical assessment techniques and pathophysiology through completion of the milestones defined in these rules.

**19.2(3) Practicum.** An applicant shall have completed a practicum in accordance with the requirements of this subrule. During the practicum, a psychologist shall develop competencies in evaluating and treating patients with mental disorders through pharmacological intervention via observation and active participation. The practicum must be associated with the psychopharmacology training program from which the applicant obtained the postdoctoral master of science degree in clinical psychopharmacology and must be completed in a period of time not less than six months and not more than three years.

*a. Scope.* At the beginning of the practicum, the psychologist shall directly observe the training physician evaluating and treating patients with mental disorders. After the training physician determines the psychologist has gained sufficient knowledge, the practicum shall transition to the psychologist's evaluation and treatment of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may evaluate and treat patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients, has personal contact with the patient at each visit, and is reviewing all pertinent medical records. During the practicum, the training physician shall make all final treatment decisions, with consultation from the psychologist prior to making a final determination regarding the psychopharmacological treatment of a patient.

*b. Minimum number of hours.* A practicum shall consist of a minimum of 400 hours. Only hours spent face to face evaluating and treating patients with mental disorders and hours spent discussing treatment plans with a training physician may count as practicum hours. Time spent by the psychologist providing services that are within the scope of practice of a licensed psychologist, such as psychological examinations and psychotherapy, shall not be counted as practicum hours.

*c. Minimum number of patients.* A psychologist shall see a minimum of 100 individual patients throughout the practicum. A patient can be counted toward this requirement if the patient has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. Over the course of the practicum, the psychologist shall observe, evaluate, and treat patients encompassing a range of ages and a variety of psychiatric diagnoses.

*d. Settings.* At least 100 hours of the 400 hours must be completed in a psychiatric setting. At least 100 hours of the 400 hours must be completed in a primary care or community mental health setting.

*e. Conflict of interest.* A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

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*f. Milestones.* To successfully complete the practicum, a psychologist shall demonstrate competency in each of the following:

(1) Physical examination and mental status examination. The psychologist shall perform comprehensive and focused physical examinations and mental status evaluations, demonstrate proper use of instruments, and recognize variation associated with developmental stages and diversity.

(2) Review of systems. The psychologist shall integrate information learned from patient reports, signs, symptoms, and a review of each major body system, recognizing normal developmental variations.

(3) Medical history interview. The psychologist shall systematically conduct a patient clinical interview, producing a patient's medical, surgical, psychiatric, and medication history, as well as a family medical and psychiatric history, and be able to communicate the findings in written and verbal form.

(4) Assessment indications and interpretation. The psychologist shall order and interpret appropriate tests (e.g., psychometric, laboratory, and radiological) for the purpose of making a differential diagnosis and monitoring therapeutic and adverse effects of treatment.

(5) Differential diagnosis. The psychologist shall determine primary and alternate diagnoses using established diagnostic criteria.

(6) Integrated treatment planning. The psychologist shall identify and select, using all available data, the most appropriate treatment alternatives, including medication, psychosocial, and combined treatments, and sequence treatment within the larger biopsychosocial context.

(7) Consultation and collaboration. The psychologist shall understand the parameters of the role of a prescribing psychologist and work with other professionals, including a patient's primary care physician, in an advisory or collaborative manner to effectively treat a patient.

(8) Treatment management. The psychologist shall apply, monitor, and modify as needed the treatment of a patient and learn to write valid and complete prescriptions.

(9) Medical documentation. The psychologist shall demonstrate appropriate medical documentation for the patient-psychologist interaction to include subjective and objective assessment; mental status, physical examination findings, or both; formulation; diagnostic impression; and comprehensive treatment plan.

*g. Informed consent.* At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the practicum. The psychologist shall provide sufficient information regarding the expectations and requirements of the practicum to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

*h. Training documentation.* The psychologist and the training director shall maintain documentation regarding all patients observed, evaluated, and treated by the psychologist as part of the practicum. The documentation shall clearly identify the training physician for each patient. The psychologist and the training director shall maintain documentation of all practicum hours, including the dates, times, and locations of all practicum hours, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

*i. Certification.* The training physician(s) and the training director shall certify on forms provided by the board that the psychologist has successfully completed the minimum number of practicum hours, treated the minimum number of patients, and demonstrated competence in the evaluation and treatment of patients with mental disorders through pharmacological intervention through completion of the milestones defined in these rules.

**19.2(4) Examination.** A psychologist shall pass the Psychopharmacology Examination for Psychologists (PEP) administered by the APA Practice Organization's College of Professional Psychology or by the Association of State and Provincial Psychology Boards. The passing score utilized by the board shall be the passing score recommended by the test administrator. The examination score shall be sent directly from the testing service to the board.

**653—19.3(148,154B) Supervised practice as a conditional prescribing psychologist—joint rule.** A conditional prescribing psychologist shall complete a minimum of two years of supervised practice in

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prescribing psychotropic medications to patients with mental disorders in accordance with this rule to be eligible to apply for a prescription certificate.

**19.3(1) *Supervision plan.*** Prior to issuing a conditional prescription certificate, the board shall review and approve the proposed supervision plan.

*a.* The proposed supervision plan must include the following:

(1) Conditional prescribing psychologist information. The plan must include the name, license number, address, telephone number, and email address of the supervisee.

(2) Supervising physician information. The plan must include the name, license number, date of licensure, area of specialization, address, telephone number, and email address of each supervising physician.

(3) Primary supervising physician. The plan must include a designation of the primary supervising physician.

(4) Period of supervision. The plan must include the beginning date of the supervision plan and estimated date of completion.

(5) Locations and settings. The plan must include a description of the locations and settings where and with whom supervision will occur.

(6) Scope of practice. The plan must include a description of the scope of practice of the conditional prescribing psychologist, including any limitations on the types of psychotropic medications that may be prescribed and the patient populations to which a prescription may be issued and including the expectations and responsibilities of the supervising physician.

(7) Release of information. The plan must include a provision requiring the conditional prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the conditional prescribing psychologist to share the patient's health information with the supervising physician.

(8) Consultation between the conditional prescribing psychologist and the supervising physician. The plan must include a provision requiring that the conditional prescribing psychologist consult with the supervising physician on a regular basis regarding a patient's psychotropic treatment plan and any potential complications. A conditional prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician objects on the basis of a contraindication.

(9) Consultation between the supervising physician and the primary care physician. The plan must include a provision requiring that the supervising physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

(10) Termination of the supervision plan. The plan must include a description of how the supervision plan may be terminated and the process for notifying affected patients.

(11) Signatures. The plan must include signatures of the psychologist and all supervising physicians.

*b.* A conditional prescribing psychologist shall inform the board of any amendments to the conditional prescribing psychologist's supervision plan, including the addition of any supervising physicians, within 30 days of the change. Amendments to a supervision plan are subject to board approval.

*c.* The board shall transmit all approved supervision plans and approved amendments to the board of medicine.

**19.3(2) *Responsibilities of a supervising physician.*** A supervising physician shall provide supervision in accordance with rules established by the board of medicine.

**19.3(3) *Responsibilities of a conditional prescribing psychologist.*** At the initial contact, a conditional prescribing psychologist shall inform a patient, or a patient's legal guardian when appropriate, that the conditional prescribing psychologist is practicing under the supervision of a physician for purposes of prescribing psychotropic medication and shall provide the name of the supervising physician. A conditional prescribing psychologist shall provide sufficient information regarding the supervision requirements to obtain informed consent and appropriate releases. Upon request, a conditional prescribing psychologist shall provide additional information regarding the

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conditional prescribing psychologist's education, training, or experience with respect to prescribing psychotropic medications.

**19.3(4) *Specialization.*** A conditional prescribing psychologist shall complete the following training during the supervised practice period to be eligible to prescribe psychotropic medications to the respective population as a prescribing psychologist:

*a. Children.* To prescribe to patients who are less than 17 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

- (1) A pediatric practice,
- (2) A child and adolescent practice, or
- (3) A general practice provided the conditional prescribing psychologist treats a minimum of 50 patients who are less than 17 years of age.

*b. Elderly patients.* To prescribe to patients who are over 65 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

- (1) A geriatric practice, or
- (2) A general practice with patients across the lifespan including patients who are over 65 years of age.

*c. Serious medical conditions.* To prescribe to patients with serious medical conditions including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, a conditional prescribing psychologist shall complete at least one year prescribing psychotropic medications to patients with serious medical conditions.

**19.3(5) *Completion of supervised practice.*** A conditional prescribing psychologist shall see a minimum of 300 patients over a minimum of two years to complete the supervised practice period, provided each of the 300 patients has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. A conditional prescribing psychologist shall treat a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

*a.* At the conclusion of the supervised practice period, a primary supervising physician shall certify the following:

- (1) Supervision was provided in accordance with rules established by the board of medicine.
- (2) A conditional prescribing psychologist has successfully completed two years of supervised practice, considered at least 300 patients for psychopharmacological intervention, and treated at least 100 patients with psychotropic medications.
- (3) A conditional prescribing psychologist intending to specialize in the psychological care of children or elderly persons, or persons with serious medical conditions, has completed the requirements of subrule 19.3(4).

(4) A conditional prescribing psychologist has successfully completed the supervised practice period and demonstrated competence in psychopharmacology by demonstrating competency in the milestones listed in paragraph 19.2(3) "f" sufficient to obtain a prescription certificate.

*b.* If a conditional prescribing psychologist is unable to successfully complete the supervised practice period prior to the expiration of the conditional prescription certificate, the conditional prescribing psychologist may request an extension of the conditional prescription certificate provided that the conditional prescribing psychologist can demonstrate that the conditional prescribing psychologist is likely to successfully complete the supervised practice within the extended time requested. Any requests for extension must be submitted to and approved by both the board and the board of medicine.

**653—19.4(148,154B) Prescribing—joint rule.** This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall comply with all prescription requirements described in 657—subrule 8.19(1). The following limits apply to a psychologist's prescriptive authority:

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1. A psychologist shall only prescribe psychotropic medications for the treatment of mental disorders.
2. A psychologist shall only prescribe psychotropic medications in situations where the psychologist has adequate education and training to safely prescribe.
3. A prescription shall identify the prescriber as a “psychologist certified to prescribe” and shall include the Iowa license number of the psychologist.
4. A prescription issued by a conditional prescribing psychologist shall contain the name of the supervising physician overseeing the care of the patient.
5. A psychologist shall not delegate prescriptive authority to any other person.
6. A psychologist is prohibited from prescribing narcotics as defined in Iowa Code section 124.101.
7. A psychologist shall maintain an active DEA registration and an active CSA registration in order to dispense, prescribe, or administer controlled substances.
8. A psychologist shall not self-prescribe nor prescribe to any person who is a member of the psychologist’s immediate family or household.
9. Before prescribing a psychotropic medication that is classified as a controlled substance, a psychologist shall check the patient’s prescriptive profile using the Iowa prescription monitoring program.
10. To prescribe to a patient who is pregnant or lactating, a psychologist shall consult with the patient’s obstetrician-gynecologist or the physician managing the patient’s pregnancy or postpartum care regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication to a patient if the patient’s obstetrician-gynecologist or the physician managing care objects on the basis of a contraindication.
11. To prescribe to a patient who has a serious medical condition, including but not limited to heart disease, kidney disease, liver disease, cancer, stroke, seizures, or comorbid psychological conditions, or to a patient who has a developmental or intellectual disability, a psychologist shall consult with the physician who is managing the comorbid condition for that patient regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication if the patient’s physician objects on the basis of a contraindication.
12. A psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician or collaborating physician objects on the basis of a contraindication.

**653—19.5(148,154B) Consultation with primary care physicians—joint rule.** This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall maintain a cooperative relationship with the primary care physician who oversees a patient’s general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient’s medical conditions, and significant changes in the patient’s medical or psychological condition are discussed.

**19.5(1) Requirement for a primary care physician.** A patient must have a designated primary care physician in order for a psychologist to have the ability to prescribe psychotropic medications to the patient. If a patient does not have a designated primary care physician, a psychologist shall refer the patient to a primary care physician prior to prescribing psychotropic medications to the patient. A psychologist shall not prescribe psychotropic medications to a patient until the patient has established care with a primary care physician.

**19.5(2) Requirement for a release.** A psychologist shall obtain a release of information from the patient, or the patient’s legal guardian when appropriate, authorizing the sharing of the patient’s health information between the psychologist and the patient’s primary care physician. A psychologist shall not prescribe psychotropic medications to a patient who refuses to sign a release.

**19.5(3) Cooperation and consultation with primary care physicians.** A psychologist shall contact each patient’s primary care physician on at least a quarterly basis and shall contact the primary care physician to relay information regarding the care of a patient whenever the following occur:

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- a. A psychologist is considering adding a new psychotropic medication to a patient's medication regimen. A psychologist shall not prescribe a new psychotropic medication if the patient's primary care physician objects on the basis of a contraindication.
- b. A psychologist is discontinuing or changing the dosage of a psychotropic medication.
- c. A patient experiences adverse effects from any medication prescribed by the psychologist that may be related to the patient's medical condition.
- d. A psychologist receives the results of laboratory tests related to the medical care of a patient.
- e. A psychologist notes a change in a patient's mental condition that may affect the patient's medical treatment.

**653—19.6(148,154B) Collaborative practice—joint rule.**

**19.6(1)** A prescribing psychologist shall have one or more collaborating physicians at all times, as evidenced by a current collaborative practice agreement. Prior to executing a collaborative practice agreement, a prescribing psychologist and a collaborating physician shall review and discuss each other's relevant education, training, experience, and competencies to determine whether a collaborative practice is appropriate and to facilitate drafting a suitable collaborative practice agreement. A collaborative relationship between a prescribing psychologist and a collaborating physician shall ensure patient safety and optimal clinical outcomes. Collaboration may be done in person or via electronic communication in accordance with these rules. A physician shall not serve as a collaborating physician for more than two prescribing psychologists at one time. A prescribing psychologist shall not prescribe without a current written collaborative practice agreement with a collaborating physician in place. All collaborative relationships shall be reviewed and evaluated on an annual basis to ensure that the prescribing psychologist is competent to safely prescribe psychotropic medications to patients and that the collaborating physician is providing appropriate feedback to the prescribing psychologist. A collaborative practice agreement shall establish the parameters of the collaborative practice that are mutually agreed upon by the prescribing psychologist and the collaborating physician and shall be reviewed on an annual basis.

**19.6(2)** A collaborative practice agreement shall include the following:

- a. *Prescribing psychologist information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the prescribing psychologist.
- b. *Collaborating physician information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the collaborating physician.
- c. *Time period.* The time period covered by the agreement.
- d. *Locations and settings.* The locations and settings where collaborative practice will occur.
- e. *Collaboration.* A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborating physician is available for timely collaboration with a prescribing psychologist, either in person or via electronic communication, in accordance with these rules.
- f. *Scope of practice.* The scope of practice agreed upon by the collaborating physician and the prescribing psychologist, as it relates to the prescribing psychologist's prescribing of psychotropic medications, including provisions to ensure that the prescribing psychologist's practice complies with all provisions of these rules.
- g. *Clinical protocols, practice guidelines, and care plans.* Clinical protocols, practice guidelines, and care plans relevant to the scope of practice authorized.
- h. *Methods of communication.* A description of how a prescribing psychologist and a collaborating physician may contact each other for consultation.
- i. *Limitations on psychotropic medications.* A description of any limitations on the range of psychotropic medications the prescribing psychologist may prescribe. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing

## MEDICINE BOARD[653](cont'd)

psychologist shall ensure that the prescribing psychologist only prescribes psychotropic medications that are consistent with the prescribing psychologist's education, training, experience, and competence.

*j. Limitations on patient populations.* A description of any limitations on the types of populations that the prescribing psychologist may treat with psychotropic medications. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only provides psychopharmacology services to patient populations that are within the prescribing psychologist's education, training, experience, and competence.

*k. Release of information.* A provision requiring the prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the prescribing psychologist to share the patient's health information with the collaborating physician.

*l. Chart review.* A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborative physician personally reviews and documents review of at least 10 percent of the prescribing psychologist's patient charts on a quarterly basis in each of the following categories:

- (1) Juvenile patients,
- (2) Pregnant or lactating patients,
- (3) Elderly patients,
- (4) Patients with serious medical conditions, and
- (5) All other patients.

*m. Annual review.* A provision requiring an annual review and evaluation of the collaborative relationship and the collaborative practice agreement.

*n. Consultation between the prescribing psychologist and the collaborating physician.* A provision requiring that the prescribing psychologist consult with the collaborating physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications. A prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the collaborating physician objects on the basis of a contraindication.

*o. Consultation between the collaborating physician and the primary care physician.* A provision requiring that the collaborating physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

*p. Termination.* A provision describing how the agreement can be terminated and the process for notifying affected patients if there will be an interruption in services.

*q. Signatures.* Signatures of the prescribing psychologist and all collaborating physicians.

**653—19.7(148,154B) Complaints—joint rule.** Any complaint received by the board alleging a violation of this chapter shall be forwarded to the board of medicine. Any complaint received by the board of medicine alleging a violation of this chapter shall be forwarded to the board.

**653—19.8(148,154B) Joint waiver or variance—joint rule.** Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

**653—19.9(148,154B) Amendment—joint rule.** Any rule identified as a joint rule may only be amended by agreement of the board and board of medicine through a joint rule-making process.

These rules are intended to implement Iowa Code chapters 148 and 154B.

[Filed 12/19/18, effective 2/20/19]

[Published 1/16/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.



**ARC 4250C**

**PROFESSIONAL LICENSING AND REGULATION BUREAU[193]**

**Adopted and Filed**

**Rule making related to organization and operation**

The Professional Licensing and Regulation Bureau hereby amends Chapter 1, "Organization and Operation," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 546.3 and 546.10.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 542, 542B, 543B, 544A, 544B and 544C and section 546.10.

*Purpose and Summary*

The Professional Licensing and Regulation Bureau of the Banking Division coordinates the functions of six professional licensing boards. Chapter 1 describes the organization of the Bureau. These amendments update the chapter to reflect legislative changes to the Bureau and its boards. The amendment relating to the composition of the Engineering and Land Surveying Examining Board reflects a change made in 2018 Iowa Acts, House File 2382. The amendment relating to the Architectural Examining Board changes the terminology from "registered" to "licensed" as a result of 2017 Iowa Acts, Senate File 408. The change of title from "registered" to "professional" relating to the membership of the Landscape Architectural Examining Board reflects the terminology used in Iowa Code section 544B.3. Striking the subrule providing for the Real Estate Appraiser Examining Board is the result of 2016 Iowa Acts, House File 2436. The amendment in Item 4 allows for staff to remove abandoned applications from the licensing database.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4007C**. A public hearing was held on October 16, 2018, at 9 a.m. at 200 East Grand Avenue, Suite 350, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Accountancy Examining Board on December 13, 2018; the Architectural Examining Board on November 15, 2018; the Engineering and Land Surveying Examining Board on November 14, 2018; the Interior Design Examining Board on November 13, 2018; the Landscape Architectural Examining Board on December 13, 2018; and the Real Estate Commission on November 1, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Bureau for a waiver of the discretionary provisions, if any, pursuant to 193—Chapter 5.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 193—1.4(546) as follows:

**193—1.4(546) Purpose of the bureau.** The bureau exists to coordinate the administrative support for the following ~~seven~~ six professional licensing boards:

**1.4(1)** The engineering and land surveying examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of ~~four~~ three professional engineers, ~~one~~ two land ~~surveyor~~ surveyors, and two public members. The board administers Iowa Code chapter 542B, Professional Engineers and Land Surveyors, and board rules published under agency number [193C] in the Iowa Administrative Code.

**1.4(2) and 1.4(3)** No change.

**1.4(4)** The architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five ~~registered~~ licensed architects and two public members. The board administers Iowa Code chapter 544A, Registered Licensed Architects, and board rules published under agency number [193B] in the Iowa Administrative Code.

**1.4(5)** The landscape architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five ~~registered~~ professional landscape architects and two public members. The board administers Iowa Code chapter 544B, Landscape Architects, and board rules published under agency number [193D] in the Iowa Administrative Code.

~~**1.4(6)** The real estate appraiser examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five certified real estate appraisers and two public members. The board administers Iowa Code chapter 543D, Real Estate Appraisals and Appraisers, and board rules published under agency number [193F] in the Iowa Administrative Code.~~

~~**1.4(7)**~~ **1.4(6)** The interior design examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered interior designers and two public members. The board administers Iowa Code chapter 544C, Registered Interior Designers, and board rules published under agency number [193G] in the Iowa Administrative Code.

ITEM 2. Amend rule 193—1.9(272C,542,542B,543B,543D,544A,544B,544C), parenthetical implementation statute, as follows:

**193—1.9(272C,542,542B,543B,543D,544A,544B,544C) Applicant contact information.**

ITEM 3. Amend rule 193—1.10(272C,542,542B,543B,543D,544A,544B,544C), parenthetical implementation statute, as follows:

**193—1.10(272C,542,542B,543B,543D,544A,544B,544C) Newsletter.**

## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

ITEM 4. Adopt the following **new** rule 193—1.11(272C,542,542B,543B,544A,544B,544C):

**193—1.11(272C,542,542B,543B,544A,544B,544C) Applications.** Unless otherwise regulated by an individual board's rules, abandoned applications shall be deemed withdrawn. An application is abandoned if the applicant has not accessed or modified the application through the bureau's electronic licensing database within the preceding six months.

[Filed 12/13/18, effective 2/20/19]

[Published 1/16/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.

**ARC 4251C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed**

**Rule making related to prescribing psychologists**

The Board of Psychology hereby adopts new Chapter 244, "Prescribing Psychologists," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 154B.13 and 154B.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 154B.1 and 154B.9 to 154B.14.

*Purpose and Summary*

The purpose of this rule making is to define the requirements for licensed psychologists to prescribe psychotropic medications to patients with mental disorders. The new chapter defines a conditional prescription certificate, sets forth the requirement for supervised practice under a conditional prescription certificate, defines a prescription certificate, sets forth the requirements to apply for a prescription certificate, sets forth the requirements for collaborative practice, sets forth the limitations on prescribing, sets forth the requirements for continuing education, sets forth the grounds for discipline, establishes a requirement to share complaints with the Board of Medicine, and sets forth the procedure for waiving or amending the joint rules. Several of these rules are joint rules, which are being promulgated jointly by the Board of Psychology and the Board of Medicine (**ARC 4249C**, IAB 1/16/19).

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 1, 2018, as **ARC 3904C**. A public hearing was held on August 21, 2018, at 10 a.m. at the Iowa Board of Medicine, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa.

Comments were received from mental health advocacy organizations, providers of mental health services, and the public stating that the proposed rules would expand access to comprehensive mental health services throughout the state and would ensure public safety due to the requirements for the education and training of psychologists prior to and following issuance of a prescription certificate. One comment was submitted from a prescribing psychologist in the U.S. Air Force who spoke to the great results in the military of psychologists and physicians joining forces to provide mental health services. The 38 comments received were favorable to the proposed rules.

The public hearing was a joint hearing with the Board of Medicine. Comments were received from provider organizations representing physicians and psychologists, as well as individual practitioners.

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

The negative comments from physician organizations and training programs spoke to the formal preparatory training of psychologists, which they considered to be inadequate. The positive comments from psychologists and the psychology training programs spoke to the adequacy of the training and to the fact that the training requirements exceed the requirements in New Mexico, where psychologists have prescribed without issues for more than 13 years.

The Board of Psychology adopted these rules with the changes that were adopted by the Board of Medicine for the joint rules. The changes to the collaborative practice agreement include requiring additional consultation between the licensed psychologist and the collaborating physician and between the patient's primary care physician and the collaborating physician for the prescribing psychologist. The supervision plan for a conditional prescribing certificate requires documentation of all supervising physicians, supervision locations, and other details of the plan subject to board approval. The plan also requires regular consultation between the supervising physician and the primary care physician as well as between the conditional prescribing psychologist and the supervising physician. In addition, the plan must include a provision for a signed release of information from the patient that authorizes the conditional prescribing psychologist to share the patient's health information with the supervising physician.

*Adoption of Rule Making*

This rule making was adopted by the Board on December 21, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure are subject to the waiver provisions accorded under 645—Chapter 18.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019.

The following rule-making action is adopted:

Adopt the following **new** 645—Chapter 244:

CHAPTER 244  
PRESCRIBING PSYCHOLOGISTS

**645—244.1(148,154B) Definitions—joint rule.**

“*APA*” means the American Psychological Association.

“*Applicant*” means a psychologist applying for a conditional prescription certificate.

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

*“Board”* means the Iowa board of psychology.

*“Board of medicine”* means the Iowa board of medicine.

*“Collaborating physician”* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who serves as a resource for a prescribing psychologist pursuant to a collaborative practice agreement. A collaborating physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

*“Conditional prescribing psychologist”* means a person licensed to practice psychology in Iowa who holds an active conditional prescription certificate. This term does not include prescribing psychologists.

*“Conditional prescription certificate”* means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication under the supervision of a supervising physician.

*“CSA registration”* means a Controlled Substance Act registration issued by the Iowa board of pharmacy authorizing a psychologist to possess and prescribe controlled substances.

*“DEA registration”* means a mid-level practitioner registration with the Drug Enforcement Administration authorizing a psychologist to possess and prescribe controlled substances.

*“Joint rule”* means a rule adopted by agreement of the board of psychology and the board of medicine through the joint rule-making process.

*“Mental disorder”* means a disorder which is defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or contained within the mental and behavioral disorders chapter of the most recent version of the International Classification of Diseases.

*“Prescribing psychologist”* means a person licensed to practice psychology in Iowa who holds an active prescription certificate. This term does not include conditional prescribing psychologists.

*“Prescription certificate”* means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication.

*“Primary care physician”* means a person licensed to practice medicine and surgery or osteopathic medicine in Iowa who is responsible for the ongoing medical care of a patient.

*“Psychologist”* means a person licensed to practice psychology in Iowa.

*“Psychotropic medication”* means a medication that shall not be dispensed or administered without a prescription and that has been explicitly approved by the federal Food and Drug Administration for the treatment of a mental disorder, as defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or the most recent version of the International Classification of Diseases. “Psychotropic medication” does not include narcotics.

*“Supervising physician”* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who supervises a conditional prescribing psychologist. A supervising physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

*“Training director”* means an employee of the psychopharmacology training program who is primarily responsible for directing the training program.

*“Training physician”* means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who provides training to a psychologist as part of the clinical experience and practicum described in rule 645—244.3(148,154B). A training physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry. A training physician shall be approved by the psychopharmacology training program.

**645—244.2(154B) Conditional prescription certificate.** A conditional prescription certificate shall authorize a psychologist to prescribe psychotropic medications to patients with mental disorders under supervision in accordance with the requirements of this chapter.

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

**244.2(1) Application.** Unless a basis for denial exists in accordance with rule 645—244.9(154B), the board shall issue a conditional prescription certificate to an applicant who satisfies the following requirements:

- a.* Holds an active license to practice psychology in Iowa and an active health service provider certification issued by the board. Both the license and the health service provider certification must be in good standing.
- b.* Meets the educational requirements set forth in rule 645—244.3(148,154B). Official academic transcripts shall be sent directly from the school to the board.
- c.* Submits a supervision plan in accordance with subrule 244.4(1).
- d.* Possesses malpractice insurance that covers the prescribing of psychotropic medications.
- e.* Submits a completed application and a nonrefundable application fee of \$270.

**244.2(2) Term.** A conditional prescription certificate shall be valid for a period of four years from the date of issuance. The board shall not renew a conditional prescription certificate unless a conditional prescribing psychologist cannot complete the requirements of supervised practice within four years due to extenuating circumstances. A conditional prescribing psychologist may request an extension of a conditional prescription certificate when extenuating circumstances exist to provide additional time for the requirements of supervised practice to be met.

**645—244.3(148,154B) Educational requirements for conditional prescription certificate—joint rule.** An applicant for a conditional prescription certificate shall have completed a program of study designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The program must have included didactic instruction, a clinical experience, and a practicum satisfying the requirements of this rule. A minimum of 40 hours of basic training on clinical assessment skills shall be included as part of the program's didactic instruction.

**244.3(1) Degree.** An applicant shall possess a postdoctoral master of science degree in clinical psychopharmacology from a program designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The degree program must be a minimum of 30 credit hours not including the practicum and shall include coursework in basic science, neuroscience, clinical medicine, pathological basis of disease, clinical pharmacology, psychopharmacology, and professional, ethical and legal issues. A minimum of one-third of the coursework must be completed in a live interactive format. The date the degree is conferred must be within the five-year period immediately preceding the application for a conditional prescription certificate. A program must be designated by the APA at the time the degree is conferred.

**244.3(2) Clinical experience.** An applicant shall have completed a clinical experience in accordance with the requirements of this subrule. During the clinical experience, a psychologist shall learn clinical assessment techniques and pathophysiology through direct observation and hands-on training with a training physician. During the clinical experience, a psychologist shall become competent in health history interviews, physical examinations, and neurological examinations with a medically diverse patient population. The clinical experience must be associated with the psychopharmacology training program from which the psychologist obtained the postdoctoral master of science degree in clinical psychopharmacology.

*a. Scope.* At the beginning of the clinical experience, the psychologist shall directly observe the training physician performing clinical assessments of patients. After the training physician determines the psychologist has gained sufficient knowledge, the clinical experience shall transition to the psychologist's performance of clinical assessments of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may perform clinical assessments of patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients and is reviewing all medical records. A psychologist and a training physician shall have ongoing discussions regarding the psychologist's clinical assessment skills and progress in the clinical experience.

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

*b. Minimum experience.* The clinical experience shall consist of a minimum of 600 patient encounters that shall be completed by the end of the practicum.

*c. Conflict of interest.* A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

*d. Milestones.* To satisfactorily complete the clinical experience, a psychologist shall demonstrate competency in each of the following:

(1) Perform a health history interview to obtain pertinent information regarding a patient's chief complaint, history of the present illness, past medical and surgical history, family history, allergies, medications, and psychosocial history. The psychologist shall perform a review of systems to elicit a health history and shall appropriately document the health history.

(2) Perform a physical examination in a logical sequence, ensuring appropriate positioning of the patient, proper patient draping, and proper application of the principles of asepsis throughout the examination. The psychologist shall verbalize and assess the components of a general survey and be able to accurately assess all of the following: vital signs, including pulse, respiration, and blood pressure; skin, hair and nails; head, face and neck; eyes; ears, nose, mouth and throat; thorax, lungs and axillae; heart; peripheral vascular system; abdomen; and musculoskeletal system. The psychologist shall be proficient in utilizing any equipment needed to conduct a physical examination.

(3) Complete a neurological examination demonstrating knowledge of the history related to the neurological system and the ability to assess the following: mental status, cranial nerves, motor system, sensory system, and reflexes. The psychologist shall differentiate normal laboratory values from abnormal laboratory values and correlate abnormal laboratory values with impaired physiological systems. The psychologist shall identify adverse drug reactions and identify laboratory data and physical signs indicating an adverse drug reaction.

*e. Informed consent.* At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the clinical experience. The psychologist shall provide sufficient information regarding the expectations and requirements of the clinical experience to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

*f. Training documentation.* The psychologist and the training director shall maintain documentation accounting for all clinical experience patient encounters, including the dates, times, and locations of all clinical experience patient encounters, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

*g. Certification.* The training physician(s) and the training director shall certify on forms provided by the board that the applicant has successfully completed the minimum number of clinical experience patient encounters required and demonstrated competence in clinical assessment techniques and pathophysiology through completion of the milestones defined in these rules.

**244.3(3) Practicum.** An applicant shall have completed a practicum in accordance with the requirements of this subrule. During the practicum, a psychologist shall develop competencies in evaluating and treating patients with mental disorders through pharmacological intervention via observation and active participation. The practicum must be associated with the psychopharmacology training program from which the applicant obtained the postdoctoral master of science degree in clinical psychopharmacology and must be completed in a period of time not less than six months and not more than three years.

*a. Scope.* At the beginning of the practicum, the psychologist shall directly observe the training physician evaluating and treating patients with mental disorders. After the training physician determines the psychologist has gained sufficient knowledge, the practicum shall transition to the psychologist's evaluation and treatment of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may evaluate and treat patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients, has

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

personal contact with the patient at each visit, and is reviewing all pertinent medical records. During the practicum, the training physician shall make all final treatment decisions, with consultation from the psychologist prior to making a final determination regarding the psychopharmacological treatment of a patient.

*b. Minimum number of hours.* A practicum shall consist of a minimum of 400 hours. Only hours spent face to face evaluating and treating patients with mental disorders and hours spent discussing treatment plans with a training physician may count as practicum hours. Time spent by the psychologist providing services that are within the scope of practice of a licensed psychologist, such as psychological examinations and psychotherapy, shall not be counted as practicum hours.

*c. Minimum number of patients.* A psychologist shall see a minimum of 100 individual patients throughout the practicum. A patient can be counted toward this requirement if the patient has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. Over the course of the practicum, the psychologist shall observe, evaluate, and treat patients encompassing a range of ages and a variety of psychiatric diagnoses.

*d. Settings.* At least 100 hours of the 400 hours must be completed in a psychiatric setting. At least 100 hours of the 400 hours must be completed in a primary care or community mental health setting.

*e. Conflict of interest.* A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

*f. Milestones.* To successfully complete the practicum, a psychologist shall demonstrate competency in each of the following:

(1) Physical examination and mental status examination. The psychologist shall perform comprehensive and focused physical examinations and mental status evaluations, demonstrate proper use of instruments, and recognize variation associated with developmental stages and diversity.

(2) Review of systems. The psychologist shall integrate information learned from patient reports, signs, symptoms, and a review of each major body system, recognizing normal developmental variations.

(3) Medical history interview. The psychologist shall systematically conduct a patient clinical interview, producing a patient's medical, surgical, psychiatric, and medication history, as well as a family medical and psychiatric history, and be able to communicate the findings in written and verbal form.

(4) Assessment indications and interpretation. The psychologist shall order and interpret appropriate tests (e.g., psychometric, laboratory, and radiological) for the purpose of making a differential diagnosis and monitoring therapeutic and adverse effects of treatment.

(5) Differential diagnosis. The psychologist shall determine primary and alternate diagnoses using established diagnostic criteria.

(6) Integrated treatment planning. The psychologist shall identify and select, using all available data, the most appropriate treatment alternatives, including medication, psychosocial, and combined treatments, and sequence treatment within the larger biopsychosocial context.

(7) Consultation and collaboration. The psychologist shall understand the parameters of the role of a prescribing psychologist and work with other professionals, including a patient's primary care physician, in an advisory or collaborative manner to effectively treat a patient.

(8) Treatment management. The psychologist shall apply, monitor, and modify as needed the treatment of a patient and learn to write valid and complete prescriptions.

(9) Medical documentation. The psychologist shall demonstrate appropriate medical documentation for the patient-psychologist interaction to include subjective and objective assessment; mental status, physical examination findings, or both; formulation; diagnostic impression; and comprehensive treatment plan.

*g. Informed consent.* At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the practicum. The psychologist shall provide sufficient information regarding the expectations and requirements of the practicum to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.



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

*h. Training documentation.* The psychologist and the training director shall maintain documentation regarding all patients observed, evaluated, and treated by the psychologist as part of the practicum. The documentation shall clearly identify the training physician for each patient. The psychologist and the training director shall maintain documentation of all practicum hours, including the dates, times, and locations of all practicum hours, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

*i. Certification.* The training physician(s) and the training director shall certify on forms provided by the board that the psychologist has successfully completed the minimum number of practicum hours, treated the minimum number of patients, and demonstrated competence in the evaluation and treatment of patients with mental disorders through pharmacological intervention through completion of the milestones defined in these rules.

**244.3(4) Examination.** A psychologist shall pass the Psychopharmacology Examination for Psychologists (PEP) administered by the APA Practice Organization's College of Professional Psychology or by the Association of State and Provincial Psychology Boards. The passing score utilized by the board shall be the passing score recommended by the test administrator. The examination score shall be sent directly from the testing service to the board.

**645—244.4(148,154B) Supervised practice as a conditional prescribing psychologist—joint rule.** A conditional prescribing psychologist shall complete a minimum of two years of supervised practice in prescribing psychotropic medications to patients with mental disorders in accordance with this rule to be eligible to apply for a prescription certificate.

**244.4(1) Supervision plan.** Prior to issuing a conditional prescription certificate, the board shall review and approve the proposed supervision plan.

*a.* The proposed supervision plan must include the following:

(1) Conditional prescribing psychologist information. The plan must include the name, license number, address, telephone number, and email address of the supervisee.

(2) Supervising physician information. The plan must include the name, license number, date of licensure, area of specialization, address, telephone number, and email address of each supervising physician.

(3) Primary supervising physician. The plan must include a designation of the primary supervising physician.

(4) Period of supervision. The plan must include the beginning date of the supervision plan and estimated date of completion.

(5) Locations and settings. The plan must include a description of the locations and settings where and with whom supervision will occur.

(6) Scope of practice. The plan must include a description of the scope of practice of the conditional prescribing psychologist, including any limitations on the types of psychotropic medications that may be prescribed and the patient populations to which a prescription may be issued and including the expectations and responsibilities of the supervising physician.

(7) Release of information. The plan must include a provision requiring the conditional prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the conditional prescribing psychologist to share the patient's health information with the supervising physician.

(8) Consultation between the conditional prescribing psychologist and the supervising physician. The plan must include a provision requiring that the conditional prescribing psychologist consult with the supervising physician on a regular basis regarding a patient's psychotropic treatment plan and any potential complications. A conditional prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician objects on the basis of a contraindication.

(9) Consultation between the supervising physician and the primary care physician. The plan must include a provision requiring that the supervising physician consult with the patient's primary

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

care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

(10) Termination of the supervision plan. The plan must include a description of how the supervision plan may be terminated and the process for notifying affected patients.

(11) Signatures. The plan must include signatures of the psychologist and all supervising physicians.

*b.* A conditional prescribing psychologist shall inform the board of any amendments to the conditional prescribing psychologist's supervision plan, including the addition of any supervising physicians, within 30 days of the change. Amendments to a supervision plan are subject to board approval.

*c.* The board shall transmit all approved supervision plans and approved amendments to the board of medicine.

**244.4(2)** *Responsibilities of a supervising physician.* A supervising physician shall provide supervision in accordance with rules established by the board of medicine.

**244.4(3)** *Responsibilities of a conditional prescribing psychologist.* At the initial contact, a conditional prescribing psychologist shall inform a patient, or a patient's legal guardian when appropriate, that the conditional prescribing psychologist is practicing under the supervision of a physician for purposes of prescribing psychotropic medication and shall provide the name of the supervising physician. A conditional prescribing psychologist shall provide sufficient information regarding the supervision requirements to obtain informed consent and appropriate releases. Upon request, a conditional prescribing psychologist shall provide additional information regarding the conditional prescribing psychologist's education, training, or experience with respect to prescribing psychotropic medications.

**244.4(4)** *Specialization.* A conditional prescribing psychologist shall complete the following training during the supervised practice period to be eligible to prescribe psychotropic medications to the respective population as a prescribing psychologist:

*a. Children.* To prescribe to patients who are less than 17 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

- (1) A pediatric practice,
- (2) A child and adolescent practice, or
- (3) A general practice provided the conditional prescribing psychologist treats a minimum of 50 patients who are less than 17 years of age.

*b. Elderly patients.* To prescribe to patients who are over 65 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

- (1) A geriatric practice, or
- (2) A general practice with patients across the lifespan including patients who are over 65 years of age.

*c. Serious medical conditions.* To prescribe to patients with serious medical conditions including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, a conditional prescribing psychologist shall complete at least one year prescribing psychotropic medications to patients with serious medical conditions.

**244.4(5)** *Completion of supervised practice.* A conditional prescribing psychologist shall see a minimum of 300 patients over a minimum of two years to complete the supervised practice period, provided each of the 300 patients has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. A conditional prescribing psychologist shall treat a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

*a.* At the conclusion of the supervised practice period, a primary supervising physician shall certify the following:

- (1) Supervision was provided in accordance with rules established by the board of medicine.

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

(2) A conditional prescribing psychologist has successfully completed two years of supervised practice, considered at least 300 patients for psychopharmacological intervention, and treated at least 100 patients with psychotropic medications.

(3) A conditional prescribing psychologist intending to specialize in the psychological care of children or elderly persons, or persons with serious medical conditions, has completed the requirements of subrule 244.4(4).

(4) A conditional prescribing psychologist has successfully completed the supervised practice period and demonstrated competence in psychopharmacology by demonstrating competency in the milestones listed in paragraph 244.3(3) "f" sufficient to obtain a prescription certificate.

*b.* If a conditional prescribing psychologist is unable to successfully complete the supervised practice period prior to the expiration of the conditional prescription certificate, the conditional prescribing psychologist may request an extension of the conditional prescription certificate provided that the conditional prescribing psychologist can demonstrate that the conditional prescribing psychologist is likely to successfully complete the supervised practice within the extended time requested. Any requests for extension must be submitted to and approved by both the board and the board of medicine.

**645—244.5(154B) Prescription certificate.** A prescription certificate shall authorize a psychologist to prescribe psychotropic medications to patients with mental disorders in accordance with the requirements of this chapter.

**244.5(1) Application.** Unless a basis for denial exists in accordance with rule 645—244.9(154B), the board shall issue a prescription certificate to a conditional prescribing psychologist who satisfies the following requirements:

*a.* Holds an active license to practice psychology in Iowa, an active health service provider certification issued by the board, and an active conditional prescription certificate. The license, certification, and certificate must all be in good standing.

*b.* Submits documentation regarding successful completion of the supervised practice period.

*c.* Submits a collaborative practice agreement in accordance with rule 645—244.8(148,154B).

*d.* Possesses malpractice insurance that covers the prescribing of psychotropic medications.

*e.* Submits a completed application and a nonrefundable application fee of \$60.

**244.5(2) Initial term and renewal.** An initial prescription certificate shall be valid through the current expiration date of the applicant's psychologist license. Thereafter, a prescription certificate shall be renewed biennially concurrent with the renewal of the psychologist license. A prescribing psychologist may renew a prescription certificate by submitting a completed renewal application and a nonrefundable application fee of \$60. A prescribing psychologist is responsible for renewing the prescription certificate prior to its expiration.

**244.5(3) Continuing education required.** A prescribing psychologist shall complete a minimum of 20 hours of continuing education in psychopharmacology each year. A total of 40 hours of continuing education in psychopharmacology is required to renew a prescription certificate. These hours are separate from, and in addition to, the continuing education hours needed to renew a psychologist license pursuant to 645—Chapter 241. If a psychologist specializes in treating children, a minimum of 10 hours of continuing education in psychopharmacology each year, for a total of 20 hours of continuing education per renewal period, must be directly related to prescribing psychotropic medication to children.

**244.5(4) Late renewal.** A prescription certificate shall become late when it has not been renewed prior to the expiration date. To renew a late prescription certificate, a prescribing psychologist shall complete the renewal requirements and submit a late fee of \$60 within 30 days following the prescription certificate expiration date. A prescribing psychologist who fails to renew a prescription certificate within 30 days following the prescription certificate expiration date shall have an inactive prescription certificate. A psychologist whose prescription certificate is inactive continues to hold the privilege of certification in Iowa but may not prescribe psychotropic medications until the prescription certificate is reactivated.

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

**244.5(5) *Reactivation.*** To apply for reactivation of an inactive prescription certificate, a psychologist shall submit a completed reactivation application, a nonrefundable fee of \$60, and documentation of a minimum of 40 hours of continuing education in psychopharmacology taken within the preceding two years. If a prescription certificate has been inactive for more than five years, a psychologist shall demonstrate competence in psychopharmacology through one of the following means:

- a. Practiced as a prescribing psychologist in another jurisdiction in the preceding two years.
- b. Completed a period of supervised practice for a minimum of 12 months. The board may issue a conditional prescription certificate to complete a supervised practice period for purposes of prescription certificate reactivation.

**645—244.6(148,154B) Prescribing—joint rule.** This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall comply with all prescription requirements described in 657—subrule 8.19(1). The following limits apply to a psychologist's prescriptive authority:

1. A psychologist shall only prescribe psychotropic medications for the treatment of mental disorders.
2. A psychologist shall only prescribe psychotropic medications in situations where the psychologist has adequate education and training to safely prescribe.
3. A prescription shall identify the prescriber as a "psychologist certified to prescribe" and shall include the Iowa license number of the psychologist.
4. A prescription issued by a conditional prescribing psychologist shall contain the name of the supervising physician overseeing the care of the patient.
5. A psychologist shall not delegate prescriptive authority to any other person.
6. A psychologist is prohibited from prescribing narcotics as defined in Iowa Code section 124.101.
7. A psychologist shall maintain an active DEA registration and an active CSA registration in order to dispense, prescribe, or administer controlled substances.
8. A psychologist shall not self-prescribe nor prescribe to any person who is a member of the psychologist's immediate family or household.
9. Before prescribing a psychotropic medication that is classified as a controlled substance, a psychologist shall check the patient's prescriptive profile using the Iowa prescription monitoring program.
10. To prescribe to a patient who is pregnant or lactating, a psychologist shall consult with the patient's obstetrician-gynecologist or the physician managing the patient's pregnancy or postpartum care regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication to a patient if the patient's obstetrician-gynecologist or the physician managing care objects on the basis of a contraindication.
11. To prescribe to a patient who has a serious medical condition, including but not limited to heart disease, kidney disease, liver disease, cancer, stroke, seizures, or comorbid psychological conditions, or to a patient who has a developmental or intellectual disability, a psychologist shall consult with the physician who is managing the comorbid condition for that patient regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication if the patient's physician objects on the basis of a contraindication.
12. A psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician or collaborating physician objects on the basis of a contraindication.

**645—244.7(148,154B) Consultation with primary care physicians—joint rule.** This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall maintain a cooperative relationship with the primary care physician who oversees a patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate

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

for the patient's medical conditions, and significant changes in the patient's medical or psychological condition are discussed.

**244.7(1) Requirement for a primary care physician.** A patient must have a designated primary care physician in order for a psychologist to have the ability to prescribe psychotropic medications to the patient. If a patient does not have a designated primary care physician, a psychologist shall refer the patient to a primary care physician prior to prescribing psychotropic medications to the patient. A psychologist shall not prescribe psychotropic medications to a patient until the patient has established care with a primary care physician.

**244.7(2) Requirement for a release.** A psychologist shall obtain a release of information from the patient, or the patient's legal guardian when appropriate, authorizing the sharing of the patient's health information between the psychologist and the patient's primary care physician. A psychologist shall not prescribe psychotropic medications to a patient who refuses to sign a release.

**244.7(3) Cooperation and consultation with primary care physicians.** A psychologist shall contact each patient's primary care physician on at least a quarterly basis and shall contact the primary care physician to relay information regarding the care of a patient whenever the following occur:

- a. A psychologist is considering adding a new psychotropic medication to a patient's medication regimen. A psychologist shall not prescribe a new psychotropic medication if the patient's primary care physician objects on the basis of a contraindication.
- b. A psychologist is discontinuing or changing the dosage of a psychotropic medication.
- c. A patient experiences adverse effects from any medication prescribed by the psychologist that may be related to the patient's medical condition.
- d. A psychologist receives the results of laboratory tests related to the medical care of a patient.
- e. A psychologist notes a change in a patient's mental condition that may affect the patient's medical treatment.

**645—244.8(148,154B) Collaborative practice—joint rule.**

**244.8(1)** A prescribing psychologist shall have one or more collaborating physicians at all times, as evidenced by a current collaborative practice agreement. Prior to executing a collaborative practice agreement, a prescribing psychologist and a collaborating physician shall review and discuss each other's relevant education, training, experience, and competencies to determine whether a collaborative practice is appropriate and to facilitate drafting a suitable collaborative practice agreement. A collaborative relationship between a prescribing psychologist and a collaborating physician shall ensure patient safety and optimal clinical outcomes. Collaboration may be done in person or via electronic communication in accordance with these rules. A physician shall not serve as a collaborating physician for more than two prescribing psychologists at one time. A prescribing psychologist shall not prescribe without a current written collaborative practice agreement with a collaborating physician in place. All collaborative relationships shall be reviewed and evaluated on an annual basis to ensure that the prescribing psychologist is competent to safely prescribe psychotropic medications to patients and that the collaborating physician is providing appropriate feedback to the prescribing psychologist. A collaborative practice agreement shall establish the parameters of the collaborative practice that are mutually agreed upon by the prescribing psychologist and the collaborating physician and shall be reviewed on an annual basis.

**244.8(2)** A collaborative practice agreement shall include the following:

- a. *Prescribing psychologist information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the prescribing psychologist.
- b. *Collaborating physician information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the collaborating physician.
- c. *Time period.* The time period covered by the agreement.
- d. *Locations and settings.* The locations and settings where collaborative practice will occur.

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

*e. Collaboration.* A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborating physician is available for timely collaboration with a prescribing psychologist, either in person or via electronic communication, in accordance with these rules.

*f. Scope of practice.* The scope of practice agreed upon by the collaborating physician and the prescribing psychologist, as it relates to the prescribing psychologist's prescribing of psychotropic medications, including provisions to ensure that the prescribing psychologist's practice complies with all provisions of these rules.

*g. Clinical protocols, practice guidelines, and care plans.* Clinical protocols, practice guidelines, and care plans relevant to the scope of practice authorized.

*h. Methods of communication.* A description of how a prescribing psychologist and a collaborating physician may contact each other for consultation.

*i. Limitations on psychotropic medications.* A description of any limitations on the range of psychotropic medications the prescribing psychologist may prescribe. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only prescribes psychotropic medications that are consistent with the prescribing psychologist's education, training, experience, and competence.

*j. Limitations on patient populations.* A description of any limitations on the types of populations that the prescribing psychologist may treat with psychotropic medications. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only provides psychopharmacology services to patient populations that are within the prescribing psychologist's education, training, experience, and competence.

*k. Release of information.* A provision requiring the prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the prescribing psychologist to share the patient's health information with the collaborating physician.

*l. Chart review.* A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborative physician personally reviews and documents review of at least 10 percent of the prescribing psychologist's patient charts on a quarterly basis in each of the following categories:

- (1) Juvenile patients,
- (2) Pregnant or lactating patients,
- (3) Elderly patients,
- (4) Patients with serious medical conditions, and
- (5) All other patients.

*m. Annual review.* A provision requiring an annual review and evaluation of the collaborative relationship and the collaborative practice agreement.

*n. Consultation between the prescribing psychologist and the collaborating physician.* A provision requiring that the prescribing psychologist consult with the collaborating physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications. A prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the collaborating physician objects on the basis of a contraindication.

*o. Consultation between the collaborating physician and the primary care physician.* A provision requiring that the collaborating physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

*p. Termination.* A provision describing how the agreement can be terminated and the process for notifying affected patients if there will be an interruption in services.

*q. Signatures.* Signatures of the prescribing psychologist and all collaborating physicians.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**645—244.9(154B) Grounds for discipline.** The board may deny, suspend, revoke, or impose other discipline as outlined in rule 645—242.3(147,272C) against a psychologist who holds a conditional prescription certificate or prescription certificate for any of the following:

**244.9(1)** Violating any of the grounds for discipline set forth in rule 645—242.2(147,272C).

**244.9(2)** The inability to safely prescribe psychotropic medications.

**244.9(3)** Prescribing medications in violation of rule 645—244.6(148,154B).

**244.9(4)** Repeatedly failing to cooperate and collaborate with primary care physicians.

**244.9(5)** Prescribing psychotropic medications without a current written collaborative practice agreement.

**244.9(6)** Failing to maintain malpractice insurance that covers the prescribing of psychotropic medications.

**244.9(7)** Practicing outside the scope of a collaborative practice agreement.

**244.9(8)** Prescribing medications while the conditional prescription certificate or prescription certificate is inactive, or prescribing controlled substances while the DEA registration or CSA registration is not current.

**244.9(9)** Having a conditional prescription certificate or prescription certificate disciplined by the licensing authority of another state.

**244.9(10)** Having a license or health service provider certification disciplined by the board or the licensing authority of another state.

**645—244.10(154B) List of psychologists.** The board shall maintain a list of all current conditional prescribing psychologists and prescribing psychologists. The list shall be transmitted annually to the board of medicine.

**244.10(1) Information.** The list shall include the name of the psychologist, license number, license expiration date, expiration date of the conditional prescription certificate or prescription certificate, and practice locations.

**244.10(2) Additions and deletions.** When a psychologist is added or removed from the list, the board shall notify the board of medicine of the addition or deletion.

**645—244.11(148,154B) Complaints—joint rule.** Any complaint received by the board alleging a violation of this chapter shall be forwarded to the board of medicine. Any complaint received by the board of medicine alleging a violation of this chapter shall be forwarded to the board.

**645—244.12(148,154B) Joint waiver or variance—joint rule.** Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

**645—244.13(148,154B) Amendment—joint rule.** Any rule identified as a joint rule may only be amended by agreement of the board and board of medicine through a joint rule-making process.

These rules are intended to implement Iowa Code chapters 148 and 154B.

[Filed 12/21/18, effective 2/20/19]

[Published 1/16/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.

**ARC 4252C**

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

**Rule making related to excise tax rate on motor fuels**

The Revenue Department hereby amends Chapter 68, "Motor Fuel and Undyed Special Fuel," Iowa Administrative Code.

REVENUE DEPARTMENT[701](cont'd)

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 421.14 and 452A.59.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 452A.3.

*Purpose and Summary*

This rule making amends subrule 68.2(1) to adjust the excise tax rate on gasoline from 30.5¢ per gallon (ending June 30, 2018) to 30.7¢ per gallon (beginning July 1, 2018) pursuant to the formula prescribed by Iowa Code section 452A.3. The ethanol distribution percentage for calendar year 2017 is between 65 percent and 70 percent, an increase from 2016. As a result, pursuant to Iowa Code section 452A.3(1)“b”(5), in fiscal year 2019 the excise tax rate for ethanol blended gasoline will remain 29¢ per gallon, but the excise tax rate for gasoline will increase from 30.5¢ per gallon to 30.7¢ per gallon.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 21, 2018, as **ARC 4133C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on December 26, 2018.

*Fiscal Impact*

Under the excise tax rates applicable for fiscal year 2019 as implemented by the rule change and as required by statute, it is estimated that, accounting for refunds, collections will be \$453.6 million, resulting in an increase of \$1.1 million in revenues.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019.

The following rule-making action is adopted:

Amend subrule 68.2(1) as follows:

**68.2(1)** The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:



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

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004)
	20.5¢ per gallon (for July 1, 2004, through June 30, 2005)
	20.7¢ per gallon (for July 1, 2005, through June 30, 2006)
	21¢ per gallon (for July 1, 2006, through June 30, 2007)
	20.7¢ per gallon (for July 1, 2007, through June 30, 2008)
	21¢ per gallon (for July 1, 2008, through February 28, 2015)
	31¢ per gallon (for March 1, 2015, through June 30, 2015)
	30.8¢ per gallon (for July 1, 2015, through June 30, 2016)
	30.7¢ per gallon (for July 1, 2016, through June 30, 2017)
	30.5¢ per gallon (beginning for July 1, 2017, through June 30, 2018)
	30.7¢ per gallon (beginning July 1, 2018)
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through February 28, 2015)
	29¢ per gallon (for March 1, 2015, through June 30, 2015)
	29.3¢ per gallon (for July 1, 2015, through June 30, 2016)
	29¢ per gallon (beginning July 1, 2016)
E-85 gasoline	17¢ per gallon (for January 1, 2006, through June 30, 2007)
	19¢ per gallon (for July 1, 2007, through February 28, 2015)
	29¢ per gallon (for March 1, 2015, through June 30, 2015)
	29.3¢ per gallon (for July 1, 2015, through June 30, 2016)
	29¢ per gallon (beginning July 1, 2016)
Aviation gasoline	8¢ per gallon (beginning July 1, 1988)
Diesel fuel other than B-11 or higher	22.5¢ per gallon (on and before February 28, 2015)
	32.5¢ per gallon (beginning March 1, 2015)
Biodiesel blended fuel (B-11 or higher)	22.5¢ per gallon (on and before February 28, 2015)
	32.5¢ per gallon (for March 1, 2015, through June 30, 2015)
	29.5¢ per gallon (beginning July 1, 2015)
Aviation jet fuel	3¢ per gallon (on and before February 28, 2015)
	5¢ per gallon (beginning March 1, 2015)
L.P.G.	20¢ per gallon (on and before February 28, 2015)
	30¢ per gallon (beginning March 1, 2015)
C.N.G.	16¢ per 100 cu. ft. (on and before June 30, 2014)
	21¢ per gallon (for July 1, 2014, through February 28, 2015)
	31¢ per gallon (beginning March 1, 2015)
L.N.G.	22.5¢ per gallon (on and before February 28, 2015)
	32.5¢ per gallon (beginning March 1, 2015)

[Filed 12/26/18, effective 2/20/19]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.

**ARC 4253C**

**UTILITIES DIVISION[199]**

**Adopted and Filed**

**Rule making related to complaint procedures**

The Utilities Board hereby amends Chapter 6, "Complaint Procedures," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 474.5 and 476.2.

UTILITIES DIVISION[199](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 476.2, 476.3, 476.103 and 546.7.

*Purpose and Summary*

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this rule making is to update and amend Chapter 6 of the Board's rules establishing standards for electric service utilities. The Board issued an order adopting amendments on December 19, 2018, in Docket No. RMU-2016-0012.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 20, 2018, as **ARC 3850C**. An oral presentation was held on July 24, 2018, at 1 p.m. in the Board's Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

The Board received written comments in its electronic filing system, [efs.iowa.gov](http://efs.iowa.gov), in Docket No. RMU-2016-0012. The Board received written comments from MidAmerican Energy Company (MidAmerican); the Iowa Association of Electric Cooperatives (IAEC); Interstate Power and Light Company (IPL); the Iowa Communications Alliance (ICA); and the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice.

The Board received comments at the oral presentation from OCA, MidAmerican, IPL, and ICA. Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy, also provided comments at the oral presentation.

Although the majority of the amendments adopted in this rule making are identical to those published in the Notice of Intended Action, the Board made some additional changes in response to stakeholder comments received at both the oral presentation and in filings in the Board's electronic filing system. There are several nonsubstantive grammatical or formatting changes made for ease of reading. The Board has added an additional sentence to rule 199—6.1(476) to further clarify that Board staff will attempt to resolve inquiries without opening an informal investigation. The Board also added clarifying language to the introductory paragraph of rule 199—6.2(476) in response to a comment from the ICA. The Board further amended subrule 6.2(1) to clarify that email addresses need only be provided if available. The Board added a sentence to paragraph 6.2(1)“d” regarding direct communications between customers and utilities before a complaint is filed with the Board.

The Board adopted additional language in subrule 6.4(1) to require further notification to parties when an investigation is deemed complete. In response to numerous comments from multiple stakeholders, the Board did not adopt proposed subrule 6.4(4). The Board adopted a further change in rule 199—6.5(476) to allow requests for formal proceedings to be filed directly in the Board's electronic filing system.

*Adoption of Rule Making*

This rule making was adopted by the Board on December 19, 2018.

*Fiscal Impact*

These amendments update and amend existing rules that are required to be followed by persons filing, and utilities responding to, complaints. No additional actions having a fiscal impact have been adopted.

*Jobs Impact*

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

UTILITIES DIVISION[199](cont'd)

*Waivers*

No waiver provision is included since the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 6.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 199—6.1(476) as follows:

**199—6.1(476) Inquiry General inquiries.** Any person may seek assistance from the Iowa utilities board by appearing in person ~~or placing a telephone call to the Consumer Services Section, Iowa Utilities Board, at the board's office at 1375 E. Court Avenue, Room 69, Des Moines, Iowa;~~ by mailing an inquiry to the board's office; by placing a telephone call to the board's customer service center at (515)725-7321 or toll-free (877)565-4450; by sending an inquiry by electronic mail to [customer@iub.iowa.gov](mailto:customer@iub.iowa.gov); or by contacting the board through any other electronic means. ~~Consumer services may advise the person of the application of the rules, inform the person of utility complaint procedures and advise of written complaint procedures before the board. However, the complaint procedures set forth below are available only after a written complaint is filed.~~ Customer service staff shall obtain the information necessary to either answer the inquiry or direct the person to the appropriate staff person who can provide a response. If the inquiry is not resolved after customer service staff has obtained the additional information, the person making the inquiry may escalate the inquiry to a written complaint requesting an informal investigation pursuant to rule 199—6.2(476) and Iowa Code section 476.3.

ITEM 2. Amend rule 199—6.2(476) as follows:

**199—6.2(476) Complaint Informal complaint procedures.** ~~Any person or body politic may file a written complaint requesting a determination of the reasonableness of rates, charges, schedules, service, regulations or anything done or not done by a public utility subject to service or rate regulation by the board. Assistance may be requested in the following manner. Any person may submit a written complaint to the board requesting a determination of the reasonableness of rates, charges, schedules, service, regulations, or anything done or not done by a public utility for those services or rates subject to regulation by the board. "Person" as used in this chapter shall include a person as defined in Iowa Code section 4.1(20).~~

**6.2(1) Information to be filed.** ~~Any person may, by filing a written complaint, request the board to determine whether the utility's charges, practices, facilities or services are in compliance with applicable statutes and rules established by the board, or by the utility in its tariff, and lawfully issued board orders. A written complaint may be filed by facsimile or electronic mail. If there is any question about the authenticity of the complaint, the complainant may be required to file a letter verifying the written complaint. The board may initiate a complaint on its own motion. The written complaint should include the following information:~~

*a.* ~~The name of the utility involved, any utility personnel known or believed to be familiar with the facts stated in the letter complaint, and the location of the office of the utility where the complaint was originally made and processed.~~

## UTILITIES DIVISION[199](cont'd)

*b.* The name of the complainant. If the complaint is being filed ~~made~~ on behalf of a person other than the complainant, an affidavit from the person ~~injured by the practice about which the complaint is made should be included stating that the complaint has been received and is believed to be true and accurate to the best of the knowledge of the injured person upon whose behalf the complaint is being made~~ that attests to the accuracy of the complaint should be included. A complaint filed by an organization on behalf of its members shall include an affidavit signed by an officer of the organization.

*c.* The address, or addresses, of the premises where the service, ~~or~~ billing problems, or other actions occurred and, if known, the telephone number and the account number of those premises. If the complainant resides at a different address, the complaint should also state where a response to the complaint is to be mailed. The complainant ~~may~~ shall also provide a telephone number and, if available, an electronic mail address where the complainant can be reached ~~during the day~~.

*d.* The nature of the complaint, and efforts made to resolve the matter. ~~Documents—e.g., bills or Bills, correspondence, — or other relevant documents~~ should be included if ~~they~~ the documents will add to aid the board's understanding of the utility ~~utility's~~ action or practice about which the complaint is made. If known, references to statutes or rules believed to govern the outcome of the complaint should be included. Also, a description of the efforts made by the complainant to resolve the complaint with the utility should be included. The complainant should contact the utility to attempt to resolve the complaint prior to submitting a complaint to the board.

*e.* A proposal for resolving the complaint. The proposal should refer to any known statutes, board orders, or rules ~~authorizing the remedy request that support the resolution proposed by the complainant~~.

**6.2(2)** *Request for additional information.* If the board staff determines that additional information is needed ~~in order to resolve the complaint prior to forwarding the complaint to the utility~~, the complainant will be notified that specified additional information should be ~~filed~~ provided. If the requested additional information is not provided within 20 days, the complaint may be dismissed. Dismissal of the complaint on this basis does not prevent the complainant from filing in the future a complaint that includes the requested information.

ITEM 3. Amend rule 199—6.3(476) as follows:

**199—6.3(476) Processing the informal complaint.** When the board receives a written complaint that includes the necessary information outlined in rule 199—6.2(476), ~~the board staff shall initiate the informal complaint process by opening an investigation into the complaint and assigning the informal complaint a file number. The following informal complaint procedures will~~ shall be followed during the investigation:

**6.3(1)** ~~The~~ Within ten days after receipt of the written complaint, or of any additional information requested, staff shall forward to the public utility and the consumer advocate the complaint ~~letter~~ and any ~~supplemental~~ additional information ~~filed~~ provided by the complainant ~~will be forwarded to the public utility~~.

**6.3(2)** ~~A copy of the complaint and any supplemental information will be forwarded by the staff to the consumer advocate.~~

**6.3(3)** ~~6.3(2)~~ The utility shall, ~~within 20 days of the date on which the complaint is forwarded to the utility by the board, file a response~~ respond to the complaint with the ~~to~~ board staff and shall at the same time send a copy of its response to the complainant and the consumer advocate within 20 days of the date the board staff forwards the complaint to the utility. Prior to the date the response is due, the utility may request an extension of time to respond to the complaint. Staff shall notify the utility, the complainant, and the consumer advocate within five days whether the request for an extension is granted and of the length of the extension, if granted.

**6.3(3)** The utility shall specifically address each allegation made by the complainant and ~~recite~~ provide any supporting facts, statutes, rules, board orders, or tariff provisions supporting its response. The utility shall ~~enclose~~ include copies of all related letters, records, or other documents not supplied by the complainant, and all records concerning the complainant that are not confidential or privileged. In cases involving confidential or privileged records, the response shall advise of the records' existence.

UTILITIES DIVISION[199](cont'd)

ITEM 4. Amend rule 199—6.4(476) as follows:

**199—6.4(476) Proposed resolution of an informal complaint.**

**6.4(1)** ~~When~~ After the utility's response is received, the staff may request from any party any additional information deemed necessary to complete the investigation and resolve the complaint. When ~~satisfied that~~ all necessary information has been gathered received and the investigation is complete, the staff ~~will respond by letter~~ shall, within 30 days, send a letter with a proposed resolution of the complaint to the complainant, with a copy to the utility, and the consumer advocate ~~acknowledging resolution of the complaint or proposing an appropriate resolution of the complaint.~~ Staff shall notify the complainant, the utility, and consumer advocate when the investigation is complete and the 30-day time period to issue a proposed resolution commences.

**6.4(2)** ~~If the staff determines that the action required by the proposed resolution has not been carried out, or new facts arise, the record may be reopened by issuing notice to the parties of further investigation. In the proposed resolution, board staff shall inform the parties of their right to request formal proceedings. If no party files a request for formal proceedings within 14 days pursuant to subrule 6.5(1), the parties shall be deemed to have accepted the proposed resolution, which shall be binding. Once the proposed resolution is accepted, or deemed accepted, the parties shall comply with the terms and conditions of the proposed resolution.~~

**6.4(3)** After the proposed resolution is issued, the complainant, utility, or consumer advocate may request in writing that staff reopen the investigation to consider additional information, changed circumstances, or other relevant information not provided in the initial investigation, regarding the complaint. The request to reopen the investigation shall be made within 14 days of issuance of the proposed resolution. Within five days of receiving the request, staff shall send a response to the request to reopen the investigation, either advising the parties that the investigation will be reopened and a second proposed resolution will be issued or denying the request. If the request to reopen the investigation is denied, the complainant, utility, or consumer advocate has 14 days from the issuance of the denial to request that the board open a formal complaint proceeding pursuant to subrule 6.5(1).

ITEM 5. Amend rule 199—6.5(476) as follows:

**199—6.5(476) Initiating formal complaint proceedings.**

**6.5(1)** *Request for formal proceeding based upon a proposed resolution.* If the consumer advocate, the complainant, or the public utility ~~is dissatisfied~~ does not agree with the proposed resolution, a request for a formal complaint ~~proceedings proceeding~~ may be made in writing within 14 days of the issuance of the proposed resolution. ~~Parties will be informed of their right to request formal proceedings. A request for civil penalties, in accordance with Iowa Administrative Code 199—Chapter 8, may also be filed at this time. Failure to file a request for civil penalties at this time does not preclude a party from requesting civil penalties at a later date during formal proceedings. If no request for formal proceedings is made within 14 days after issuance of the proposed resolution or the specified date of utility action, the proposed resolution will be deemed binding on all parties. The board may initiate formal proceedings and seek civil penalties at any time on its own motion.~~ The request for a formal proceeding shall be considered as filed on the date of the United States Postal Service postmark, the date of electronic mail, the date of filing in the board's electronic filing system, or the date of in-person delivery to the board's customer service center. The request shall include the file number marked on the proposed resolution. The request shall explain why the proposed resolution should be modified or rejected and shall propose an alternate resolution. All parties to the informal complaint shall be provided copies of the request for a formal proceeding. Any other party to the informal complaint investigation may submit a response to the request for a formal proceeding within ten days of the date the request was submitted to the board.

**6.5(2)** *Request for a formal complaint proceeding by pleading.* The request for formal complaint proceedings shall be filed within 14 days after issuance of the proposed resolution or the specified date of utility action, whichever is later. The request shall be considered as filed on the date of the United States Postal Service postmark, the date personal service is made, or the date received and accepted in the board's records and information center. The request shall be in writing and must be delivered by

UTILITIES DIVISION[199](cont'd)

~~United States Postal Service, other delivery service, personal service, or through the board's electronic filing system pursuant to 199—Chapter 14. The request shall include the file number (C-XX-XXX or C-XXXX-XXXX) marked on the proposed resolution. It shall explain why the proposed resolution should be modified or rejected and propose an alternate resolution, including any temporary relief desired. Copies of the request shall be mailed to the consumer advocate and the parties. Any person may request that a formal complaint proceeding be opened. The board may conduct an informal investigation pursuant to rule 199—6.2(476) before granting or denying the request for a formal complaint proceeding. A person filing a request for a formal complaint proceeding shall participate in the informal complaint investigation.~~

~~**6.5(3) Request for formal complaint proceeding.** Upon receipt of a request for a formal complaint proceedings, the proceeding, whether based upon a proposed resolution or a pleading, board staff shall consider whether prepare a recommendation to the board whether to grant or deny the request for a formal complaint proceedings should be initiated and issue an order proceeding. If the board denies formal complaint proceedings, a party may file a petition for judicial review either in the Polk County district court or in the district court for the county in which the party resides or has its principal place of business pursuant to Iowa Code section 17A.19. If formal complaint proceedings are initiated, an order will be issued docketing the case as a formal complaint and granting or denying, in whole or in part, any temporary relief requested. The board will review any investigation conducted by staff and staff's recommendation and shall issue an order either granting or denying a formal complaint proceeding. If the board grants the request for a formal complaint proceeding, the board will issue a procedural schedule or conduct a scheduling conference as required for a contested case proceeding.~~

ITEM 6. Amend rule 199—6.7(476) as follows:

~~**199—6.7(476) Record.** The written complaint and all supplemental information obtained during the informal investigation shall be uploaded into the electronic filing system formal complaint docket and shall be made part of the record in the formal complaint proceeding. The information from the informal complaint investigation shall be redacted pursuant to requirements in 199—Chapter 7.~~

ITEM 7. Amend **199—Chapter 6**, implementation sentence, as follows:

~~These rules are intended to implement Iowa Code sections 476.2, 476.3, 476.103 and 546.7 and Iowa Code Supplement section 476.103.~~

[Filed 12/19/18, effective 2/20/19]

[Published 1/16/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.

**ARC 4254C**

## **UTILITIES DIVISION[199]**

**Adopted and Filed**

**Rule making related to universal service**

The Utilities Board hereby amends Chapter 39, "Universal Service," Iowa Administrative Code.

### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 474.5 and 476.2.

### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 476.15, 476.95B and 476.102 and 47 U.S.C. Section 214(e).

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*Purpose and Summary*

The purpose of this rule making is to update or eliminate rules that are outdated or inconsistent with statutes and other administrative rules. These amendments are intended to eliminate obsolete provisions and update other provisions which continue to be necessary in relation to the Board's exercise of federally delegated authority to designate which telecommunications carriers are eligible to receive support from the federal universal service fund. The Board issued an order commencing rule making on March 27, 2018, and held an oral presentation on June 20, 2018. The Board issued an order adopting amendments on December 17, 2018. The Board's orders in this proceeding are available on the Board's electronic filing system, [efs.iowa.gov](http://efs.iowa.gov), under Docket No. RMU-2016-0011.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 25, 2018, as **ARC 3753C**. An oral presentation was held on June 20, 2018, at 9 a.m. in the Board's Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

Before commencing the rule-making proceeding, the Board received input from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; AT&T Corp. and Teleport Communications America, LLC; CenturyLink, Inc.; and the Iowa Communications Alliance (ICA). After the proposed amendments were published in the Notice of Intended Action, the Board received comments from ICA and OCA.

CenturyLink, Inc., OCA, and ICA participated in the oral presentation. Comments addressed the amendments proposed in the Notice of Intended Action. Extensive discussion was held on the Board's request for information regarding the status of local markets for supported services. Other topics addressed included the process of amending existing eligible telecommunications carrier (ETC) designations and ways to streamline the schedule of filings. Although the majority of the amendments adopted in this rule making are identical to those published in the Notice of Intended Action, the Board adopted some additional changes in response to stakeholder comments received in writing through the Board's electronic filing system and at the oral presentation. The Board further amended the rule governing applications for ETC designation to clarify the mapping requirement in paragraph 39.3(2)"g"; to clarify paragraph 39.3(2)"i" by eliminating outdated language relating to network improvement plans; and to clarify the requirement in paragraph 39.3(2)"m" regarding certification that an applicant will contribute to the dual party relay service. The Board revised new subrule 39.3(3) governing amendments to existing designations to clarify the process specified in paragraph 39.3(3)"i" for requesting an amendment of designation where a carrier is expanding its service area. The Board also made additional amendments to rule 199—39.7(476), which includes the schedule of filings, and rule 199—39.8(476), governing relinquishments of ETC designations, to further clarify those rules.

*Adoption of Rule Making*

This rule making was adopted by the Board on December 17, 2018.

*Fiscal Impact*

The adopted amendments streamline and update existing rules. No fiscal impact is expected.

*Jobs Impact*

After analysis and review, the Board concludes the amendments will not have a detrimental effect on employment in Iowa.

*Waivers*

No waiver provision is included because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that specifies procedures for requesting a waiver of the rules in Chapter 39.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 20, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 199—39.2(476) as follows:

**199—39.2(476) Definition of terms.** For the purposes of the board's implementation of federal universal service fund requirements, the following definitions apply. Whenever a reference in this chapter is made to provisions found in 47 CFR Part 36, 51 or 54, that reference includes any amendment through ~~April 8, 2015~~ February 20, 2019.

"Broadband service" means the broadband Internet access service designated by the Federal Communications Commission at 47 CFR § 54.101 as eligible for support by the federal universal service support mechanisms. Eligible broadband Internet access services must provide the capability to transmit data and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

"Competitive eligible telecommunications carrier" means a carrier that meets the definition of an "eligible telecommunications carrier" below and does not meet the definition of an "incumbent local exchange carrier" in 47 CFR § 51.5.

"Connect America fund" or "CAF" means the federal universal service fund, as reformed by the Federal Communications Commission, to phase down and replace support previously provided through high-cost mechanisms, as referenced in 47 CFR §§ 54.304 and 54.312.

"Eligible telecommunications carrier" or "eligible carrier" means a carrier designated by the board as eligible to receive universal service support pursuant to 47 U.S.C. § 214(e).

"Facilities" means any physical components of the telecommunications network that are used in the transmission or routing of the services designated for universal service fund support.

~~"Federal poverty guidelines" means the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2).~~

"High-cost program" means the component of the federal universal service fund that includes the following support mechanisms: high-cost loop support, safety net support, safety valve support, local switching support, interstate common line support, high-cost model support, interstate access support, and the connect America fund, which includes funding to support and advance networks that provide voice and broadband services, both fixed and mobile.

"High-cost support" means those support mechanisms in existence as of October 1, 2011, specifically, high-cost loop support, safety net additive support and safety valve support provided pursuant to 47 CFR Part 36, Subpart F; local switching support pursuant to 47 CFR § 54.301; forward-looking support pursuant to 47 CFR § 54.309; interstate access support pursuant to 47 CFR §§ 54.800 through 54.809; interstate common line support pursuant to 47 CFR §§ 54.901 through 54.904; support provided pursuant to 47 CFR §§ 51.915, 51.917, and 54.304; support provided to competitive eligible telecommunications carriers as set forth in 47 CFR § 54.307(e); connect America fund support provided pursuant to 47 CFR § 54.312; and mobility fund support provided pursuant to 47 CFR Part 54, Subpart L; and Rural Broadband Experiment support.



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*“Lifeline-only ETC”* means a telecommunications carrier that seeks limited designation as an ETC only to participate in the Lifeline program.

*“Lifeline program”* means the federal universal service program providing support for low-income consumers that is defined in 47 CFR § 54.401 to mean a nontransferable retail service offering (1) for which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in 47 CFR § 54.403, and (2) which provides qualifying low-income consumers with voice telephony service as defined in 47 CFR § 54.101(a) or broadband Internet access service as defined in 47 CFR § 54.400.

*“Mobility fund”* means the wireless component of the connect America fund which provides support for the extension of mobile broadband networks in otherwise unserved areas.

*“National Lifeline accountability database”* means the electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Federal Communications Commission and as defined in 47 CFR § 54.400.

*“National Lifeline eligibility verifier,”* as defined in 47 CFR § 54.400(o), means the electronic and manual system that facilitates the determination of consumer eligibility for the Lifeline program.

*“Qualifying low-income consumer”* means a consumer who meets the qualifications for Lifeline as specified in 47 CFR § 54.409.

*“Services designated for support”* means voice telephony service and broadband service.

*“Tribal Link Up”* means an assistance program for eligible residents of tribal lands seeking telecommunications service from a telecommunications carrier that is receiving high-cost support on tribal lands, that provides a reduction of the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber’s principal place of residence and a deferred schedule of payments of the customary charge for commencing telecommunications service as defined in 47 CFR § 54.413(a).

*“Voice telephony service”* means the service designated by the Federal Communications Commission at 47 CFR § 54.101 as eligible for support by the federal universal service support mechanisms. “Voice telephony service” is service which provides:

1. Voice grade access to the public switched network or its functional equivalent;
2. Minutes of use for local service at no additional charge to end users;
3. Access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and
4. Toll limitation services to qualifying low-income consumers as provided in 47 CFR Part 54, Subpart E.

ITEM 2. Amend paragraph **39.3(2)“d”** as follows:

*d.* An explanation of how the carrier will provide voice telephony service and broadband service as defined in 199—39.2(476) and 47 CFR § 54.101.

ITEM 3. Amend paragraph **39.3(2)“g”** as follows:

*g.* A detailed description, including a map or maps, of the geographic service area for which the applicant requests an ETC designation from the board. An applicant seeking designation in connection with the connect America fund Phase II auction or other similar conditional support mechanism shall file a list of the census blocks in which the applicant will serve as an ETC, in addition to the map included with the description required by this paragraph. Wireless telecommunications carriers, defined as commercial mobile radio service providers in 47 CFR Parts 20 and 24, shall file coverage area maps and maps that depict signal strength. Requests to withhold from public inspection maps depicting signal strength will be deemed granted as provided in 199—paragraph 1.9(5) “c.”

ITEM 4. Amend paragraph **39.3(2)“i”** as follows:

*i.* ~~A five-year plan that describes with specificity proposed improvements or upgrades to the applicant’s network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements. An affirmative statement that the applicant will use the support only for the provision, maintenance, and upgrading of facilities to deploy,~~

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improve, and support services to consumers in the applicant's designated service area. Applicants seeking designation only for purposes of receiving support from the Lifeline program are not required to submit a network improvement plan need not include an affirmative statement or other information concerning network improvements planned for the designated service area.

ITEM 5. Amend subparagraph **39.3(2)“f”(9)** as follows:

(9) Promptly respond to consumer inquiries and complaints received from government agencies. Inquiries for information or complaints to a wireless ETC shall be resolved promptly and courteously. If a wireless ETC cannot resolve a dispute with the applicant or customer, the wireless ETC shall inform the applicant or customer of the right to file a complaint with the board. The wireless ETC shall provide the following board address and toll-free telephone number: Iowa Utilities Board, Customer Service, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069; 1-877-565-4450. When the board receives a complaint, the procedures set out in 199—Chapter 6, “Complaint Procedures,” shall be followed to enforce the minimum consumer protection standards in paragraph 39.3(2)“f.” When the board receives a complaint alleging the addition or deletion of a product or service for which a separate charge is made to a customer account without the verified consent of the customer, the complaint shall be processed by the board pursuant to 199—Chapter 6. In any complaint proceeding pursuant to this subparagraph, if the wireless ETC asserts that the complainant is located in an area where the wireless ETC is not designated as an ETC, the wireless ETC must submit evidence in support of its assertion.

ITEM 6. Amend paragraph **39.3(2)“m”** as follows:

*m.* ~~For applications from wireless carriers seeking designation as an ETC, a~~ certification that the wireless carrier applicant will contribute to the dual party relay service, as provided in Iowa Code section ~~477C.7(2)“a.”~~ 447C.7(1).

ITEM 7. Rescind subrule 39.3(3) and adopt the following **new** subrule in lieu thereof:

**39.3(3)** Amendments, assignments and transfers of control. Except as otherwise provided in this subrule, a carrier's ETC designation may be amended or assigned, or control of such designation may be transferred by the transfer of control of the carrier, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the board.

*a. Assignment.* For purposes of this subrule, an assignment of a designation is a transaction in which a board-issued ETC designation is assigned from one carrier to another carrier. Following an assignment, the designation is held by a carrier other than the carrier to which it was originally granted.

*b. Transfers of control.* For purposes of this subrule, a transfer of control is a transaction in which a board-issued designation remains held by the same carrier, but there is a change in the individuals or entities that control the carrier. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. A change from 50 percent or more ownership to less than 50 percent ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to, the following:

- (1) Power to constitute or appoint more than 50 percent of the board of directors or partnership management committee;
- (2) Authority to appoint, promote, demote and fire senior executives who control the day-to-day activities of the carrier;
- (3) Ability to play an integral role in major management decisions of the carrier;
- (4) Authority to pay financial obligations, including expenses arising out of operations;
- (5) Ability to receive moneys and profits from the carrier's operations; and
- (6) Unfettered use of all of the carrier's facilities and equipment.

*c. Pro forma assignments and transfers of control.* Assignments or transfers of control that do not result in a change in the actual controlling party are considered nonsubstantial or pro forma. If a transaction is one of the types listed below, the transaction is presumptively pro forma and prior board approval need not be sought:

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- (1) Assignment from an individual or individuals to an entity owned and controlled by such individuals without any substantial change in their relative interests;
- (2) Assignment from an entity to its individual equity holders without effecting any substantial change in the disposition of their interests;
- (3) Assignment or transfer by which certain equity holders retire and the interest transferred is not a controlling one;
- (4) Entity reorganization that involves no substantial change in the beneficial ownership of the carrier (including reincorporation or reorganization in a different jurisdiction or change in form of the business entity);
- (5) Assignment or transfer from a carrier to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a carrier to an entity owned or controlled by the same equity holders without substantial change in their interests; or
- (6) Assignment of less than a controlling interest in a carrier.

*d. Applications for substantial transactions.* In the case of an assignment or transfer of control of board-designated ETC that is not pro forma, the parties to such transaction must file a joint application with the board prior to consummation of the proposed assignment or transfer of control. The application shall include the following information:

- (1) A brief narrative of the means by which the proposed transfer or assignment will take place. This narrative should include a statement concerning how the transaction will be classified for the purposes of any filings required to be made by the parties with the Universal Service Administrative Company.
- (2) Identification of each applicant, including the legal name and state or other governmental authority under the laws of which each entity applicant is incorporated or organized.
- (3) The name, title, mailing address, telephone number and email contact information for each applicant.
- (4) The name, title, mailing address, telephone number and email contact information for an application contact point, such as an executive officer, legal counsel or regulatory consultant, to whom correspondence concerning the application should be addressed.
- (5) A statement identifying the date on which the applicants are asking for the transfer of the ETC designation to be effective. Where the timing of a transaction is dependent on facts objectively ascertainable outside of the filing (i.e., regulatory, lender or other third-party approval), the parties should include a statement concerning the manner in which such facts will operate on the effective date or other terms of the transaction.
- (6) A certification as to whether the assignee/transferee is a board-designated ETC. If the assignee/transferee is not a board-designated ETC, the assignee/transferee shall separately file with the board an application for designation as an ETC as provided in subrule 39.3(2). If the assignee/transferee is a board-designated ETC, the joint application shall include a certification from the assignee/transferee that (a) the assignee/transferee is a board-designated ETC in good standing and (b) the assignee/transferee will comply with the state and federal requirements for eligibility as an ETC, including the use of support to provide designated services within the assigned or transferred service area.

(7) Whether as part of the transaction, the assignor/transferor is requesting to relinquish its ETC status in whole or in part. If the assignor/transferor is requesting to relinquish its ETC status, the joint application shall be deemed to be the assignor/transferor's request for relinquishment of ETC designation under 199—39.8(476); provided that such relinquishment shall be conditioned on consummation of the transaction described in the application. If the assignor/transferor is for any reason seeking the unconditional relinquishment of its ETC status, such request should be filed separately under 199—39.8(476).

*e. Board approval.* Where an assignment or transfer of control involves a transferee/assignee which is already a board-designated ETC, such application shall be granted by the board 30 days after the date the complete application seeking approval of the assignment or transfer of control is accepted for filing, unless the board, for good cause, docket the application for further investigation.

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Where an assignment or transfer of control involves a transferee/assignee which is not already a board-designated ETC, such application shall be granted by the board at the same time as the board grants the assignee/transferee's application for ETC designation in accordance with the timelines and procedures set forth in subrule 39.3(2).

*f. Notification of pro forma transactions.* In the case of a pro forma assignment or transfer of control, the designated ETC is not required to seek prior board approval. Instead, a pro forma assignee or a carrier that is subject to a pro forma transfer of control must file a notification with the board no later than 30 days after the assignment or transfer is completed. The notification must contain the following:

(1) The information requested in subparagraphs 39.3(3) "d"(1) to (4) for the transferee/assignee.

(2) A certification that the transfer of control or assignment was pro forma and that, together with all previous pro forma transactions, the transfer of control or assignment does not result in a change in the actual control of the carrier.

(3) A certification from the assignee/transferee that the assignee/transferee will comply with the state and federal requirements for eligibility as an ETC, including the use of support to provide designated services within the assigned or transferred service area.

*g. Involuntary assignments or transfers of control.* In the case of an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy; to an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; or in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved, the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

*h. Notification of consummation.* An assignee or transferee must notify the board no later than 30 days after either consummation of the proposed assignment or transfer of control or a decision not to consummate the proposed assignment or transfer of control. The notification shall identify the docket number(s) under which the authorization of the assignment or transfer of control was granted.

*i. Amendments other than transactions.* Where a carrier that has been designated by the board as an ETC intends to serve as an ETC in a new service area for the purpose of receiving support from the CAF Phase II auction or for other similar purposes, the carrier shall file a request to amend its designation with a notice of expansion at least 30 days in advance of the expansion and shall certify that the carrier intends to amend its designation to serve as an ETC in the expanded service area.

ITEM 8. Amend rule 199—39.6(476) as follows:

**199—39.6(476) Universal service support for low-income consumers (Lifeline program and Tribal Link Up program).**

**39.6(1) Carrier obligation to offer Lifeline.** Pursuant to 47 CFR § 54.405, which specifies the Lifeline obligations of eligible telecommunications carriers, all eligible telecommunications carriers must make available Lifeline service, as defined in 47 CFR § 54.401, to qualifying low-income consumers, defined as consumers who meet the qualifications for Lifeline as specified in 47 CFR § 54.409. Eligible telecommunications carriers must comply with the minimum service standards specified in 47 CFR § 54.408.

**39.6(2)** No change.

**39.6(3) Consumer qualification for Lifeline.** ~~To constitute a qualifying low-income consumer, a consumer's household income as defined in 47 CFR § 54.400(f) and (h) must be at or below 135 percent of the federal poverty guidelines for a household of that size or such percentage as may be determined by the FCC or the consumer, one or more of the consumer's dependents, or the consumer's household must participate in one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance (Section 8); Low Income Home Energy Assistance Program; National School Lunch Program's free lunch program; or Temporary Assistance for Needy Families. A consumer who lives on tribal lands is eligible for Lifeline service as a qualifying low-income consumer if the consumer meets the qualifications for Lifeline specified in 47 CFR § 54.409(a) or if the consumer, one or more of the consumer's dependents, or the consumer's household participates in one of the following tribal-specific federal assistance~~

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~~programs specified in 47 CFR § 54.409(b): Bureau of Indian Affairs general assistance; tribally administered Temporary Assistance for Needy Families; Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations. To qualify for Lifeline, a consumer must meet the qualifications for Lifeline as specified in 47 CFR § 54.409. A consumer may only receive one Lifeline service from one telephone provider per household.~~

**39.6(4) Determination of subscriber eligibility.** Until the national Lifeline eligibility verifier becomes responsible for the initial determination of Iowa consumers' eligibility for Lifeline assistance, Iowa eligible telecommunications carriers are responsible for establishing consumer eligibility for Lifeline assistance. Iowa eligible telecommunications carriers shall ensure that their Lifeline subscribers are eligible to receive Lifeline services in accordance with 47 CFR § 54.410. Eligible telecommunications carriers shall:

- a. Implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services;
- b. Confirm a subscriber's income-based or program-based eligibility according to 47 CFR § 54.410(b) or (c);
- c. Provide prospective subscribers Lifeline certification forms that comply with 47 CFR § 54.410(d); and
- d. Recertify all subscribers' Lifeline eligibility ~~annually and at 90-day intervals (where subscribers have provided a temporary address)~~ in accordance with 47 CFR § 54.410(f) and (g).

**39.6(5) to 39.6(7)** No change.

ITEM 9. Amend rule 199—39.7(476) as follows:

**199—39.7(476) Schedule of filings.** The filing requirements specified below apply only to filings that are not available to the board through the Universal Service Administrative Company's online filing portal or other means authorized by the FCC.

**39.7(1) Annual Lifeline compliance certifications.**

- a. No change.
- b. *Filing instructions.* FCC Form 555 shall be filed using the board's electronic filing system in accordance with 199—Chapter 14, unless the board directs otherwise by order issued in advance of the filing deadline. The filing shall be titled "Annual Lifeline Eligible Telecommunications Carrier Certification," with a reference to the year for which the certification is filed. The document title for the FCC form shall be "FCC Form 555 Filing." ~~The board's records and information center will assign each filing an FLR docket number, signifying "Federal Lifeline Report."~~ The annual Lifeline compliance certifications are not subject to protection from public disclosure.

**39.7(2) Annual eligible recovery certifications.** On or before the date on which carriers file their access tariffs with the FCC, each price cap and rate-of-return carrier designated by the board as an eligible telecommunications carrier pursuant to 47 U.S.C. § 214(e) shall file with the board certifications of eligible recovery amounts as follows, as required by 47 CFR § 54.304(c) and (d).

- a. and b. No change.
- c. *Filing instructions.* The annual eligible recovery certifications shall be filed using the board's electronic filing system in accordance with 199—Chapter 14, unless the board directs otherwise by order issued in advance of the filing deadline. The filing shall be titled "Connect America Fund – Intercarrier Compensation Recovery and Certification," with a reference to the year for which the certification is filed. The document title for the FCC form shall be "Annual Reporting Requirements for Section 54.304." ~~The board's records and information center will assign each filing an "ETR" docket number, signifying "Eligible Telecommunications Carrier Report."~~

d. No change.

**39.7(3) Annual reporting requirements.**

- a. *FCC Form 481.* On or before July 1 of each year, or other date established by the Federal Communications Commission, each carrier designated by the board as an eligible telecommunications carrier pursuant to 47 U.S.C. § 214(e) for purposes of receiving Lifeline support only shall file with the board the carrier's annual report filed with the FCC pursuant to ~~47 CFR § 54.313 (for ETCs receiving~~

## UTILITIES DIVISION[199](cont'd)

~~high-cost support), or 47 CFR § 54.422(a) (for ETCs receiving Lifeline support only), using FCC Form 481 or such other form designated by the FCC as the form for the annual report for ETCs.~~

*b.* No change.

*c. Annual certifications from carriers seeking to continue to receive high-cost support.* Any carrier seeking to continue to receive federal high-cost universal service support shall file with the board no later than July 1 of each year an affidavit titled "Certification of [Company Name]." The company name shall be the name used on the carrier's initial application for ETC designation and its current name, if its name has changed.

(1) Contents of affidavit. The affidavit shall include the study area code (SAC) number associated with the company. The affidavit shall be sworn and notarized and shall be executed by an authorized corporate officer. The affidavit shall certify that the carrier has used all federal high-cost support provided in the preceding calendar year and will use the all federal high-cost support provided to the carrier receives in the coming calendar year received pursuant to 47 CFR Subchapter B, Part 54, Subparts D and, K, L, and M, as defined in 47 CFR § 54.5, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. ~~In addition, the affidavit shall certify that the carrier has complied with and will continue to comply with applicable service quality standards and consumer protection rules, certify that the carrier has a reasonable amount of back-up power to ensure functionality without an external power source, certify that the carrier is offering a local usage plan comparable to that offered by the incumbent local exchange carrier in the relevant service areas, and certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible carrier is providing equal access within the ETC's designated service area.~~ The affidavit shall also certify to the following: as an eligible telecommunications carrier, the carrier agrees to provide timely responses to board requests for information related to the status of local voice service markets or facilities local markets for supported services, including local markets for supported voice and broadband services.

(2) Certifications subject to complaint or investigation. Any certification filed by a carrier shall be subject to complaint or investigation by the board.

(3) State certification of eligibility. An ETC's certification shall be the basis of the board's certification to the FCC and USAC pursuant to 47 CFR § 54.314 that the ETC has used and will use the support for the purposes intended.

~~*d. Progress reports and extensions on previously filed two-year network improvement and maintenance plans.* In addition to any network improvement plans and associated progress reports required by 47 CFR § 54.313, competitive ETCs whose universal service support is being phased down must file with the board progress reports and extensions on previously filed two-year network improvement and maintenance plans during the phase-down period. Each competitive ETC subject to this requirement shall file a rolling one-year extension and a progress report on its network improvement and maintenance plan detailing the prior calendar year's activities. The progress report shall include coverage area maps detailing progress toward plan targets, an explanation of how much universal service support was received, and how the support was used to improve signal quality, coverage, or capacity. If support was used for something other than improving signal quality, coverage, or capacity, the report shall include an explanation of how the support was used. The report shall identify any network improvement targets that have not been met and shall include an explanation of why targets were not met. The report shall indicate if there have not been any changes to the ETC's coverage area and shall include an explanation of why no changes were made. Any reporting of expense and investment information shall include an explanation of how the expenses and investments benefited specific wire centers in the ETC's designated service area. For purposes of this paragraph, "wire center" shall be defined as determined by the North American numbering plan administrator.~~

~~*e. d. Filing instructions for annual report filings.* FCC Form 481 (including rate floor data filed pursuant to 47 CFR § 54.313(h)) if Form 481 is required to be filed with the board, the affidavit certifying compliance, any required network improvement plan progress report and extension, and FCC Form 690 shall be filed using the board's electronic filing system in accordance with 199—Chapter 14, unless the board directs otherwise by order issued in advance of the filing deadline. The filing shall be titled~~

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“Annual Eligible Telecommunications Carrier Reporting Requirements,” with a reference to the year for which the report is filed. The document title for the FCC form shall be “FCC Form 481 Filing” or “FCC Form 690 Filing,” as appropriate. The document title for the affidavit certifying compliance shall be “Carrier Certification.” ~~The document title for any required network improvement plan report shall be “Network Improvement Plan Report.” The board’s records and information center will assign each filing an FER docket number, signifying “Federal ETC Report,” and indicating the year of filing and the carrier’s company number.~~

*f. e. Confidential information.*

(1) Requests to withhold from public inspection ~~network improvement and maintenance plan extensions and progress reports,~~ financial reports, and loop or line count data included in the rate floor data reports included in the annual report filings will be deemed granted as provided in 199—paragraph 1.9(5) “c.”

(2) If a carrier considers other information filed on or with FCC Form 481 to be confidential, the carrier shall file both a public version and a confidential version of the material pursuant to 199—14.12(17A,476), and a separate request for confidential treatment pursuant to 199—1.9(22) and Iowa Code section 22.7. Where a request for confidential treatment of information filed on or with FCC Form 481 is based on a protective order issued by the FCC, the carrier’s request for confidential treatment shall include a reference to the relevant protective order.

**39.7(4) Rate floor data and rate floor data updates.**

a. On or before ~~January 2~~ July 1 of each year, or other date established by the FCC, each carrier designated by the board as an eligible telecommunications carrier pursuant to 47 U.S.C. § 214(e) that is subject to the FCC’s mandatory rate floor data reporting requirements in ~~47 CFR § 54.313(h)(2)~~ 47 CFR § 54.313(h)(1) shall file with the board the ~~annual rate floor data update~~ filed with the FCC. Carriers that ~~are required to file or that elect to file rate floor data updates with the FCC on January 2 of each year pursuant to 47 CFR § 54.313(h)(2)~~ shall also file the updates with the board.

b. Filing instructions for rate floor data ~~and rate floor data updates.~~ The rate floor data ~~and rate floor data updates~~ shall be filed using the board’s electronic filing system in accordance with 199—Chapter 14, unless the board directs otherwise by order issued in advance of the filing deadline. The filing shall be titled “FCC Section 54.313(h)(1) Rate Floor Data” or “FCC Section 54.313(h)(2) Rate Floor Data Update,” with a reference to the year for which the update is filed. The document title for the report shall be “Rate Floor Data” or “Rate Floor Data Update,” ~~as appropriate. The board’s records and information center will assign each filing an FER docket number, signifying “Federal ETC Report” and indicating the year of filing and the carrier’s company number.~~

c. No change.

ITEM 10. Amend subrule 39.8(1) as follows:

**39.8(1)** The board may permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give ~~90~~ 30 days’ advance notice to the board of such relinquishment. A carrier that is granted ETC status in connection with a connect America fund Phase II auction or other similar conditional support mechanism but that ultimately does not receive the support shall, within 30 days after the Federal Communications Commission issues a public notice regarding the award of support, file a notice of relinquishment of the carrier’s designation for any service areas where the carrier is not awarded funds and does not plan to offer service.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/16/19.