



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2017

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Dec. 28 '16	Jan. 18 '17	Feb. 7 '17	Feb. 22 '17	Feb. 24 '17	Mar. 15 '17	Apr. 19 '17	July 17 '17
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sep. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sep. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sep. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sep. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '18
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sep. 13	Oct. 18	Jan. 15 '18
July 14	Aug. 2	Aug. 22	Sep. 6	Sep. 8	Sep. 27	Nov. 1	Jan. 29 '18
July 28	Aug. 16	Sep. 5	Sep. 20	Sep. 22	Oct. 11	Nov. 15	Feb. 12 '18
Aug. 11	Aug. 30	Sep. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '18
Aug. 23	Sep. 13	Oct. 3	Oct. 18	***Oct. 18***	Nov. 8	Dec. 13	Mar. 12 '18
Sep. 8	Sep. 27	Oct. 17	Nov. 1	***Nov. 1***	Nov. 22	Dec. 27	Mar. 26 '18
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Dec. 13	Jan. 3 '18	Jan. 23 '18	Feb. 7 '18	Feb. 9 '18	Feb. 28 '18	Apr. 4 '18	July 2 '18
Dec. 27	Jan. 17 '18	Feb. 6 '18	Feb. 21 '18	Feb. 23 '18	Mar. 14 '18	Apr. 18 '18	July 16 '18

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Friday, May 5, 2017	May 24, 2017
25	Wednesday, May 17, 2017	June 7, 2017
26	Friday, June 2, 2017	June 21, 2017

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Wednesday, May 3, 2017, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Rules of professional ethics and conduct, 3.15, ch 13, 14.3 Notice **ARC 3019C** 4/12/17

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Out-of-state travel by state employees, 64.10(2) Filed **ARC 3041C** 4/26/17

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Reinstatement to active status—reporting of continuing education hours, 3.3(4) Filed **ARC 3022C** 4/12/17

Rules of conduct, 4.1 Notice **ARC 3015C** 4/12/17

Civil penalties against nonregistrant—update of cross reference, 7.3 Notice **ARC 3014C** 4/12/17

EARLY CHILDHOOD IOWA STATE BOARD[249]

Early childhood Iowa initiative, 1.3, 1.4(2), 1.6(2), 1.8 Notice **ARC 3011C** 4/12/17

ECONOMIC DEVELOPMENT AUTHORITY[261]

Iowa tourism grant program, amendments to ch 42 Filed **ARC 3023C** 4/12/17

EDUCATIONAL EXAMINERS BOARD[282]

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Executive director; complaints; fees; licenses and endorsements; renewals;

authorizations—rolling review of rules, 1.2, 11.4, 12.3, 12.6, 12.8, 13.17, 18.4, 18.6,

20.8, 22.3, 22.5 Notice **ARC 3012C** 4/12/17

EDUCATION DEPARTMENT[281]

Open enrollment—method of finance, special education students, 17.10, 17.11 Notice **ARC 3031C** 4/26/17

Programs for at-risk early elementary students, ch 65 Filed **ARC 3042C** 4/26/17

Administrative advancement and recruitment program, rescind ch 94 Notice **ARC 3030C** 4/26/17

HUMAN SERVICES DEPARTMENT[441]

Decrease in statewide average private-pay cost of nursing facility services and of charges for institutional care, 75.23(3), 75.24(3)"b" Notice **ARC 3017C** 4/12/17

Increase in maximum Medicaid rate for intermediate care facilities for individuals with an intellectual disability, 75.24(3)"b" Notice **ARC 3016C** 4/12/17

Foster care—alignment with child care regulations, contractor preservice training, update of terminology, amendments to chs 108, 112 to 114, 116, 117, 156, 202 Notice **ARC 3040C** 4/26/17

Interstate compact on the placement of children—use of national electronic interstate compact enterprise (NEICE) system, amendments to ch 142 Notice **ARC 3020C** 4/12/17

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Synthetic guaranteed investment contracts, 96.3, 96.4, 96.5(2)"a," 96.10 Notice **ARC 3032C** 4/26/17

Internal audit function requirement, amendments to ch 98 Notice **ARC 3033C** 4/26/17

INTERIOR DESIGN EXAMINING BOARD[193G]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Description of organization; disciplinary authority, investigations and proceedings; grounds for discipline, amendments to chs 1, 5 to 7 Filed **ARC 3024C** 4/12/17

Registration; continuing education; renewal and reinstatement, amend chs 2, 3; rescind ch 8 Filed **ARC 3025C** 4/12/17

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Federal occupational safety and health standards—adoption by reference, 10.20, 26.1 Notice **ARC 3029C** 4/26/17

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Deer hunting by residents, 106.6(6), 106.7, 106.10(5) Notice **ARC 3013C**..... 4/12/17

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Telepharmacy practice, amend 8.35(2); adopt ch 13 Notice **ARC 3037C**..... 4/26/17

Nonresident pharmacy practice, ch 19 Notice **ARC 3039C**..... 4/26/17

Compounding practices; outsourcing facilities, amend ch 20; adopt ch 41 Notice **ARC 3038C**..... 4/26/17

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Infection control at barbershops and barber schools, amendments to ch 22 Notice **ARC 3021C** 4/12/17

REVENUE DEPARTMENT[701]

Renewable fuels tax credits and rebates, amend chs 12, 42, 52; adopt ch 250 Filed **ARC 3043C**..... 4/26/17

Excise tax rate on motor fuels, 68.2(1) Notice **ARC 3036C** 4/26/17

TRANSPORTATION DEPARTMENT[761]

Public records and fair information practices, 4.4(2)“b,” 4.9 Filed **ARC 3026C** 4/12/17

Real property acquisition and relocation assistance—adoption by reference of section II of uniform manual, 111.1 Notice **ARC 3035C**..... 4/26/17

Sanctions—service of notice, 615.37 Filed **ARC 3027C** 4/12/17

Public transit system funding, amendments to chs 920, 921, 924 Notice **ARC 3034C** 4/26/17

WORKERS’ COMPENSATION DIVISION[876]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Payroll tax tables, 8.8 Filed **ARC 3044C**..... 4/26/17

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Employer records and reports; claims and benefits; overpayment recovery, amendments to chs 22, 24, 25 Notice **ARC 3028C** 4/12/17

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Senator Jack Whitver
4019 NE Bellagio Circle
Ankeny, Iowa 50021

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Legal Counsel
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Telephone (515)281-6048
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Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

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

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

Representative Art Staed
2141 Coldstream Avenue NE
Cedar Rapids, Iowa 52402

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

Colin Smith
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

ACCOUNTANCY EXAMINING BOARD[193A]

Rules of professional ethics and conduct, 3.15, ch 13, 14.3 IAB 4/12/17 ARC 3019C	Professional Licensing and Regulation Bureau Offices 200 E. Grand Ave., Suite 350 Des Moines, Iowa	May 2, 2017 8:30 a.m.
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ARCHITECTURAL EXAMINING BOARD[193B]

Rules of conduct, 4.1 IAB 4/12/17 ARC 3015C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	May 2, 2017 2 p.m.
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Civil penalties against nonregistrant—update of cross reference, 7.3 IAB 4/12/17 ARC 3014C	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	May 2, 2017 2 p.m.
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EARLY CHILDHOOD IOWA STATE BOARD[249]

Early childhood Iowa initiative, 1.3, 1.4(2), 1.6(2), 1.8 IAB 4/12/17 ARC 3011C	Room 145 Lucas State Office Bldg. Des Moines, Iowa	May 2, 2017 1 p.m.
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EDUCATIONAL EXAMINERS BOARD[282]

Executive director; complaints; fees; licenses and endorsements; renewals; authorizations—rolling review of rules, 1.2, 11.4, 12.3, 12.6, 12.8, 13.17, 18.4, 18.6, 20.8, 22.3, 22.5 IAB 4/12/17 ARC 3012C	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	May 3, 2017 1 p.m.
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EDUCATION DEPARTMENT[281]

Open enrollment—method of finance, special education students, 17.10, 17.11 IAB 4/26/17 ARC 3031C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	May 16, 2017 11 a.m. to 12 noon
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Administrative advancement and recruitment program, rescind ch 94 IAB 4/26/17 ARC 3030C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	May 16, 2017 10 to 11 a.m.
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INSURANCE DIVISION[191]

Synthetic guaranteed investment contracts, 96.3, 96.4, 96.5(2)“a,” 96.10 IAB 4/26/17 ARC 3032C	Conference Rm. 4 North, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	May 17, 2017 1:30 p.m.
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Internal audit function requirement, amendments to ch 98 IAB 4/26/17 ARC 3033C	Conference Rm. 4 North, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	May 17, 2017 2:30 p.m.
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LABOR SERVICES DIVISION[875]

Federal occupational safety and health standards—adoption by reference, 10.20, 26.1 IAB 4/26/17 ARC 3029C	150 Des Moines St. Des Moines, Iowa	May 17, 2017 10 a.m. (If requested)
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NATURAL RESOURCE COMMISSION[571]

Deer hunting by residents, 106.6(6), 106.7, 106.10(5) IAB 4/12/17 ARC 3013C	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 2, 2017 11:30 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Infection control at barbershops and barber schools, amendments to ch 22 IAB 4/12/17 ARC 3021C	Fifth Floor Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 2, 2017 8 to 8:30 a.m.
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TRANSPORTATION DEPARTMENT[761]

Real property acquisition and relocation assistance—adoption by reference of section II of uniform manual, 111.1 IAB 4/26/17 ARC 3035C	Third Floor Conference Room Administration Bldg. 800 Lincoln Way Ames, Iowa	May 18, 2017 10 a.m. (If requested)
Public transit system funding, amendments to chs 920, 921, 924 IAB 4/26/17 ARC 3034C	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	May 19, 2017 10 a.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 3031C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 17, “Open Enrollment,” Iowa Administrative Code.

These proposed amendments are necessary to align Chapter 17 with legislative changes made in 2016 Iowa Acts, chapter 1036 (House File 2336). Two internal cross references and outdated terminology for students requiring special education are also corrected.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested persons may submit comments orally or in writing by May 16, 2017, at 4:30 p.m. Comments on the proposed amendments should be directed to Phil Wise, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail phil.wise@iowa.gov; or fax (515)242-5988.

A public hearing will be held on May 16, 2017, from 11 a.m. to 12 noon in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling (515)281-5295.

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

These amendments are intended to implement Iowa Code section 282.18(7).

The following amendments are proposed.

ITEM 1. Amend subrule 17.10(1) as follows:

17.10(1) Full-time pupils. Unless otherwise agreed to in the mediation under paragraph 17.4(6)“b,” for full-time pupils, the resident district shall pay each year to the receiving district an amount equal to the sum of the state cost per pupil for the previous year; plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4 and; plus either the teacher leadership supplemental supplement state cost per pupil for the previous year as provided in Iowa Code section 257.9 257.9(11) or the teacher leadership supplement foundation aid allocation for fiscal year 2017 as provided in Iowa Code section 284.13(1)“e,” whichever the district received, if both the district of residence and the receiving district received either of the supplements. If the pupil participating in open enrollment is also an eligible pupil under Iowa Code section 261E.6 (postsecondary enrollment options program), the receiving district shall pay the tuition reimbursement amount to an eligible postsecondary institution as provided in Iowa Code section 261E.7.

ITEM 2. Amend subrule 17.10(5) as follows:

17.10(5) Method of payment. These moneys shall be paid to the receiving district ~~on a quarterly basis~~ by the first resident district according to the timeline in Iowa Code section 282.20(3) (on or before February 15 and July 15 of each year). Payments shall be made to the receiving district in a timely manner. The district cost per pupil for nonspecial education students shall be the cost calculated each year for the school year preceding the school year for which the open enrollment takes place. Costs for special education students shall be as outlined in rule 281—17.11(282).

EDUCATION DEPARTMENT[281](cont'd)

ITEM 3. Amend rule 281—17.11(282) as follows:

281—17.11(282) Special education students. If a parent/guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B, this request shall receive consideration under the following conditions. The request shall be granted only if the receiving district is able to provide within that district the appropriate special education program for that student in accordance with Iowa rules of special education, ~~281—41.84(256B,273,34CFR300)~~ 281—Chapter 41. This determination shall be made by the receiving district in consultation with the resident district and the appropriate area education agency(ies) before approval of the application. In a situation where the appropriateness of the program is in question, the pupil shall remain enrolled in the program of the resident district until a final determination is made. If the appropriateness of the special education program in the resident district is questioned by the parent, then the parent ~~should~~ may request a due process hearing as provided by ~~281—41.113(1)~~ 281—41.507(256B,34CFR300) or a mediation conference as provided by ~~281—41.506(256B,34CFR300)~~. If the appropriateness of the special education program in the receiving district is at issue, the final determination of the appropriateness of a special education instructional program shall be the responsibility of the director of special education of the area education agency in which the receiving district is located, based upon the decision of a ~~diagnostic-education~~ the child's individualized education program team, ~~from the receiving district~~ which shall include a representative from the resident district that has the authority to commit district resources, and which decision is subject to the parent's procedural safeguards.

District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil shall be as provided by rule 281—17.9(282).

The district of residence shall pay to the receiving district on a ~~quarterly~~ quarterly basis the schedule set forth in subrule 17.10(5) the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the ~~fourth quarter~~ final payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district shall provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency.

ARC 3030C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to rescind Chapter 94, “Administrative Advancement and Recruitment Program,” Iowa Administrative Code.

EDUCATION DEPARTMENT[281](cont'd)

The statutory authority for this chapter was repealed by 2013 Iowa Acts, chapter 88, section 37.

Interested individuals may make written comments on the proposed amendment on or before May 16, 2017, at 4:30 p.m. Comments on the proposed amendment should be directed to Nicole M. Proesch, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; e-mail nicole.proesch@iowa.gov; or fax (515)242-5988.

A public hearing will be held on May 16, 2017, from 10 to 11 a.m. in the State Board Room, Second Floor, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling (515)281-5295.

This amendment is not subject to waiver.

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

This amendment is intended to implement 2013 Iowa Acts, chapter 88, section 37.

The following amendment is proposed.

Rescind and reserve **281—Chapter 94.**

ARC 3040C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 108, “Licensing and Regulation of Child-Placing Agencies,” Chapter 112, “Licensing and Regulation of Child Foster Care Facilities,” Chapter 113, “Licensing and Regulation of Foster Family Homes,” Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” Chapter 116, “Licensing and Regulation of Residential Facilities for Mentally Retarded Children,” Chapter 117, “Foster Parent Training,” Chapter 156, “Payments for Foster Care,” and Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

These proposed amendments revise outdated terminology and regulations and align the rules with child care regulations and needed revisions for contractor requirements for preservice training for the recruitment, retention, training and support contracts effective July 1, 2017.

Any interested person may make written comments on the proposed amendments on or before May 16, 2017. 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. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code section 217.6.

The following amendments are proposed.

ITEM 1. Amend rule 441—108.4(238) as follows:

441—108.4(238) Staff qualifications. ~~An agency employee or volunteer shall be a person of good character, emotional stability, and have necessary ability, experience, and education to perform the duties~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~assigned. An employee or volunteer shall not have a criminal record or founded child abuse report, unless the department has evaluated the crime or founded report and concluded that the crime or report does not merit prohibition of employment or licensure.~~

108.4(1) Qualifications for all staff. A child-placing agency employee or volunteer shall be emotionally stable and have the experience and education to perform the duties assigned. The agency shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has been convicted of a crime involving the mistreatment or exploitation of a child. The agency shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has a record of a criminal conviction or founded child abuse report unless the department has evaluated the crime or abuse and determined that the crime or abuse does not merit prohibition of volunteering or employment. If the child-placing agency is out of state, the agency shall complete that state's child abuse record check and a criminal record check.

a. If a record of criminal conviction or founded child abuse exists, the person shall be offered the opportunity to complete and submit Iowa's Record Check Evaluation form.

b. In its evaluation, the department shall consider:

(1) The nature and seriousness of the crime or founded abuse in relation to the employment or volunteer position sought;

(2) The time elapsed since the commission of the crime or founded abuse;

(3) The circumstances under which the crime or founded abuse was committed;

(4) The degree of rehabilitation; and

(5) The number of crimes or founded abuses committed by the person involved.

c. The agency shall maintain the following information with respect to each staff person:

(1) Documentation that a criminal record check with the Iowa division of criminal investigation has been completed on the staff person prior to the staff person's providing any care or service directly or indirectly to children under the care of the agency. A copy of the department's evaluation of the criminal record check shall be kept in the staff record.

(2) A written, signed and dated statement furnished by the staff person which discloses any founded reports of child abuse on the person that may exist prior to the staff person's providing any care or services to or on behalf of the facility.

(3) Documentation that a child abuse record check of the staff person has been completed with the Iowa central abuse registry for any founded reports of child abuse prior to the staff person's providing any care or services directly or indirectly to children under the care of the agency. A copy of the department's evaluation of this child abuse record check shall be kept in the staff record.

~~108.4(1)~~ 108.4(2) *Contracted employees.* A child-placing agency which contracts for services shall ensure that contracted employees meet the same qualifications, training, and evaluation requirements as those of workers in employed positions. A child-placing agency is responsible for the services provided by contracted providers as well as volunteers and agency employees.

~~108.4(2)~~ 108.4(3) *Qualifications of administrator.* An agency administrator shall possess one of the following:

a. and b. No change.

~~108.4(3)~~ 108.4(4) *Caseworker qualifications.* Therapy and counseling services, psychosocial evaluation and assessment and care plan development shall be provided by staff who meet one of the following minimum education and experience criteria:

a. to e. No change.

~~108.4(4)~~ 108.4(5) *Person filling more than one position.* A person functioning in more than one position specified by these rules shall meet the requirements for each of the positions the person fills.

ITEM 2. Amend rule 441—112.1(237) as follows:

441—112.1(237) Applicability. This chapter relates to licensing procedures for all child foster care facilities authorized by Iowa Code chapter 237. Rules relating to specific types of facilities are located in 441—Chapter 113, "Licensing and Regulation of Foster Family Homes," 441—Chapter 114,

HUMAN SERVICES DEPARTMENT[441](cont'd)

“Licensing and Regulation of All Group Living Foster Care Facilities for Children,” 441—Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” and 441—Chapter 116, “Licensing and Regulation of Residential Facilities for ~~Mentally Retarded~~ Children With an Intellectual Disability.”

This rule is intended to implement Iowa Code chapter 237.

ITEM 3. Amend rule **441—112.2(237)**, definitions of “Applicant,” “Foster family home,” “Group facility” and “Residential facility for mentally retarded children,” as follows:

“*Applicant*.”

1. ~~The applicant for~~ For a foster family home license, the applicant is the ~~foster parent or parents~~ person or persons applying.

2. For a proprietary child caring facility, the applicant is the owner of the facility.

3. For facilities having a board of directors, the applicant may be the president of the board or the board’s designee.

“*Foster family home*” means a home in which an individual person or persons or a married couple who wishes to provide or is providing, for a period exceeding 24 consecutive hours, board, room, and care for a child in a single family living unit.

“*Group facility*” means a community residential facility, a comprehensive residential facility, or a residential facility for ~~mentally retarded~~ children with an intellectual disability.

“*Residential facility for ~~mentally retarded~~ children with an intellectual disability*” means any residential facility which serves children ~~who meet the definition of mentally retarded~~ with an intellectual disability as defined in Iowa Code chapter 222.

ITEM 4. Amend paragraph **112.3(1)“a”** as follows:

a. *Foster family care*. A person wishing to apply to be a foster parent shall contact the department’s recruitment and retention contractor at ~~1-800-243-0756~~ in the applicable service area to request an application packet. This procedure also applies to:

(1) and (2) No change.

ITEM 5. Amend paragraph **112.3(4)“a”** as follows:

a. Before it results in adverse action, a founded abuse report on a director, a sole proprietor involved in the facility’s operation, or any facility staff or foster parent applicant shall be evaluated by the department to determine if the abuse merits prohibition of employment or licensure.

ITEM 6. Amend rule 441—112.4(237) as follows:

441—112.4(237) License.

112.4(1) and **112.4(2)** No change.

112.4(3) When corrective action is completed on or before the date specified on a provisional or renewal license, a full license shall be issued for the remainder of the licensure term.

112.4(4) When the corrective action is not completed by the date specified on a provisional or renewal license, a full license shall be denied.

112.4(5) No change.

112.4(6) A foster family home license shall be approved for a term of one year for the first and second years of licensure. Thereafter, the license shall be approved for a term of two years unless it is determined by the administrator that a one-year license ~~may~~ shall be issued. A group facility license shall be approved for a term of one to three years according to the following criteria:

a. to c. No change.

This rule is intended to implement Iowa Code sections 237.3 and 237.5.

ITEM 7. Amend rule 441—112.10(232) as follows:

441—112.10(232) Mandatory reporting of child abuse.

112.10(1) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

112.10(2) *Required training.* ~~Within one year of becoming a~~ After completing the initial mandatory reporter training, and every five years thereafter, any person required to make a report under subrule 112.10(1) shall complete two hours of training relating to the identification and reporting of child abuse.

112.10(3) No change.

112.10(4) *Training content.*

a. Training in child abuse identification shall include physical and behavioral signs of physical abuse, denial of critical care, ~~and~~ sexual abuse and other categories of child abuse pursuant to Iowa Code section 232.68.

b. No change.

112.10(5) No change.

This rule is intended to implement Iowa Code section 232.69.

ITEM 8. Amend rule 441—112.11(237) as follows:

441—112.11(237) Required training on the reasonable and prudent parent standard. Each group facility shall have an on-site official authorized to apply the reasonable and prudent parent standard as defined in rule 441—202.1(234). Within one year of being identified as an authorized on-site official, each authorized official shall complete the same department-approved training on the reasonable and prudent parent standard in the same manner as required for prospective foster parents and referenced in 441—subrule ~~117.8(6)~~ 117.1(4).

ITEM 9. Amend rule **441—113.2(237)**, definition of “Foster family home,” as follows:

“*Foster family home*” means a home in which an individual person or persons or a married couple who wishes to provide or is providing, for a period exceeding 24 consecutive hours, board, room, and care for a child in a single family living unit.

ITEM 10. Adopt the following **new** definitions of “Health care provider” and “Public water supply system (PWS)” in rule **441—113.2(237)**:

“*Health care provider*” means a licensed medical doctor, doctor of osteopathy, physician assistant or advanced registered nurse practitioner who completes a health report.

“*Public water supply system (PWS)*” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

ITEM 11. Amend subrule 113.3(1) as follows:

113.3(1) Application. Applications for an initial license to operate a foster family home shall be submitted and processed as directed in rule 441—112.3(237). In addition to the application form, the applicant shall submit the following forms during the licensing process:

a. and b. No change.

~~e. Form 470-3226, HIV General Agreement, to indicate choices about caring for children who have or are at risk for HIV infection.~~

~~d. c.~~ Form 470-0693, Foster Care Private Water Supply Survey, if applicable.

~~e. d.~~ Form 470-4657, Floor Plan. A The applicant or the recruitment and retention provider shall complete a drawing of the floor plan of the family’s home.

~~f. e.~~ If licensed to drive, a copy of the driver’s license and motor vehicle insurance.

ITEM 12. Amend subrule 113.3(4) as follows:

113.3(4) Home study. The worker for the recruitment and retention contractor shall complete a family home study.

a. *Process.* Information for the home study is gathered primarily through the required preservice training as described in rule 441—117.1(237). In addition:

(1) The worker shall hold at least two face-to-face interviews with the applicant with one of the interviews taking place in the applicant’s home.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) The worker shall hold at least one face-to-face interview with each member of the household in the applicant's home.

(3) ~~At least one of the interviews shall take place at the applicant's home.~~ A physical inspection of the home is required. The worker shall use the Foster Family Survey Report to complete the physical inspection of the home to verify compliance with the licensing and regulation standards in this chapter.

(4) No change.

b. *Family assessment topics.* The assessment of the prospective foster family shall evaluate the family's ability to parent a special needs child. The assessment shall include the following:

(1) to (5) No change.

(6) ~~The~~ An evaluation of the applicant's willingness to accept a child who has medical problems (such as HIV), ~~mental retardation~~ an intellectual disability, or emotional or behavioral problems. The applicant shall complete Form 470-3226, HIV General Agreement, to indicate choices about caring for children who have or are at risk for HIV infection.

(7) to (16) No change.

c. *Written report.* The recruitment and retention contractor shall prepare a written report of the family assessment using ~~Form 470-4029, PS-MAPP Family Profile Summary, and RC-0025, Home Study Summary and Recommendation Outline~~ Form 470-5436, Resource Parent Home Study. The ~~summary~~ Resource Parent Home Study shall include a recommendation for the number, age, sex, characteristics, and special needs of a child or children the family can best parent; and any other pertinent information in making the licensing recommendation. The home study shall be maintained in the foster family record.

ITEM 13. Amend paragraph **113.3(5)“a”** as follows:

a. Upon approval, the department shall issue the applicant a foster family home license as described at rule 441—112.4(237) ~~to care for.~~ The license shall indicate the licensed capacity for the number of foster children ~~allowed~~ approved for placement in the foster family home under subrule 113.4(1).

ITEM 14. Amend paragraph **113.4(1)“c”** as follows:

c. Meet one of the following criteria:

(1) ~~A variance is necessary to keep a sibling group together. No variance shall be granted if the foster home is at licensed capacity and there are no members of the sibling group in the foster home.~~

(2) (1) The foster parents have three or more children in the home and have shown the ability to parent a large number of children. A licensing variance may be approved at initial or renewal licensure to allow the placement of up to three foster children as set forth in the chart below:

No. of Children in the Home (birth/relative/adoptive placements)	Maximum License Capacity:	
	Without variance	With variance
0 children	5	Not applicable
1 child	4	Not applicable
2 children	3	Not applicable
3 children	2	3
4 children	1	3
5 or more children	Not applicable	3

(3) (2) A variance beyond the maximum capacity of the foster home license is needed for the placement of a specific child in foster family care. A child-specific variance shall end when that child leaves the placement or any other change brings the family into licensed capacity. Unless a variance is needed for the placement of a sibling(s) of a foster child already in the home, or to keep siblings together, the maximum number of children in the home shall not exceed eight. A family may have both a licensing and a child-specific variance concurrently.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 15. Amend subrule 113.5(2) as follows:

113.5(2) Grounds.

- a. No change.
- b. The foster child shall be adequately supervised and protected against hazards including, but not limited to, traffic, pools bodies of water, railroads, waste material, and contaminated water. The foster parent shall provide environmental protections such as door alarms, baby monitors, fences, and foliage barriers.
- c. When there is a swimming pool on the premises:
 - (1) An aboveground or in-ground swimming pool that is not fenced shall be covered whenever the pool is not in use. The cover shall meet or exceed the ASTM International (formerly known as the American Society for Testing and Materials) specification intended to reduce the risk of drowning by inhibiting access to the water by children under five years of age.
 - (2) An uncovered aboveground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high. The height of the side of the pool may be included.
 - (3) An uncovered in-ground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high and flush with the ground.
- d. If children are allowed to use an aboveground or in-ground swimming pool, or other body of water:
 - (1) Equipment needed to rescue a child or adult shall be readily accessible.
 - (2) The foster parent shall accompany the children and provide constant and active supervision while the children use the pool.

ITEM 16. Amend subrule 113.5(3) as follows:

113.5(3) Bedrooms for foster children.

- a. Bedrooms shall either have been constructed for the purpose of providing sleeping accommodation or remodeled for sleeping to provide proper heat and ventilation. Bedroom additions to a home shall meet building code requirements. All bedrooms used by foster children ~~must~~ shall have:
 - (1) and (2) No change.
 - (3) An unobstructed, operable window that opens from the inside that is large enough to allow for an unrestricted exit by a foster child;
 - (4) A closet, wardrobe, armoire, or dresser for the child's clothes; and
 - (5) A standard bed, ~~or a crib~~ for infants and toddlers who cannot safely use a standard bed, a crib or crib-like furniture which has a waterproof mattress covering and sufficient bedding to enable a child to rest comfortably and which meets the current standards or recommendations from the U.S. Consumer Product Safety Commission or ASTM International for juvenile products for each child under two years of age if developmentally appropriate. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Safe infant sleep practices shall conform to the following standards:
 1. Infants shall always be placed on their backs for sleep.
 2. Infants shall be placed on a firm mattress with a tight fitting sheet that meets U.S. Consumer Product Safety Commission federal standards.
 3. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any item not designed for sleeping including, but not limited to, an infant seat, car seat, swing, or bouncy seat.
 4. No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.
 5. No co-sleeping shall be allowed.
 6. Sleeping infants shall be actively observed by sight and sound.
 7. If an alternate sleeping position is needed, a signed physician authorization with statement of medical reason is required.
- b. to d. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

e. Video or surveillance cameras are not allowed in children's bedrooms or in any bathroom in the home.

~~e. f.~~ Bedrooms belowground shall:

(1) to (4) No change.

(5) Have a finished ceiling such as drywall or a drop ceiling; and

(6) No change.

ITEM 17. Amend subrule 113.5(6) as follows:

113.5(6) Physical care standards for foster children.

a. Grouping children in bedrooms shall take into consideration the age and sex of children.

(1) No change.

~~(2) Foster children over the age of 2 shall not share a bedroom with any person over the age of 18 in the home unless approved by the social work administrator or designee.~~

~~(3) (2)~~ Foster children shall not share a bed with any other child. The social work administrator may approve a waiver of this policy.

~~b. Foster parents shall have a designated bedroom.~~ Children 2 years of age or older shall be provided bedroom space other than in the foster parents' bedroom. Foster children under the age of 2 may share a bedroom with the foster parent.

c. There shall be ~~provisions a plan~~ for isolating ~~from other~~ healthy children; from a child who is ill or suspected of having a contagious disease.

d. No change.

~~e. Linens shall be changed at least weekly and more frequently for children with bladder or bowel control problems.~~ Bedding shall be clean, odor-free, and free of urine and feces.

~~f. Waterproof mattress covers shall be provided for children under three years of age and for any child who lacks bowel or bladder control.~~

~~g. Individual space shall be provided for the child's clothes and personal possessions.~~

~~h. f.~~ Foster parents shall follow universal precautions to reduce exposure to bloodborne pathogens and other infectious materials when providing care to all children placed in their physical custody.

~~i. Children under the age of 1 year shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician.~~

~~j. g.~~ Smoking and vaping shall be prohibited in the foster home or any vehicle when the foster child is present.

ITEM 18. Amend paragraph **113.5(10)“a”** as follows:

a. The heating plant shall have a capacity to maintain a temperature of approximately 65 degrees Fahrenheit: in the bedrooms with the door closed.

~~(1) At a point 24 inches from the floor during the day in severe weather, and~~

~~(2) In the bedrooms with the door closed.~~

ITEM 19. Amend rule 441—113.6(237) as follows:

441—113.6(237) Sanitation, water, and waste disposal.

113.6(1) Food preparation and storage. Food preparation areas shall be clean, and there shall be facilities to store perishable food at cold temperatures and storage areas for other nonperishable food supplies.

~~**113.6(2) Milk supply.** Fluid or powdered milk sufficient to meet the needs of the foster child shall be provided.~~

~~**113.6(3) 113.6(2) Public water supply.** The water supply is approved when the water is obtained from a public water supply system.~~

~~**113.6(4) 113.6(3) Private water supply.**~~

a. Each privately operated water supply shall be annually checked tested prior to initial licensure and annually tested before the license is renewed and evaluated for obvious deficiencies such as open or loose well tops or platforms and poor drainage around the wells.

b. to d. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

e. When the water sample is not approved, no foster family home license shall be issued until the foster parents provide a written statement that foster children will be provided potable water, including where the water will be obtained, and how it will be transported and stored.

(1) No change.

(2) ~~Annual~~ When the family has made ongoing alternative arrangements for the use of safe, potable water, annual testing of the water may be waived after the private water supply has tested unpotable for three consecutive years when the family has made ongoing alternative arrangements for the use of safe, potable water.

~~113.6(5)~~ **113.6(4)** *Sewage treatment.*

a. and *b.* No change.

~~113.6(6)~~ **113.6(5)** *Garbage storage and disposal.*

a. and *b.* No change.

This rule is intended to implement Iowa Code section 237.3.

ITEM 20. Amend rule 441—113.7(237) as follows:

441—113.7(237) Safety.

113.7(1) *Fire protection for bedrooms.* Any floor of a house, including the basement, ~~used for the sleeping of foster children~~ shall be equipped with the following:

a. A working smoke detector. On floors that are used for sleeping, the smoke detector shall be in a location where sleeping areas can be alerted. For hearing-impaired children, the foster parent shall install a smoke detector in the child's bedroom that will use an alternative means of waking the child.

b. and *c.* No change.

113.7(2) No change.

113.7(3) *Safety plan.* The family shall have an emergency safety plan to be used ~~in case of~~ for fire, tornado, blizzard, flood, other natural or manmade disasters, accidents, medical issues, and other life-threatening situations for children in out-of-home placements. The safety plans shall state the action that the foster parents and children are to take in each situation that may occur.

a. ~~Safety~~ The safety plans for fire and tornadoes shall be documented and reviewed with foster children at the time of placement and. Fire and tornado plans shall be practiced with the foster children throughout the year within one week of placement and no less than annually thereafter.

b. ~~In the case of~~ a disaster requiring evacuation of the foster home, the foster parents shall notify the department of the evacuation and the address and telephone number of the foster parents' temporary residence within 48 24 hours after evacuation.

c. No change.

113.7(4) *Medications and poisonous substances.* All ~~prescription~~ medications and poisonous, toxic, or otherwise unsafe substances shall be kept ~~in a locked storage container out of the reach of~~ secured from access by children.

a. All prescription medication shall be administered as prescribed and documented in a ~~prescription~~ medication log that is given to the child's department caseworker when the child leaves the placement.

b. No change.

113.7(5) *Weapons.* All weapons, firearms, and ammunition shall be inaccessible to a child of any age.

a. and *b.* No change.

c. The weapons, firearms, and ammunition storage unit shall not share the same key or matching security code. If a key is used, the key shall be stored in a place inaccessible to the foster child.

~~*e.*~~ *d.* Any motor vehicles used to transport foster children shall not contain a loaded gun, and any ammunition in the vehicle shall be kept in a separate, locked container.

~~*e.*~~ *e.* Foster parents who have a permit to carry a firearm shall sign Form 470-4657, Firearms Safety Plan. Foster parents who have firearms but do not have a permit to carry shall complete the safety plan section of the Firearms Safety Plan form.

HUMAN SERVICES DEPARTMENT[441](cont'd)

113.7(6) No change.

113.7(7) *Supervision.* The foster parents shall provide reasonable and prudent supervision of foster children to ensure their safety.

a. Foster parents shall ~~reasonably~~ adequately supervise foster children while the children are using any hazardous or dangerous objects or equipment. In order for foster children to participate in age- or developmentally appropriate activities, the foster parent would apply the reasonable and prudent parent standard.

b. Foster parents shall ~~monitor~~ use reasonable and prudent supervision of foster children ~~while they when the foster children~~ are using the Internet or other social media.

113.7(8) *Household pets.* Household pets and any outdoor animals or pets accessible to foster children shall have a current veterinary health certificate verifying that the ~~animal has had routine vaccinations that are required by local ordinance~~ animal's routine immunizations, e.g., rabies, are current.

a. At the time of the initial home study and any time thereafter, foster parents shall report an animal's history of aggression towards people and inform the department of the animal's aggression towards people within 24 hours of an occurrence.

b. Foster parents who have pets or animals with any history of aggression shall have a written plan that addresses strategies to reduce the risk of aggression by their pets or animals with which the child will have contact.

c. Animal waste will be contained and disposed of on a routine basis.

113.7(9) No change.

This rule is intended to implement Iowa Code section 237.3.

ITEM 21. Amend rule 441—113.8(237) as follows:

441—113.8(237) Foster parent training.

113.8(1) *Preservice training.* All foster parent applicants shall complete the following training before licensure and the placement of a child in foster care in their home:

a. Orientation pursuant to rule 441—117.2(237); ~~and~~

b. Preservice training pursuant to rule 441—117.1(237);₂

c. Preservice training that includes an agency-approved medication management training, cardiopulmonary resuscitation (CPR) and first-aid training, mandatory reporter training on child abuse identification, and the reasonable and prudent parent standard training; and

d. Mandatory reporter training on child abuse identification and reporting before initial licensure and every five years thereafter as required by rule 441—112.10(232) and 441—subrule 117.8(3).

113.8(2) *In-service training.* All licensed foster parents shall complete six hours of in-service training annually as required by rule 441—117.7(237).

~~*a.* All Each foster parents parent shall complete training in medication management, cardiopulmonary resuscitation, first aid, and the reasonable and prudent parent standard in their first year of licensure as required by rule 441—117.8(237) maintain certification in CPR and first-aid training.~~

~~*b.* All licensed foster parents shall complete mandatory reporter training on child abuse identification and reporting in their first year of licensure and every five years thereafter as required by rule 441—112.10(232) and 441—subrule 117.8(4).~~

This rule is intended to implement Iowa Code section 237.5A.

ITEM 22. Amend rule 441—113.10(237) as follows:

441—113.10(237) Information on the foster child.

~~**113.10(1) *Initial information.***~~ Rescinded IAB 7/29/09, effective 10/1/09.

113.10(2) *113.10(1) Foster child information.* Foster parents shall maintain a separate folder of information on each foster child placed in the foster family home. This folder shall be provided to the department or the child's parent or guardian when the child leaves the placement. The folder shall contain:

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~a. Names~~ The names and addresses of all doctors, mental health professionals, and dentists who have treated the foster child; current medications prescribed, including over-the-counter medications; medication log; and the type of treatment medical, dental, vision, and mental health treatments and hearing examinations received while the foster child is in the foster home.

~~b. to d.~~ No change.

~~113.10(3)~~ 113.10(2) Confidentiality. Foster parents shall maintain confidentiality regarding a child in placement except as required to comply with rules on mandatory reporting of child abuse and with the child's case permanency plan. Foster parents shall not without parent or guardian and department consent post pictures or information concerning a foster child on any Internet Web site or on social media.

This rule is intended to implement Iowa Code section 237.7.

ITEM 23. Amend rule 441—113.11(237) as follows:

441—113.11(237) Health of foster family.

113.11(1) Health report required. The foster parents shall furnish the licensing agency with a health report on the family completed no more than six months before the application for licensure. The report shall include information on all family members, including foster parents, their minor children who reside in the home, and adult household members. An updated report shall be provided upon request of the department licensing worker or the recruitment and retention contractor. An updated health report for an adopted child shall be provided within three months of the adoption finalization or at license renewal, whichever comes first.

113.11(2) No change.

113.11(3) Capability for caring for the child. If there is evidence that the foster parent is unable to provide necessary care for the child, the department licensing worker, the recruitment and retention contractor, or the physician may require additional medical and mental health reports, including a substance abuse evaluation.

This rule is intended to implement Iowa Code section 237.7.

ITEM 24. Amend subrule 113.12(5) as follows:

113.12(5) Personal characteristics. The foster parents shall:

~~a.~~ Provide evidence of marital ~~adjustment~~ and stability.

~~b. to g.~~ No change.

~~h.~~ Ensure that all family members are aware of ~~and in agreement with~~ having foster children in the home.

i. Respect the gender identity and sexual orientation of the foster child.

ITEM 25. Amend subrule 113.12(6) as follows:

113.12(6) Determination of characteristics. The areas discussed in subrules 113.12(4) and 113.12(5) shall be explored through observation of the family and interviews with family members and documented in a foster home study as described in subrule 113.3(4), or in the foster family record when explored after licensure and prior to renewal. Any additional areas that the family or worker identifies as a possibility for creating problems shall also be documented in the foster family record.

ITEM 26. Amend rule 441—113.13(237) as follows:

441—113.13(237) Record checks. Record checks are required for each foster parent applicant and for anyone who is 14 years of age or older living in the home of the applicant. The purpose of the record checks is to determine whether any of these persons has any founded child abuse reports or criminal convictions or has been placed on the sex offender registry.

113.13(1) Procedure. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.

~~a.~~ *Iowa records.* Each foster parent applicant and anyone who is 14 years of age or older living in the home of the applicant shall be checked for records with:

(1) The Iowa central abuse registry, using Form 470-0643, Request for Child and Dependent Adult Abuse Information;

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) The Iowa division of criminal investigation, using Form 595-1396, DHS Criminal History Record Check, Form B; ~~and~~

(3) The Iowa sex offender registry; ~~and~~

(4) Iowa Courts Online.

b. Other records.

(1) No change.

(2) Each foster parent applicant shall also be fingerprinted for a national criminal history check. ~~Other adults living in the home may be fingerprinted if the department determines that a national criminal history check is warranted. Fingerprinting, for the purpose of a national criminal history check, is required on all other adult household members at the time of initial application effective with applications dated on or after October 1, 2011. When warranted, the department may require fingerprinting for a national criminal history check on adult household members who move in after initial application.~~

113.13(2) Evaluation of record. If the applicant or anyone living in the home has a record of founded child or dependent adult abuse, a criminal conviction, or placement on the sex offender registry, the department shall not license the applicant as a foster family unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of license.

a. Exclusion. An evaluation shall not be performed if the person has been convicted of:

(1) No change.

(2) A crime in another state that would be a felony as set forth in Iowa Code section 237.8(2) "a"(4) ~~if the crime were committed in Iowa.~~

b. Scope. The evaluation shall consider the nature and seriousness of the founded child or dependent adult abuse or crime in relation to:

(1) to (5) No change.

c. Evaluation form. The person with the founded child or dependent adult abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date of receipt to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure.

113.13(3) Evaluation decision. The service area manager or designee shall conduct the evaluation and make the decision. The department shall issue ~~Form 470-2386, Record Check Decision Form 470-2310, Record Check Evaluation,~~ to ~~explain~~ inform the subject of the decision and describe the basis of the decision reached regarding the evaluation of an abuse or a crime, using the criteria specified in paragraph 113.13(2) "b." The department shall mail the form to the person on whom the evaluation was completed:

a. and b. No change.

113.13(4) No change.

This rule is intended to implement Iowa Code section 237.8(2).

ITEM 27. Amend rule 441—113.14(237) as follows:

441—113.14(237) Reference checks.

113.14(1) to 113.14(3) No change.

113.14(4) Reference checks shall include only those areas related to the applicant's ability to care for children and should include discussion of the following areas:

a. and b. No change.

c. Marital ~~adjustment~~ and stability.

d. to g. No change.

113.14(5) When warranted, additional references may be sought after licensure.

This rule is intended to implement Iowa Code section 237.3.

ITEM 28. Amend rule 441—113.15(237) as follows:

441—113.15(237) Unannounced visits.

113.15(1) to 113.15(3) No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

113.15(4) The findings from the unannounced visit shall be summarized on ~~Form 470-4512, Unannounced Visit Report~~ Form 470-5438, Progress Notes.

a. and *b.* No change.

113.15(5) Actions after the unannounced visit.

a. When deficiencies are cited that do not appear likely to cause immediate physical or mental harm to the child, an additional visit may be scheduled. The department licensing worker and the recruitment and retention contractor shall discuss the deficiencies with the foster parents and make ~~suggestions~~ plans for improving the deficiencies.

b. When the reported deficiencies raise questions of concern as to the quality of care provided, the recruitment and retention contractor shall:

(1) No change.

(2) Hold a meeting with the department licensing worker and the foster parents to discuss deficiencies and ~~suggestions~~ the plans for improving the deficiencies and then complete a written corrective action plan as to how the foster parents intend to address the deficiencies.

c. No change.

113.15(6) No change.

This rule is intended to implement Iowa Code section 237.7.

ITEM 29. Amend paragraph **113.16(2)“d”** as follows:

d. Clothing shall be becoming, of proper size, and ~~of the character usually worn by children in the community~~ culturally appropriate.

ITEM 30. Amend rule 441—113.17(237) as follows:

441—113.17(237) Medical examinations and health care of the child.

~~**113.17(1) Physical examinations.** Rescinded IAB 3/11/09, effective 5/1/09.~~

~~**113.17(2) 113.17(1) Medical and dental supervision care.** Each child shall be under regular medical and dental supervision. Foster parents shall keep the supervising worker child's department case manager informed of any health problems medical and dental appointments and treatments prescribed for the child. In case of sickness or accident, immediate medical care shall be secured for the child in accordance with the supervising worker's directions given at the time of placement.~~

a. Foster parents shall contact the child's parents to engage them in the process of accessing routine medical and dental care for their child unless parental rights have been terminated.

b. In case of an emergency or urgent situation requiring medical care and treatment of an acute illness, disease or condition of a child, when a delay or inability to access parental or department consent for medical care or treatment would endanger the health or physical well-being of the child, the foster parents can provide consent for medical care and treatment.

~~**113.17(3) 113.17(2) Exemption from medical care.** Nothing in this rule shall be construed to require medical treatment or immunization for a minor child of any person who is a member of a church or religious organization which is against medical treatment for disease. In such instance, an official statement from the organization and a notarized statement from the parents shall be incorporated in the record. In potentially life-threatening situations, the child's care shall be referred to appropriate medical and legal authorities.~~

This rule is intended to implement Iowa Code section 237.3.

ITEM 31. Amend rule 441—113.18(237) as follows:

441—113.18(237) Training and discipline of foster children.

~~**113.18(1) Foster parents' methods of training and discipline.** The home study evaluation of the each foster parent applicant shall include a discussion and a written report of the foster parents' methods of training and discipline. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.~~

~~**113.18(2) Restrictions on training and discipline.** Child training and discipline shall be handled with kindness and understanding.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

- a. to d. No change.
- e. Restraints shall not be used as a form of discipline.

(1) No change.

(2) ~~The~~ Upon approval of the department, the foster parent shall receive training on the safe and appropriate use of restraints which has been approved as a part of the treatment plan by a licensed practitioner of the healing arts who is working with the child may use restraints only in accordance with the written plan of a licensed mental health professional who is working with the child and the foster parents.

113.18(3) Reports of mistreatment. Reports of mistreatment coming to the attention of the ~~supervising worker~~ department licensing worker and caseworker for the foster child shall be investigated promptly and referred to the proper authorities when necessary.

This rule is intended to implement Iowa Code sections 234.40 and 237.3.

ITEM 32. Amend rule 441—114.1(237) as follows:

441—114.1(237) Applicability. This chapter outlines the basic standards for all group living foster care facilities and contains the basic standards applicable to community residential facilities for children. Additional standards applicable to specific levels of group living are discussed in 441—Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” and 441—Chapter 116, “Licensing and Regulation of Residential Facilities for ~~Mentally Retarded~~ Children With an Intellectual Disability.”

This rule is intended to implement Iowa Code chapter 237.

ITEM 33. Amend **441—Chapter 116**, title, as follows:

LICENSING AND REGULATION OF RESIDENTIAL FACILITIES
FOR ~~MENTALLY RETARDED~~ CHILDREN WITH AN INTELLECTUAL DISABILITY

ITEM 34. Amend rule 441—116.1(237) as follows:

441—116.1(237) Applicability. This chapter relates specifically to the licensing and regulation of residential facilities serving ~~mentally retarded~~ children with an intellectual disability. Refer to 441—Chapter 112 for basic licensing and regulation of all foster care facilities, 441—Chapter 114 for definitions and minimum standards for all group living foster care facilities, including community care facilities, and 441—Chapter 115 for definitions and standards for comprehensive residential facilities for children. Chapters 112 and 114 apply to community residential facilities for ~~mentally retarded~~ children with an intellectual disability and Chapters 112, 114 and 115 apply to comprehensive residential facilities for ~~mentally retarded~~ children with an intellectual disability with the exception of the areas discussed specifically in this chapter.

This rule is intended to implement Iowa Code chapter 237.

ITEM 35. Amend rule **441—116.2(237)**, definitions of “Community residential facility for mentally retarded children” and “Comprehensive residential facility for mentally retarded children,” as follows:

“*Community residential facility for ~~mentally retarded~~ children with an intellectual disability*” means a community residential facility as defined in rule 441—114.2(237) which serves children ~~who meet the definition of mentally retarded~~ with an intellectual disability as defined in Iowa Code chapter 222.

“*Comprehensive residential facility for ~~mentally retarded~~ children with an intellectual disability*” means a comprehensive residential facility as defined in rule 441—115.2(237) which serves children ~~who meet the definition of mentally retarded~~ with an intellectual disability as defined in Iowa Code chapter 222.

ITEM 36. Adopt the following **new** subrule 117.1(4):

117.1(4) Additional preservice training. Before licensure, each foster parent shall complete training in an agency-approved medication management course, cardiopulmonary resuscitation (CPR), first

HUMAN SERVICES DEPARTMENT[441](cont'd)

aid, the reasonable and prudent parent standard, and the mandatory reporter training on child abuse identification.

ITEM 37. Amend rule 441—117.7(237), introductory paragraph, as follows:

441—117.7(237) Required in-service training. ~~Training~~ At least six hours of in-service training is required to assist foster parents in confidently and effectively addressing the needs of children placed in foster care. The Foster Parent Training Plan, Form 470-3341, shall be used to address in-service training needs. The training plan shall be developed with the department or retention and recruitment contractor and the foster parent at annual licensing renewal annually.

ITEM 38. Amend subrule 117.7(3) as follows:

117.7(3) Foster parent training requirements. Each individual foster parent shall complete six credit hours of department-approved in-service training annually ~~when the foster parent has an approved one-year license or an approved two-year license. Failure to meet the requirement for in-service training hours will result in denial of the license renewal.~~

~~a. Training cycle. “Annually” means within the annual training cycle as described in this paragraph.~~

~~(1) Initial license. For a newly licensed foster parent, the initial training cycle shall be the 10-month period ending 2 months before the license expires. EXAMPLE: The initial training cycle for a new license effective June 1 is June 1 through March 31.~~

~~(2) a. Renewal license. Renewal license. For a one-year license renewal, the each foster parent shall complete six hours of annual in-service training eye cycle shall be within the 12-month period beginning 2 months before the expiration of the previous license and ending 2 months before the expiration of the subsequent license on the effective date of the foster parent’s renewal license. EXAMPLE: The training cycle for a license effective June 1 would be April 1 through March 31 of the subsequent year. For a two-year license renewal, the each foster parent shall complete six hours of in-service training eye cycle for the first within the 12 months of the first license year shall be the 12-month period beginning 2 months before the expiration of the previous license year and ending 10 months after beginning on the effective date of the two-year license renewal. The annual training cycle for For the second year of a two-year license shall be the 12-month period beginning 11 months after the effective date of the first year of the license and ending 2 months before the expiration of the license renewal, each foster parent shall complete six hours of in-service training within the 12 months of the second year of the two-year license renewal.~~

~~b. Content. The choice of in-service training shall be based upon an assessment of the foster parent’s training needs made by the foster parent and the recruitment and retention contractor in collaboration with the department licensing worker.~~

~~(1) No change.~~

~~(2) At least three credit hours of the annual six hours of in-service training shall be group training.~~

~~(3) Except for the classes for the mandatory reporters reporter training on child abuse identification class, cardiopulmonary resuscitation, and first aid, training credit will not be allowed for any in-service training class that is repeated unless the class has been updated with new information.~~

~~c. No change.~~

ITEM 39. Amend rule 441—117.8(237) as follows:

441—117.8(237) Specific in-service training required.

~~117.8(1) Medication management. Within the initial training cycle, each individual foster parent shall complete one hour of training related to the use and practice of medication management.~~

~~a. Training shall be completed through the approved individual self-study course, “Medication Management.”~~

~~b. One hour of in-service training credit shall be allowed for completion of this self-study course. This course cannot be repeated for in-service training credit.~~

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~~e. Foster parents who are already licensed on October 1, 2009, shall complete this training by October 1, 2010.~~

~~**117.8(2) 117.8(1)** *Cardiopulmonary resuscitation (CPR)*. All foster parents shall be certified in CPR every three years and shall maintain their CPR certification and a certificate or card indicating the date of training and expiration. The training shall be provided by:~~

~~a. The training shall be provided by:~~

~~(1) a. A nationally recognized training organization, such as the American Red Cross, the American Heart Association, the National Safety Council, or Emergency Medical Planning (Medic First Aid), or~~

~~(2) b. An equivalent certified trainer and curriculum approved by the department.~~

~~b. Newly licensed foster parents shall complete the training before the end of their initial training cycle. Foster parents who are already licensed on October 1, 2009, shall complete this training by October 1, 2010.~~

~~**117.8(3) 117.8(2)** *First aid*. All foster parents shall be certified in first aid every three years and shall maintain a certificate or card indicating the date of training and the expiration date of certification. Newly licensed foster parents shall complete the training before the end of their initial training cycle. Foster parents who are already licensed on October 1, 2009, shall complete this training by October 1, 2010.~~

~~**117.8(4) 117.8(3)** *Child abuse reporting*. Each foster parent shall complete an approved mandatory child abuse reporter training every five years after the foster parent's initial preservice mandatory child abuse reporter training relating to the identification of child abuse and the requirements and procedures for the reporting of child abuse pursuant to Iowa Code section 232.68.~~

~~a. *Training cycle*. Newly licensed foster parents shall complete mandatory reporter training before the end of their initial training cycle. The training shall be repeated every five years thereafter.~~

~~b. a. *Training provider*. The foster parent shall be responsible for obtaining the required two-hour mandatory reporter training on child abuse identification and reporting as approved by the Iowa department of public health. A list of approved training opportunities is available on the Iowa department of public health Web site by searching "mandatory reporter training."~~

~~e. b. *Documentation*. The foster parent shall secure documentation of the training content, amount, and provider and shall forward the documentation to the recruitment and retention contractor, who will provide the documentation to the department for inclusion in the foster parent's licensing file.~~

~~**117.8(5) 117.8(4)** *Caring for children with HIV*. Before placement of an HIV-infected child occurs, the foster parents shall complete the course "Caring for Children With HIV" or an approved alternative course that contains information on the unique aspects of pediatric HIV disease, transmission and infection control, the spectrum of HIV disease, confidentiality, death and bereavement, and self-care for the caregiver.~~

~~**117.8(6)** *Reasonable and prudent parent standard*. Before the end of the foster parent's initial license year, each foster parent shall complete training on the reasonable and prudent parent standard as defined in rule 441—202.1(234). Foster parents licensed before October 1, 2015, shall complete this training no later than September 30, 2016.~~

ITEM 40. Amend subrule 156.8(7) as follows:

~~**156.8(7)** *Respite care*. The service area manager or designee may authorize respite Respite care for a child in family foster care shall be for up to 24 days per calendar year per placement. Respite Except for a certified respite provider, respite shall be provided by a licensed foster family. The payment rate to the respite foster family shall be the rate authorized under rule 441—156.6(234) to meet the needs of the child. Certified respite providers deliver foster child respite services in the foster family home for at least five hours a day at \$20 per day.~~

ITEM 41. Amend subrule 202.5(3) as follows:

~~**202.5(3)** The child shall have a physical examination by a physician, advanced registered nurse practitioner, or a physician assistant before the initial placement in into foster care, or the physical examination shall be scheduled within 14 calendar days of placement. The physician, advanced registered nurse practitioner, or a physician assistant shall complete a preliminary screening for dental~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

and mental health and refer the child to a dentist or mental health professional if appropriate. To address any immediate medical needs, the child shall be seen immediately at an emergency room, an urgent care center, or other community health resource.

ARC 3032C

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 505.8 and chapter 508, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 96, “Synthetic Guaranteed Investment Contracts,” Iowa Administrative Code.

The rules in Chapter 96 prescribe the terms and conditions under which life insurance companies may issue group annuity contracts and other contracts issued in connection with group annuity contracts that establish the insurer’s obligation by reference to a segregated portfolio of assets that is not owned by the insurer; the essential operational features of the segregated portfolio of assets; and the reserve requirements for these group annuity contracts and agreements.

The proposed amendments to Chapter 96 are intended to do the following:

1. Revise the definitions of “spot rate” and “synthetic guaranteed investment contract.”
2. Require that a plan of operations for a class of contracts shall include (1) the criteria used by an insurer in evaluating the potential issuance of a pooled fund contract, (2) the criteria used to approve the investment manager for the segregated portfolio of assets associated with a pooled fund contract, and (3) a description of risk-mitigation techniques used by the insurer in connection with contracts issued to pooled funds.
3. Revise the calculation of the minimum value of guaranteed contract benefits under a contract issued to a pooled fund representing multiple employer-sponsored plans to reflect projected plan sponsor contract value withdrawals available to the member plans in the pooled fund.
4. Require that an actuarial memorandum clearly describe how the valuation actuary has reflected withdrawal risks, if applicable, including the impact of any dynamic lapse assumption and the results of sensitivity testing of the prudent estimate of future plan sponsor withdrawals.

The Division intends that these amendments will become effective July 26, 2017.

Any interested person may make written comments on these proposed amendments on or before May 16, 2017. Written comments may be sent to Bob Koppin, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309-3738. Comments may also be submitted electronically to robert.koppin@iid.iowa.gov or via facsimile to (515)281-3059.

A public hearing will be held on May 17, 2017, at 1:30 p.m. in Conference Room 4 North of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine remarks to the subject of the amendments.

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

A waiver provision is provided in subrule 96.6(2).

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

These amendments are intended to implement Iowa Code section 505.8 and chapter 508.

The following amendments are proposed.

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ITEM 1. Amend rule 191—96.3(505,508) as follows:

191—96.3(505,508) Scope and application.

96.3(1) This chapter applies to that portion of a group annuity contract or other contract issued in connection with group annuity contracts described in rule 191—96.4(505,508), definition of “synthetic guaranteed investment contract,” and issued by a life insurer ~~that~~:

- a. ~~That~~ functions as an accounting record for an accumulation fund; and
- b. ~~That~~ has benefit guarantees relating to a principal amount and levels of interest at a fixed rate of return specified in advance.

96.3(2) The fixed rate of return ~~will~~:

- a. ~~Shall~~ be constant over the applicable rate periods, ~~and may~~;
- b. ~~May~~ reflect prior and current market conditions with respect to the segregated portfolio ~~but may~~; and
- c. ~~Shall~~ not reference future changes in market conditions.

96.3(3) This chapter applies to all synthetic guaranteed investment contract forms filed on or after January 18, 2012. ~~Contract~~ In addition, the minimum statutory reserve requirements of rule 191—96.10(505,508) shall apply to all synthetic guaranteed investment contracts regardless of issue date. The contract forms ~~that have been~~ and related plans of operation that were issued or filed ~~before January 18, 2012~~ prior to January 1, 2017, need not be refiled with the commissioner.

ITEM 2. Amend rule **191—96.4(505,508)**, definitions of “Spot rate,” and “Synthetic guaranteed investment contract,” as follows:

“*Spot rate,*” means:

1. “Treasury-based spot rate,” corresponding to a given time of benefit payment, means the yield on a zero-coupon noncallable and nonprepayable United States government obligation maturing at that time, or the zero-coupon yield implied by the price of a representative sampling of coupon-bearing, noncallable and nonprepayable United States government obligations in accordance with a formula set forth in the plan of operation.

2. “Index spot rate,” corresponding to a given time of benefit payment, means the zero-coupon yield implied by (a) the Barclays Short Term Corporate Index for a given time of benefit payment under one year or (b) the zero-coupon yield implied by the Barclays United States Corporate Investment Grade Bond Index for a given time of benefit payment greater than or equal to one year.

3. “Blended spot rate,” corresponding to a given time of benefit payment, means a blend of 50 percent each of (a) the treasury-based spot rate, and (b) the index spot rate. To the extent that guaranteed contract liabilities are denominated in the currency of a foreign country rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency acceptable to the commissioner and are supported by investments denominated in the currency of the foreign country, the treasury-based spot rate component of the blended spot rate may be determined by reference to substantially similar obligations of the government of the foreign country. For liabilities other than those described above, the blended spot rate shall be determined on a basis mutually agreed upon by the insurer and the commissioner.

“Synthetic guaranteed investment contract” or “contract” means a group annuity contract or other contract issued in connection with a group annuity contract that ~~in whole or in part~~ establishes the insurer’s obligations by reference to a segregated portfolio of assets that is not owned by the insurer. The contract functions as an accounting record for an accumulation fund, and the fixed rate of return credited to the fund reflects an amortization of the segregated portfolio’s market gains and losses based on the period specified in the crediting formula, subject to any minimum interest rate guarantee.

ITEM 3. Amend subparagraph **96.5(2)“a”(7)** as follows:

(7) A description of the allowable investment parameters (such as objectives, derivative strategies, asset classes, quality, duration and diversification requirements applied to the assets held within the segregated portfolio) to be reflected in the investment guidelines applicable to each contract issued in the class to which the submitted plan of operation applies; and a description of the procedures that

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will be followed by the insurer in evaluating the appropriateness of any specific investment guidelines submitted by the contract holder. If the insurer chooses to operate a contract in accordance with investment guidelines that do not conform to the criteria established pursuant to this subparagraph, the nonconforming set of investment guidelines shall be filed with the commissioner in accordance with the filing requirements of this subrule;

ITEM 4. Renumber subparagraphs **96.5(2)“a”(8)** and **(9)** as **96.5(2)“a”(10)** and **(11)**.

ITEM 5. Adopt the following **new** subparagraph **96.5(2)“a”(8)**:

(8) For contract forms filed on or after January 1, 2017, a description of the criteria used by the insurer in approving for contract issuance a pooled fund representing multiple employer-sponsored plans and in approving the investment manager for the segregated portfolio of assets associated with such pooled fund contract;

ITEM 6. Adopt the following **new** subparagraph **96.5(2)“a”(9)**:

(9) For contract forms filed on or after January 1, 2017, a description of risk-mitigation techniques used by the insurer in connection with contracts issued to pooled funds representing multiple employer-sponsored plans;

ITEM 7. Amend subrule 96.10(2) as follows:

96.10(2) In determining compliance with the asset maintenance requirement and the reserve for the value of guaranteed contract liabilities specified in subrule 96.10(1), the insurer shall deduct a percentage of the market value of an asset as follows:

a. For debt instruments, the percentage shall be the NAIC asset valuation “reserve objective factor,” but the factor shall be increased by 50 percent for the purpose of this calculation if the difference in durations of the assets and liabilities is more than one-half year. The above notwithstanding, in the event that, under the terms of the synthetic guaranteed investment contract, the asset default risk for debt instruments is borne solely by the contract holder, there shall be no asset valuation reserve percentage deduction from the market value of an asset, for purposes of complying with the asset maintenance requirement and the reserve for guaranteed contract liabilities specified in subrule 96.10(1).

b. For assets that are not debt instruments, the percentage shall be the NAIC asset valuation reserve “maximum reserve factor.”

ITEM 8. Amend subrule 96.10(6) as follows:

96.10(6) For purposes of this chapter, the “value of guaranteed contract liabilities” is defined to be the sum of the expected guaranteed contract benefits, each discounted at a rate corresponding to the expected time of payment of the expected guaranteed contract benefit that is not greater than ~~the maximum multiple of the spot rate supportable by the expected return from the segregated portfolio assets, and in no event greater than 105 percent of the blended spot rate as described in the plan of operation, pursuant to rule 191—96.5(505,508), or the actuary’s opinion and memorandum, pursuant to subrule 96.10(8), except that if the expected time of payment of an expected guaranteed contract benefit is more than 30 years, it shall be discounted from the expected date of payment to year 30 at a rate of no more than 80 percent of the 30-year blended spot rate and from year 30 to the date of valuation at a rate not greater than 105 percent of the 30-year blended spot rate.~~

ITEM 9. Adopt the following **new** paragraph **96.10(7)“c”**:

c. The minimum value of guaranteed contract benefits under a contract issued to a pooled fund representing multiple employer-sponsored plans shall be determined so as to reflect projected plan sponsor contract value withdrawals available to the member plans in the pooled fund.

(1) Projections of such future cash flows shall take into account:

1. Known plan sponsor withdrawals, and

2. A prudent estimate of future plan sponsor withdrawals. The prudent estimate shall be based on company experience and other relevant criteria.

(2) A single valuation rate shall be determined, pursuant to subrule 96.10(6), equal to the lesser of:

1. The expected return from the segregated portfolio of assets, or

2. The blended spot rate based on the duration of the segregated portfolio of assets.

INSURANCE DIVISION[191](cont'd)

(3) The single valuation rate shall be used to model future market values of the segregated portfolio of assets. Future credited interest rates shall be modeled according to the contractually defined crediting rate formula. Modeled future contract values shall reflect modeled future market values, modeled future credited interest rates, known future plan sponsor withdrawals, the prudent estimate of future plan sponsor withdrawals, future withdrawals pursuant to paragraph 96.10(7) "b," and any remaining final payment at the modeled contract termination date.

(4) All such modeled withdrawals and termination payments shall be discounted using the single valuation rate and the modeled times of those withdrawals and payments. The sum of these present values shall be deemed the minimum value of the guaranteed contract liabilities for a pooled fund contract.

ITEM 10. Amend subparagraph **96.10(8) "g" (5)** as follows:

(5) Clearly describe how the valuation actuary has reflected withdrawal risks, if applicable, including a discussion of the positioning of the contracts within the benefit withdrawal priority order pertaining to the contracts, the impact of any dynamic lapse assumption and the results of sensitivity testing the prudent estimate of future plan sponsor withdrawals pursuant to paragraph 96.10(7) "c";

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INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 98, "Annual Financial Reporting Requirements," Iowa Administrative Code.

The rules in Chapter 98 improve the Division's surveillance of the financial condition of insurers by requiring an annual audit of financial statements by certified public accountants, Communication of Internal Control Related Matters Noted in an Audit, and Management's Report of Internal Control Over Financial Reporting. The proposed amendments to Chapter 98 set forth the requirements for the establishment of an internal audit function, including independence and reporting requirements of an insurer or group of insurers, unless otherwise exempt from the requirements of these rules. Several internal cross references are also corrected.

The Division intends that this rule making will become effective July 26, 2017.

Any interested person may make written comments on these proposed amendments on or before May 16, 2017. Written comments may be sent to Bob Koppin, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309-3738. Comments may also be submitted electronically to robert.koppin@iid.iowa.gov or via facsimile to (515)281-3059.

A public hearing will be held on May 17, 2017, at 2:30 p.m. in Conference Room 4 North of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine remarks to the subject of the amendments.

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

This chapter does not provide for waivers.

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

These amendments are intended to implement Iowa Code section 505.8.

The following amendments are proposed.

INSURANCE DIVISION[191](cont'd)

ITEM 1. Amend subrule 98.2(2) as follows:

98.2(2) Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from rules ~~98.4(505)~~ 191—98.4(505) through ~~98.12(505)~~ 191—98.12(505) and ~~98.17(505)~~ 191—98.18(505) if:

a. A copy of the audited financial report, Communication of Internal Control Related Matters Noted in an Audit, and the letter to the insurer with the accountant's qualifications that are filed with such other state are filed with the commissioner in accordance with the filing dates specified in rules ~~98.4(505)~~ 191—98.4(505), ~~98.11(505)~~ 191—98.11(505), and ~~98.17(505)~~ 191—98.18(505), respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions Canada).

b. A copy of any Notification of Adverse Financial Condition Report filed with such other state is filed with the commissioner within the time specified in rule ~~98.10(505)~~ 191—98.10(505).

ITEM 2. Amend rule **191—98.3(505)**, definitions of "Audit committee" and "Independent board member," as follows:

"*Audit committee*" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers (if applicable), and external audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. Refer to subrule ~~98.13(5)~~ 98.13(6) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

"*Independent board member*" has the same meaning as described in subrule ~~98.13(3)~~ 98.13(4).

ITEM 3. Adopt the following **new** definition of "Internal audit function" in rule **191—98.3(505)**:

"*Internal audit function*" means a person or persons that provide independent, objective and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

ITEM 4. Amend rule 191—98.9(505) as follows:

191—98.9(505) Scope of audit and report of independent certified public accountant. Financial statements furnished pursuant to rule ~~98.5(505)~~ 191—98.5(505) shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU Section 319, for those insurers required to file a Management's Report of Internal Control Over Financial Reporting pursuant to rule ~~98.15(505)~~ 191—98.16(505), the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional Requirements in Statements on Auditing Standards or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the ~~National Association of Insurance Commissioners~~ NAIC as the independent certified public accountant deems necessary.

ITEM 5. Renumber subrules **98.13(2)** to **98.13(9)** as **98.13(3)** to **98.13(10)**.

ITEM 6. Adopt the following **new** subrule 98.13(2):

98.13(2) The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by rule 191—98.14(505).

INSURANCE DIVISION[191](cont'd)

ITEM 7. Amend renumbered subrule 98.13(3) as follows:

98.13(3) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subrule ~~98.13(5)~~ 98.13(6).

ITEM 8. Amend renumbered subrule 98.13(8) as follows:

98.13(8) If an insurer is a member of an insurance holding company system, the reports required by subrule ~~98.13(6)~~ 98.13(7) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

ITEM 9. Renumber rules **191—98.14(505)** to **191—98.20(505)** as **191—98.15(505)** to **191—98.21(505)**.

ITEM 10. Adopt the following new rule 191—98.14(505):

191—98.14(505) Internal audit function requirements.

98.14(1) An insurer is exempt from the requirements of this rule if:

a. The insurer has annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500 million; and

b. If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1 billion.

98.14(2) The insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and rules.

98.14(3) In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

98.14(4) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

98.14(5) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this rule at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

ITEM 11. Amend renumbered subrule 98.15(3) as follows:

98.15(3) For purposes of subrule ~~98.14(2)~~ 98.15(2), actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

a. To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

b. Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

c. Not to withdraw an issued report; or

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d. Not to communicate matters to an insurer's audit committee.

ITEM 12. Amend renumbered subrule 98.16(2) as follows:

98.16(2) Notwithstanding the premium threshold in subrule ~~98.15(4)~~ 98.16(1), the commissioner may require an insurer to file Management's Report of Internal Control Over Financial Reporting if the insurer is in any RBC level event, or if the insurer meets any one or more of the standards of an insurer deemed to be hazardous to policyholders, creditors or the general public.

ITEM 13. Amend renumbered subrule 98.16(5) as follows:

98.16(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subrule ~~98.15(4)~~ 98.16(4), are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

a. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.

b. Management's Report of Internal Control Over Financial Reporting, required by subrule ~~98.15(4)~~ 98.16(1), and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the state insurance department.

ITEM 14. Amend renumbered rule 191—98.17(505) as follows:

191—98.17(505) Exemptions.

98.17(1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with 191—Chapter 3.

98.17(2) If an insurer or group of insurers that is exempt from the requirements of rule 191—98.14(505) no longer qualifies for that exemption, the insurer or group of insurers shall have one year after the year the threshold is exceeded to comply with the requirements of this chapter.

ITEM 15. Amend renumbered rule 191—98.18(505) as follows:

191—98.18(505) Letter to insurer with accountant's qualifications. The accountant shall furnish the insurer, in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. to 3. No change.

4. That the accountant consents to the requirements of rule ~~98.18(505)~~ 191—98.19(505) and that the accountant consents and agrees to make available for review by the commissioner, or a designee or appointed agent, the workpapers, as defined in rule ~~98.12(505)~~ 191—98.12(505).

5. No change.

6. A representation that the accountant is in compliance with the requirements of rule ~~98.7(505)~~ 191—98.7(505).

ARC 3029C**LABOR SERVICES DIVISION[875]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, “General Industry Safety and Health Rules,” and Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), has amended general industry and construction standards concerning exposure to beryllium and beryllium compounds. The new standards are based on a finding that the previous exposure limits were high enough to cause occupational lung cancer and chronic beryllium disease. The Iowa Labor Commissioner must adopt the federal standards by reference.

Federal OSHA reduced the occupational exposure limits and made changes concerning methods to reduce exposure, such as personal protective clothing and equipment. Federal compliance deadlines are one, two, and three years in the future. Iowa will use the same compliance deadlines as federal OSHA.

The principal reasons for adoption of these amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa’s regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1) and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on May 16, 2017, a public hearing will be held on May 17, 2017, at 10 a.m. at 150 Des Moines Street, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)725-5615 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than May 17, 2017, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule. Variance procedures are set forth in 875—Chapter 5.

After analysis and review of this rule making, jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the State of Iowa is only implementing the federal regulations. The requirements imposed on Iowa businesses by these regulations do not exceed those imposed by federal law.

These amendments are intended to implement Iowa Code section 88.5 and 29 CFR 1953.5.

The following amendments are proposed.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:
82 Fed. Reg. 2735 (January 9, 2017)

ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:
82 Fed. Reg. 2750 (January 9, 2017)

ARC 3037C**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 8, “Universal Practice Standards,” and to adopt new Chapter 13, “Telepharmacy Practice,” Iowa Administrative Code.

These amendments were approved at the March 8, 2017, regular meeting of the Board of Pharmacy.

The proposed amendment to subrule 8.35(2) identifies a telepharmacy practice as a defined subset of a limited use pharmacy license type.

The proposed rules in new Chapter 13 provide standards for the provision of pharmaceutical services to patients through the use of audiovisual technologies that link a telepharmacy site with a managing pharmacy, allowing a verifying pharmacist at the remote pharmacy to oversee and verify the dispensing processes performed by the technician at the telepharmacy site. The audiovisual technology also ensures that the patient and the pharmacist are able to converse face to face, over secure connections, about the patient’s drug treatment plan.

The proposed rules define terms used in the chapter and assign responsibilities for various aspects of the practices involved. The proposed rules require a written agreement between the managing pharmacy and the telepharmacy site and identify the specific required provisions and contents of the written agreement and what must occur in case the agreement is terminated or either pharmacy closes. The proposed rules identify the general requirements for a telepharmacy site and a managing pharmacy and for a verifying pharmacist and a telepharmacy technician, including addressing specific training and experience requirements for those personnel.

The required information to be provided with the initial application for a limited use pharmacy license as a telepharmacy site and the minimum information to be provided in a request for waiver of the minimum distance between a proposed telepharmacy site and an existing pharmacy that dispenses prescription drugs to outpatients are identified. Specific application and notification requirements in the case of a change of telepharmacy site or managing pharmacy name, location, ownership, or pharmacist in charge are identified. The proposed rules provide that the opening of a new pharmacy within ten miles of an existing telepharmacy site does not force the closing of the telepharmacy site.

Subjects to be addressed by policies and procedures to be adopted and implemented by both the telepharmacy site and the managing pharmacy are listed, and information and reports required of a telepharmacy site or managing pharmacy are identified. The proposed rules identify specific records that must be maintained by and available at a telepharmacy site, including records of the monthly inspection of the telepharmacy site by a pharmacist from the managing pharmacy.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34. Requirements for waiver of the specific restrictions regarding location of a telepharmacy site within ten miles of another pharmacy that dispenses prescription drugs to outpatients are identified in subrule 13.16(8).

A public hearing was held on August 30, 2016, during a regularly held meeting of the Board. Numerous written and oral comments, objections, and suggestions were received both by persons attending the hearing and other interested persons. The results of additional discussions between Board staff, legislators, the Governor’s staff, and industry were shared with the Board. The Board considered all of these comments and suggestions when composing these proposed rules.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on May 16, 2017. Such written materials may be sent to Terry

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Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

After analysis and review of this rule making, the Board has been unable to determine whether the adoption of these rules will have an impact on jobs or the net result of any possible impact. The establishment of telepharmacy sites where a pharmacy currently does not exist may create jobs for pharmacy technicians and also for verifying pharmacists. However, the establishment of a telepharmacy site in place of an existing pharmacy that intends to close, as a means of preserving the availability of pharmacy services in a community or area, may still result in the overall reduction in the number of jobs in that area.

These amendments are intended to implement Iowa Code sections 124.301, 147.107, 155A.3, 155A.6A, 155A.13, 155A.14, 155A.19, 155A.28, 155A.31, 155A.33, and 155A.41.

The following amendments are proposed.

ITEM 1. Amend subrule 8.35(2) as follows:

8.35(2) Limited use pharmacy license. Limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, telepharmacy practice, and veterinary pharmacy practice. Applications for limited use pharmacy license for these and other limited use practice settings shall be determined on a case-by-case basis.

ITEM 2. Adopt the following new 657—Chapter 13:

CHAPTER 13
TELEPHARMACY PRACTICE

657—13.1(155A) Purpose and scope. The purpose of this chapter is to provide standards for the provision of telepharmacy services to patients. These rules provide for pharmaceutical care services at a telepharmacy site utilizing audiovisual technologies that link the telepharmacy site with a managing pharmacy and one or more verifying pharmacists. The telepharmacy site and the managing pharmacy shall be located within Iowa and shall maintain appropriate licensure by the board.

657—13.2(155A) Definitions. For purposes of this chapter, the following definitions shall apply:

“*Board*” means the board of pharmacy.

“*CSA*” or “*CSA registration*” means a registration issued pursuant to Iowa Code section 124.303 and 657—Chapter 10.

“*DEA*” means the Drug Enforcement Administration of the U.S. Department of Justice.

“*Managing pharmacy*” means a licensed pharmacy located in Iowa that oversees the activities of one or more telepharmacy sites.

“*Telepharmacy*” means the practice of pharmacy where pharmaceutical care services are provided using audiovisual technologies linking a telepharmacy site with the managing pharmacy.

“*Telepharmacy site*” means a licensed pharmacy that is operated by a managing pharmacy and staffed by one or more telepharmacy technicians where pharmaceutical care services, including the storage and dispensing of prescription drugs, drug utilization review, and patient counseling, are provided by a licensed pharmacist through the use of technology.

“*Verifying pharmacist*” means a remote Iowa-licensed pharmacist or pharmacists who perform any step in the prescription verification and dispensing process including but not limited to: verification of data entry; product selection, packaging, and labeling; drug utilization review; and patient counseling.

657—13.3(124,155A) Written agreement. The managing pharmacy and the telepharmacy site shall execute and maintain a current written agreement between the pharmacies. If there is no current written agreement between the pharmacies, the telepharmacy site shall immediately notify the board and shall discontinue operations as a telepharmacy site until a current written agreement between the managing pharmacy and the telepharmacy site is executed.

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13.3(1) Contents of agreement. The written agreement between the managing pharmacy and a telepharmacy site shall include, but may not be limited to, the following:

- a. Staffing, to include telepharmacy technician staffing, verifying pharmacist staffing and availability, and on-site pharmacist staffing as needed.
- b. Hours of operation of the telepharmacy site and hours of availability of pharmacists at the managing pharmacy.
- c. Emergency contact information for the managing pharmacy and the telepharmacy site.
- d. A complete description of the audiovisual technology to be utilized to link the managing pharmacy and the telepharmacy site.
- e. A provision that, in the event that the telepharmacy technician is not available at the telepharmacy site, that a verifying pharmacist is not available, or that the audiovisual communication connection between the telepharmacy site and the managing pharmacy is not available, the telepharmacy site shall close pending the availability of the technician, the verifying pharmacist, and the communication link or pending the arrival at the telepharmacy site of a pharmacist to provide on-site pharmacy services.
- f. Activities and services to be provided by the managing pharmacy at the telepharmacy site.
- g. Identification of contact persons to receive, on behalf of the managing pharmacy and the telepharmacy site, notifications and official communications regarding the written agreement. Identification of contact persons shall include delivery addresses and preferred methods of delivery of the written communications required by this rule and any other communications affecting the written agreement between the managing pharmacy and the telepharmacy.
- h. Pharmacy locations, other than the managing pharmacy, where verifying pharmacists may be based or located.

13.3(2) Termination of agreement. A managing pharmacy shall provide written notice to the board and to the telepharmacy site 90 days in advance of the managing pharmacy's intent to terminate the agreement between the telepharmacy site and the managing pharmacy. A telepharmacy site shall provide written notice to the board and to the managing pharmacy 90 days in advance of the telepharmacy site's intent to terminate the agreement between the managing pharmacy and the telepharmacy site.

a. *New agreement.* A new written agreement between a managing pharmacy and the telepharmacy site, including the filing of a new pharmacy license application identifying the new pharmacist in charge, shall be executed within the 90-day advance notification period.

b. *No new agreement.* If the telepharmacy site is unable to contract with a new managing pharmacy, the telepharmacy site shall, 30 days prior to the expiration of the 90-day advance notification period, implement the prior notification requirements for closing a telepharmacy site as provided in subrule 13.3(3). The telepharmacy site shall cease operations and close at the end of that 30-day closing notification period unless a new written agreement is executed.

13.3(3) Closing of telepharmacy site. A telepharmacy site that intends to close the telepharmacy site shall provide written notification to the managing pharmacy and the board as provided in subrule 13.3(2). In addition, the telepharmacy site shall provide written notification to the DEA and to patients and shall comply with all requirements for closing a pharmacy as provided in 657—subrule 8.35(7).

13.3(4) Closing of managing pharmacy. A managing pharmacy that intends to close the managing pharmacy shall provide written notification to the telepharmacy site and the board as provided in subrule 13.3(2). In addition, the managing pharmacy shall provide written notification to the DEA and to patients and shall comply with all requirements for closing a pharmacy as provided in 657—subrule 8.35(7). A telepharmacy site that has been managed by the closing pharmacy shall comply with the provisions of subrules 13.3(2) and 13.3(3), as applicable.

657—13.4(155A) Responsible parties. The responsibilities identified and assigned pursuant to rule 657—8.3(155A) shall be assigned, as appropriate, to the managing pharmacy and the telepharmacy site, by and through their respective owners or license holders, to the pharmacist in charge and to staff pharmacists, including verifying pharmacists. A telepharmacy technician shall share responsibility

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with the pharmacist in charge, the telepharmacy site, and the verifying pharmacist, as assigned in rule 657—8.3(155A), for all functions assigned to and performed by the telepharmacy technician.

657—13.5 to 13.7 Reserved.

657—13.8(124,155A) General requirements for telepharmacy site. The telepharmacy site shall maintain a pharmacy license issued by the board. If the telepharmacy site plans to dispense controlled substances, the telepharmacy site shall also maintain a CSA registration and a DEA registration.

13.8(1) Located in Iowa. A telepharmacy site shall be located within the state of Iowa.

13.8(2) Pharmacist in charge. The pharmacist in charge of the telepharmacy site shall be the pharmacist in charge of the managing pharmacy.

13.8(3) Security. A telepharmacy site shall employ methods to prevent unauthorized access to prescription drugs, devices, and pharmacy and patient records. Such methods may include an alarm system and shall include other security systems and methods as provided by these rules. Alarm systems and entry system locks should be disarmed when the telepharmacy site is staffed and open for business. Minimum security methods shall include:

a. Electronic keypad or other electronic entry system into the telepharmacy site or the pharmacy department that requires and records the unique identification of the individual accessing the pharmacy, including the date and time of access. Complete access records shall be maintained for a minimum of two years beyond the date of access.

b. Secure storage such as a safe.

c. Controlled access to computer records.

d. A continuous system of video surveillance and recording of the pharmacy department that includes maintenance of recordings for a minimum of 60 days following the date of the recording.

13.8(4) Telepharmacy site signage. In addition to the patient counseling sign required pursuant to subrule 13.8(5), one or more signs, prominently posted in every prescription pick-up area and clearly visible to the public, shall inform the public that the location is a telepharmacy site supervised by a pharmacist at a remote location. Signage shall include the name, location, and telephone number of the managing pharmacy. The telepharmacy site shall also prominently post the days and times that the telepharmacy is open for business.

13.8(5) Patient counseling. Patient counseling as required by rule 657—6.14(155A) shall be provided utilizing the audiovisual technology employed between the telepharmacy site and the managing pharmacy. Every telepharmacy site shall post in every prescription pickup area, in a manner clearly visible to patients, a notice that Iowa law requires the pharmacist to discuss with the patient any new prescriptions dispensed to the patient. The board shall provide a telepharmacy site with the required signage.

13.8(6) Label requirements. In addition to the label requirements identified in 657—subrule 6.10(1), the label affixed to or on the dispensing container of any prescription drug or device dispensed by a telepharmacy site pursuant to a prescription drug order shall include, on the primary label or affixed by use of an auxiliary label, the following:

a. The name, telephone number, and address of the telepharmacy site;

b. The name and telephone number of the managing pharmacy.

13.8(7) Prohibited activities. In the physical absence of a pharmacist, the following activities are prohibited:

a. Practice of pharmacist-interns or pharmacy support persons at the telepharmacy site.

b. Advising patients regarding over-the-counter products unless that advice is communicated directly by a pharmacist to the patient.

c. Dispensing or delivering prescription medications packaged by a technician into patient med paks unless an on-site pharmacist has verified the drugs in the patient med paks.

d. Tech-check-tech practice.

e. Compounding, unless an on-site pharmacist has verified the accuracy and completeness of the compounded drug product.

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f. All judgmental activities identified in rule 657—3.23(155A) that a pharmacy technician is prohibited from performing in the practice of pharmacy.

13.8(8) Continuous quality improvement. A telepharmacy site shall implement and participate in a continuous quality improvement program pursuant to rule 657—8.26(155A).

13.8(9) Technology failure. If the audiovisual technology between the telepharmacy site and the managing pharmacy or the verifying pharmacist is not operational, no prescriptions shall be dispensed from the telepharmacy site to a patient unless a pharmacist is physically present at the telepharmacy site.

13.8(10) Perpetual controlled substances inventory. A telepharmacy site that dispenses controlled substances shall maintain a perpetual inventory record of those controlled substances.

a. The perpetual inventory record requirement shall apply to all controlled substances maintained and dispensed by the telepharmacy site and shall not be limited only to Schedule II controlled substances.

b. The perpetual inventory record format and other requirements provided in rule 657—10.33(124,155A) shall apply to the telepharmacy site's perpetual inventory record of controlled substances, with the following exceptions:

(1) The perpetual inventory record shall contain records for all controlled substances, not just Schedule II controlled substances, and

(2) Audit of the perpetual inventory record shall be completed and the physical and perpetual inventories shall be reconciled pursuant to the requirements of 657—subrule 10.33(4) each month as part of the inspection of the telepharmacy site.

657—13.9(155A) General requirements for managing pharmacy.

13.9(1) Distance to telepharmacy site. The managing pharmacy shall be located in Iowa and within a 200-mile radius of a telepharmacy site to ensure that the telepharmacy site is sufficiently supported by the managing pharmacy and that necessary personnel or supplies may be delivered to the telepharmacy site within a reasonable period of time of an identified need.

13.9(2) Emergency preparedness plan. A managing pharmacy shall develop and include in both the managing pharmacy's and the telepharmacy site's policies and procedures a plan for continuation of pharmaceutical services provided by the telepharmacy site in case of an emergency interruption of the telepharmacy site's services. The plan shall address the timely arrival at the telepharmacy site of necessary personnel or the delivery to the telepharmacy site of necessary supplies within a reasonable period of time following the identification of an emergency need. The plan may provide for alternate methods of continuation of the services of the telepharmacy site including, but not limited to, personal delivery of patient prescription medications from an alternate pharmacy location or on-site pharmacist staffing at the telepharmacy site.

13.9(3) Pharmacist in charge. The pharmacist in charge of the managing pharmacy shall be the pharmacist in charge of the telepharmacy site.

13.9(4) Adequate audiovisual connection. The pharmacist in charge shall ensure adequate audiovisual connection with the telepharmacy site during all periods when the telepharmacy site is open for business including ensuring confidentiality of communications in compliance with state and federal confidentiality laws.

13.9(5) Monthly inspection. The pharmacist in charge or delegate pharmacist shall be responsible for performing a monthly inspection of the telepharmacy site. Inspection reports shall be signed by the individual pharmacist who performed the inspection. Inspection records and reports shall be maintained at the telepharmacy site for two years following the date of the inspection. A copy of the inspection report shall be provided to and maintained at the managing pharmacy. The monthly inspection shall include, but may not be limited to, the following:

a. Audit and reconciliation of controlled substances perpetual and physical inventories.

b. Audit of electronic entry system and records.

c. Verification that the video recording system is functioning properly and that the recordings are maintained and available for at least 60 days past the date of the recording.

d. Compilation of a record of the number of prescriptions filled, the number of on-site pharmacist hours, and the number of hours the pharmacy site was open for business during the preceding month.

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- e.* Review of written policies and procedures and verification of compliance with those policies and procedures.
- f.* Ensuring compliance with and review of records in the continuous quality improvement program, following up with responsible personnel to address issues identified by incident reports to prevent future incidents.
- g.* Review of records of the receipt and disbursement of prescription drugs, including controlled substances, to ensure compliance with record-keeping requirements.
- h.* Inspection of drug supplies and storage areas to ensure removal and quarantine of outdated drugs.
- i.* Inspection of stock drug supplies and storage areas to ensure drugs are maintained in a manner to prevent diversion and maintain the integrity of the drugs, verifying that the temperatures of storage areas are appropriate for the stored drugs and equipment.
- j.* Inspection of pharmacy and storage areas and shelves to ensure areas and shelves are clean and free of pests and other contaminants.

13.9(6) *On-site pharmacist staffing.* In an effort to promote public health, the telepharmacy site shall be staffed by a pharmacist for at least 16 hours per month. While on site, the pharmacist shall make available to the community general health care services, which may include, but not necessarily be limited to, immunizations, medication therapy management, or health screenings, as deemed necessary and appropriate by the pharmacist in charge and as provided by policies and procedures.

a. If a pharmacist will be available at the telepharmacy site to provide in-person patient services, a consistent schedule of the pharmacist's availability shall be established and published.

b. Signage identifying the days and times when a pharmacist is on site and available to patients shall be conspicuously posted at the telepharmacy site and may be published by other means, as deemed appropriate.

c. Notice that the pharmacist will not be present at the telepharmacy site during any routinely scheduled and posted on-site availability shall be provided to the public in advance of the absence except as provided in the emergency preparedness plan.

d. If the average number of prescriptions dispensed per day by the telepharmacy site exceeds 150 prescriptions, the telepharmacy site shall provide on-site pharmacist staffing 100 percent of the time the pharmacy is open for business and shall, within ten business days, apply to the board for licensure as a general pharmacy. The average number of prescriptions dispensed per day shall be determined by averaging the number of prescriptions dispensed per day over the previous 90-day period.

657—13.10(155A) General requirements for verifying pharmacist. A verifying pharmacist shall maintain a current and active license to practice pharmacy in Iowa.

13.10(1) *Location of verifying pharmacist.* The verifying pharmacist who is performing patient counseling shall be physically located within the managing pharmacy or another pharmacy licensed to operate a pharmacy in Iowa.

13.10(2) *Adequate audiovisual connection.* The verifying pharmacist shall ensure adequate audiovisual connection with the telepharmacy site during all periods when the pharmacist is responsible for verifying telepharmacy site activities and practices, including ensuring confidentiality of communications in compliance with state and federal confidentiality laws.

13.10(3) *Verifying pharmacist training.* A verifying pharmacist shall be adequately trained on the use of the technology to ensure accurate verification and patient counseling and shall review and understand the policies and procedures of the managing pharmacy and the telepharmacy site.

13.10(4) *Patient refusal of counseling.* If a patient or patient's caregiver refuses patient counseling, the refusal shall be directly communicated by the patient or patient's caregiver to the pharmacist through audiovisual communication. A technician may not accept and communicate a refusal of patient counseling from the patient or patient's caregiver to the pharmacist.

13.10(5) *Reference library.* A verifying pharmacist shall have access to all required references applicable to the telepharmacy services provided at the telepharmacy site.

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657—13.11(155A) General requirements for telepharmacy technician. A telepharmacy technician shall maintain current national certification and registration in good standing with the board as a certified pharmacy technician.

13.11(1) Practice experience. Before practicing in a telepharmacy site, a telepharmacy technician shall have completed a minimum of 2,000 hours of practice experience as a certified pharmacy technician, at least 1,000 hours of which shall be practicing in an Iowa-licensed pharmacy and 160 hours of which shall be practicing in a managing pharmacy.

13.11(2) Training. In addition to training required of all pharmacy technicians, a telepharmacy technician shall complete the following minimum training requirements before practicing in a telepharmacy site. Records of telepharmacy technician training shall be documented and maintained by the telepharmacy site.

- a. Review and understanding of the policies and procedures of the managing pharmacy.
- b. Review and understanding of the policies and procedures of the telepharmacy site.
- c. Review and understanding of these rules for telepharmacy practice.
- d. Review and understanding of pharmacy technician rules, 657—Chapter 3.
- e. Understanding of the operation of the audiovisual technologies to be utilized at both pharmacies.
- f. Training at the telepharmacy site under the direct supervision of an on-site verifying pharmacist. Training shall include operation and use of the audiovisual technology and other means of communication between the telepharmacy site and the managing pharmacy and all daily operations from unlocking and opening the telepharmacy site to closing and locking the telepharmacy site at the end of the business day. If the telepharmacy site is protected by one or more alarm systems, training shall include how to disarm and engage the alarm system or systems.

13.11(3) Continuing education. Beginning with the first full two-year continuing education period for renewal of the technician's national pharmacy technician certification after beginning practice as a telepharmacy technician, and for each subsequent renewal of national certification for as long as the technician continues to practice as a telepharmacy technician, the technician shall complete two hours of continuing education in each of the following activities. These continuing education requirements shall not be in addition to the total continuing education credits required to maintain national certification.

- a. Patient safety/medication errors.
- b. Pharmacy law.

13.11(4) Identification. The telepharmacy technician shall, at all times when the technician is practicing at the telepharmacy site and the telepharmacy site is open for business, wear a name badge or tag identifying the technician. The badge or tag shall include, at a minimum, the technician's first name and title. The name badge or tag shall be so designed and worn that the technician's name and title are clearly visible to the public at all times.

13.11(5) Adequate audiovisual connection. The telepharmacy technician shall ensure adequate audiovisual connection with the managing pharmacy during all periods when the telepharmacy site is open for business, including ensuring confidentiality of communications in compliance with state and federal confidentiality laws.

657—13.12 to 13.15 Reserved.

657—13.16(124,155A) Telepharmacy site—initial application.

13.16(1) License application. A telepharmacy site shall complete and submit to the board a limited use/telepharmacy license application and fee as provided in rule 657—8.35(155A). In addition to the application and fee, the telepharmacy site shall include the additional information identified in this rule.

13.16(2) CSA registration application. If controlled substances will be dispensed from the telepharmacy site, the telepharmacy site shall complete and submit, with the limited use/telepharmacy license application and fee, the CSA registration application and fee as provided in rule 657—10.1(124).

13.16(3) Identification of managing pharmacy. The telepharmacy site application shall include identification of the managing pharmacy, including pharmacy name, license number, address, telephone number, pharmacist in charge, and a statement from the managing pharmacy or pharmacist in charge

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indicating that the managing pharmacy has executed a written agreement to provide the required services and oversight to the telepharmacy site.

13.16(4) *Distance to nearest general pharmacy.* The telepharmacy site application shall identify the nearest licensed pharmacy that dispenses prescription drugs to outpatients and shall provide evidence identifying the total driving distance between the proposed telepharmacy site and the nearest currently licensed general pharmacy.

a. If the distance between the proposed telepharmacy site and the nearest currently licensed general pharmacy is less than ten miles, the telepharmacy site shall submit a request for waiver of the distance requirement. The process and requirements for a request for waiver are identified in subrule 13.16(8).

b. The distance requirement shall not apply under any of the following circumstances:

(1) The telepharmacy site was approved by the board and operating as a telepharmacy site prior to July 1, 2016.

(2) The proposed telepharmacy site is located within a hospital campus, and services will be limited to inpatient dispensing.

(3) The proposed telepharmacy site is located on property owned, operated, or leased by the state.

13.16(5) *Written agreement.* The telepharmacy site application shall include the written agreement between the telepharmacy site and the managing pharmacy as described in subrule 13.3(1).

13.16(6) *Key personnel.* The telepharmacy site application shall identify key personnel including the pharmacist in charge of the managing pharmacy and the telepharmacy site and the telepharmacy technician or technicians at the telepharmacy site. Identification shall include the names, the license or registration numbers, and the titles of the key personnel. Telepharmacy technician identification shall also include a copy of the telepharmacy technician's current national certification or other verification of the telepharmacy technician's current national certification.

13.16(7) *Audiovisual technology.* A description of the audiovisual technology system to be used to link the managing pharmacy and the telepharmacy site, including built-in safeguards relating to verification of the accuracy of the dispensing processes. Safeguards shall include but may not be limited to:

a. Requiring a verifying pharmacist to review and compare the electronic image of any new prescription with the data entry record of the prescription prior to authorizing the telepharmacy site's system to print a prescription label and prior to the telepharmacy technician's filling of the prescription at the telepharmacy site.

b. Requiring the technician to use barcode technology at the telepharmacy site to verify the accuracy of the drug to be dispensed.

c. Requiring remote visual confirmation by a verifying pharmacist of the drug stock bottle and the drug to be dispensed prior to the dispensing of the prescription at the telepharmacy site.

d. Ensuring that the telepharmacy site's system prevents a prescription from being sold and delivered to a patient before the verifying pharmacist has performed a final verification of the accuracy of the prescription and released the prescription for sale and delivery at the telepharmacy site.

13.16(8) *Request for distance waiver.* The board shall consider a request for waiver of the distance requirement between the proposed telepharmacy site and the nearest currently licensed pharmacy that dispenses prescription drugs to outpatients if the petitioner can demonstrate to the board that the proposed telepharmacy site is located in an area where there is limited access to pharmacy services and that there exist compelling circumstances that justify waiving the distance requirement.

a. The request for waiver shall be prepared and shall include the elements of a request for waiver or variance identified in 657—Chapter 34.

b. In addition to the requirements of 657—Chapter 34, the request for waiver shall include evidence and specific information regarding each of the following, if applicable. If an item identified below does not apply to the proposed telepharmacy site, the request for waiver shall specifically state that the item does not apply.

(1) That the nearest currently licensed pharmacy that dispenses prescription drugs to outpatients is open for business for limited hours or fewer hours than the proposed telepharmacy site.

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(2) That the proposed telepharmacy site intends to provide services not available from the nearest currently licensed pharmacy that dispenses prescription drugs to outpatients.

(3) That access to the nearest currently licensed general pharmacy that dispenses prescription drugs to outpatients is limited. A description of how the proposed telepharmacy site will improve patient access to pharmacy services shall be included.

(4) That limited access to pharmacy services is affecting patient safety.

(5) That there are transportation barriers to services from the nearest currently licensed pharmacy that dispenses prescription drugs to outpatients.

(6) That the nearest currently licensed pharmacy that dispenses prescription drugs to outpatients is closing.

(7) That the proposed telepharmacy site is located in an area of the state where there is limited access to pharmacy services.

c. The board shall consider a request for waiver of the distance requirement during any open session of a meeting of the board. One or more representatives of the parties to the waiver request, including representatives of the proposed telepharmacy site, the managing pharmacy, and the nearest currently licensed general pharmacy, shall be invited and encouraged to attend the meeting at which the waiver request is scheduled for consideration to be available to respond to any questions.

d. The board's decision to grant or deny the request for waiver of the distance requirement shall be a proposed decision and shall be reviewed by the director of the department of public health.

(1) The director shall have the power to approve, modify, or veto the board's proposed decision regarding the waiver request.

(2) The director's decision on a waiver request shall be considered final agency action.

(3) The director's decision (final agency action) shall be subject to judicial review under Iowa Code chapter 17A.

657—13.17(124,155A) Changes to telepharmacy site or managing pharmacy. Except as specifically provided by these rules, a change to a telepharmacy site shall require compliance with the licensure and notification requirements of the specific type of change identified in 657—subrules 8.35(6) and 8.35(7). A change affecting the CSA registration shall comply with the appropriate requirements of rule 657—10.11(124).

13.17(1) Change of pharmacist in charge. A change of pharmacist in charge shall require submission of a pharmacy license application for the managing pharmacy and the telepharmacy site as provided by 657—subrule 8.35(6).

13.17(2) Closing or selling of pharmacy. A telepharmacy site or managing pharmacy that intends to close or sell the pharmacy practice shall comply with all requirements for closing or selling a pharmacy found at 657—subrules 8.35(6) and 8.35(7) regarding ownership change and closing a pharmacy, including all advance notification requirements. A purchaser of a telepharmacy site shall complete and submit applications and supporting information as provided in rule 657—13.16(124,155A). A closing pharmacy shall also comply with the requirements of subrule 13.3(3) or 13.3(4), as appropriate.

13.17(3) Location change. A telepharmacy site that intends to move to and to provide telepharmacy services from a new location that is outside the community wherein the telepharmacy site has been located shall comply with the requirements of subrule 13.17(2) for closing a pharmacy and shall submit applications and supporting information as provided in rule 657—13.16(124,155A). A managing pharmacy that intends to move to a new location shall comply with the requirements of 657—subrules 8.35(5), 8.35(6), and 8.35(7), as appropriate.

657—13.18(155A) Opening of traditional pharmacy. If a pharmacy licensed as a general, hospital, or limited use pharmacy opens for business within ten miles of an existing and operating telepharmacy site, the telepharmacy site may continue to operate as a telepharmacy site and shall not be required to close due to the proximity of the new pharmacy.

657—13.19 and 13.20 Reserved.

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657—13.21(124,155A) Policies and procedures. In addition to policies and procedures required for the specific services provided and identified in other chapters of board rules, both the managing pharmacy and the telepharmacy site shall develop, implement, and adhere to written policies and procedures for the operation and management of the specific pharmacy's operations.

13.21(1) Minimum requirements. Policies and procedures shall define the frequency of review, and written documentation of review by the pharmacist in charge shall be maintained. Policies and procedures shall address, at a minimum, the following:

a. Procedures ensuring that a record is made and retained identifying the pharmacist who verified the accuracy of the prescription including the accuracy of the data entry, the selection of the correct drug, the accuracy of the label affixed to the prescription container, and the appropriateness of the prescription container.

b. Procedures ensuring that a record is made and retained identifying the pharmacist who performed the drug utilization review as provided by rule 657—8.21(155A).

c. Procedures ensuring that a record is made and retained identifying the pharmacist who provided counseling to the patient or the patient's caregiver pursuant to rule 657—6.14(155A).

d. Procedures ensuring that a record is made and retained identifying the technician who filled the prescription.

e. Procedures ensuring adequate security to prevent unauthorized access to prescription drugs and devices and to confidential records.

f. Procedures regarding procurement of drugs and devices, including who is authorized to order or receive drugs and devices, from whom drugs and devices may be ordered and received, and the required method for documentation of the receipt of drugs and devices.

g. Procedures ensuring appropriate and safe storage of drugs at the telepharmacy site, including appropriate temperature controls.

h. Procedures identifying the elements of a monthly inspection of the telepharmacy site by the pharmacist in charge or designated pharmacist, including requirements for documentation and retention of the results of each inspection.

i. Procedures for the temporary quarantine of out-of-date and adulterated drugs from dispensing stock and the subsequent documented disposal of those drugs.

j. Procedures and documentation required in the case of return to the telepharmacy of a drug or device.

k. Procedures for drug and device recalls.

13.21(2) Availability. Policies and procedures shall be available for inspection and copying by the board or the board's representative at the location to which the policies and procedures apply.

657—13.22(155A) Reports to the board. The board may periodically request information regarding the services provided by a telepharmacy site.

13.22(1) Timeliness. A telepharmacy site shall complete and submit the requested information in a timely manner as requested by the board. The board shall allow a reasonable amount of time for a telepharmacy site to complete and submit the requested information.

13.22(2) Information to include. Information requested may include, but may not necessarily be limited to, the following:

a. The number of prescriptions dispensed from the telepharmacy site over a specified period of time.

b. The number of hours a pharmacist was physically present at the telepharmacy site over a specified period of time.

c. The number of hours the telepharmacy site was open for business over a specified period of time.

657—13.23(124,155A) Records. Every inventory or other record required to be kept under Iowa Code chapters 124 and 155A or rules of the board shall be kept by the telepharmacy site and be available for inspection and copying by the board or its representative for at least two years from the date of the

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inventory or record except as specifically identified by law or rule. Controlled substances records shall be maintained in a readily retrievable manner in accordance with federal requirements and 657—Chapter 10.

13.23(1) *Dispensing record.* As provided in rule 657—13.21(124,155A), a written or electronic record identifying the pharmacist who verified the prescription, the pharmacist who provided counseling to the patient or the patient's caregiver, and the pharmacy technician who filled the prescription shall be maintained for every prescription fill dispensed by the telepharmacy site.

13.23(2) *On-site pharmacist staffing.* A written or electronic record of the number of prescriptions filled, the number of on-site pharmacist hours, and the number of hours the telepharmacy site was open for business each month shall be maintained by the telepharmacy site.

13.23(3) *Pharmacy access.* Records identifying, by unique identification of the individual accessing the pharmacy department, including the date and time of access, shall be maintained for two years beyond the date of access.

13.23(4) *Monthly inspection.* Reports of the monthly inspection of the telepharmacy site shall be maintained at the telepharmacy site for two years following the date of the inspection. A copy of the inspection report shall be provided to and maintained at the managing pharmacy for two years following the date of the inspection.

These rules are intended to implement Iowa Code sections 124.301, 147.107, 155A.3, 155A.6A, 155A.13, 155A.14, 155A.19, 155A.28, 155A.31, 155A.33, and 155A.41.

ARC 3039C**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 155A.13A, the Board of Pharmacy hereby gives Notice of Intended Action to rescind Chapter 19, “Nonresident Pharmacy Practice,” Iowa Administrative Code, and to adopt a new chapter with the same title.

The proposed rules were approved at the November 2, 2016, regular meeting of the Board of Pharmacy.

The proposed rules reflect an administrative review pursuant to Iowa Code section 17A.7(2) as well as are promulgated in response to 2016 Iowa Acts, Senate File 453, enacted by the General Assembly. The proposed rules identify application requirements, including minimum standards for inspections of nonresident pharmacies seeking licensure in Iowa, and application and registration requirements for the pharmacist in charge of a nonresident pharmacy. The proposed rules provide directives for nonresident pharmacies subject to disciplinary action or criminal convictions to provide timely notice to the Board. The proposed rules also provide further explanation of the disciplinary authority of the Board. In paragraph 19.4(1)“d,” there are two references to rules in 657—Chapter 41, which is proposed in **ARC 3038C** and published herein.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed rules not later than 4:30 p.m. on May 16, 2017. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

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

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These rules are intended to implement Iowa Code section 155A.13A as amended by 2016 Iowa Acts, Senate File 453.

The following amendment is proposed.

Rescind 657—Chapter 19 and adopt the following **new** chapter in lieu thereof:

CHAPTER 19
NONRESIDENT PHARMACY PRACTICE

657—19.1(155A) Definitions.

“*Board*” means the Iowa board of pharmacy.

“*FDA*” means the United States Food and Drug Administration.

“*Home state*” means the state in which a pharmacy is located.

“*Nonresident pharmacy*” means a pharmacy, including an Internet-based pharmacy, located outside the state of Iowa that delivers, dispenses, or distributes, by any method, prescription drugs, devices, or pharmacy services to an ultimate user physically located in this state.

“*Nonresident pharmacy license*” means a pharmacy license issued to a nonresident pharmacy.

“*Pharmacy services*” includes, but is not limited to, nonproduct services provided by an Iowa-licensed pharmacist or a pharmacist practicing at an Iowa-licensed nonresident pharmacy, such as patient counseling and drug information, pharmaceutical care, and assessment of health risks.

“*Registered pharmacist in charge*” means the pharmacist in charge at the nonresident pharmacy who is registered with the board and is legally responsible for the operation of the nonresident pharmacy with respect to the provision of prescription drugs, devices, or pharmacy services to patients located in Iowa.

657—19.2(155A) Nonresident pharmacy license. A nonresident pharmacy shall apply for and obtain, pursuant to provisions of rule 657—8.35(155A), a nonresident pharmacy license from the board prior to providing prescription drugs, devices, or pharmacy services to an ultimate user in this state. All requirements of rule 657—8.35(155A) regarding licensure are applicable to nonresident pharmacies unless otherwise provided in this rule. Any pharmacy that dispenses controlled substances to Iowa residents shall also register pursuant to 657—Chapter 10.

19.2(1) Inspection requirements. In lieu of the inspection requirement identified in 657—subrule 8.35(5), a nonresident pharmacy submitting any application for licensure, except when related to a change in location, shall submit with its application and fee an inspection report that satisfies the following requirements:

a. Less than two years have passed since the date of the inspection and the inspection report is the most recent inspection report available that satisfies the requirements of these rules.

b. The inspection occurred while the pharmacy was in operation. An inspection prior to the initial opening of the pharmacy shall not satisfy this requirement.

c. The inspection report addresses all aspects of the pharmacy’s business that will be utilized in Iowa.

d. The inspection was performed by or on behalf of the home state licensing authority, if available.

19.2(2) Qualified inspector. If the home state licensing authority has not conducted an inspection satisfying the inspection requirements, the nonresident pharmacy shall submit an inspection report issued by one of the following:

a. The verified pharmacy program offered by the National Association of Boards of Pharmacy®.

b. Another qualified entity if the entity is preapproved by the board.

c. An authorized agent of the board. The board may recover from a nonresident pharmacy, prior to the issuance of a nonresident pharmacy license, the costs associated with conducting an inspection.

19.2(3) Corrective action. The nonresident pharmacy shall submit evidence of corrective action taken to satisfy any deficiency identified in the inspection report and of compliance with all legal directives of the home state licensing authority.

19.2(4) Nonresident pharmacy license changes. A nonresident pharmacy shall submit a completed application and fee pursuant to 657—subrule 8.35(6) except as provided in this rule.

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a. Name. A change of the pharmacy name which is provided to patients shall require submission of a pharmacy license application and fee within ten days after issuance by the home state regulatory authority of a license bearing the new name.

b. Location. A change of pharmacy location shall require submission of a pharmacy license application, with the exception of the inspection requirements pursuant to subrule 19.2(1), and fee within ten days after issuance by the home state regulatory authority of a license bearing the new address.

c. Pharmacist in charge. A change in the pharmacist in charge shall require submission of a pharmacy license application and fee within ten days of the identification of a permanent pharmacist in charge pursuant to 657—subrule 8.35(6). If a temporary pharmacist in charge is identified, written notification shall be provided to the board pursuant to 657—paragraph 8.35(6)“c.” The temporary pharmacist in charge shall not be required to be registered pursuant to rule 657—19.3(155A).

19.2(5) Closing pharmacy or discontinuation of services. If a nonresident pharmacy is closing, the pharmacy shall comply with the requirements in 657—subrule 8.35(7). If a nonresident pharmacy is discontinuing provision of pharmacy services to Iowa, but not closing, the pharmacy shall comply with the requirements in the introductory paragraph of 657—subrule 8.35(7) as it relates to transferring patient records to another Iowa-licensed pharmacy and 657—paragraphs 8.35(7)“b” and “d.” The notice requirements of this rule shall not apply in the case of a board-approved emergency or unforeseeable closure, including but not limited to emergency board action, foreclosure, fire, or natural disaster. The nonresident pharmacy shall return to the board the nonresident pharmacy license certificate and, if registered, the Iowa controlled substances Act registration certificate within ten days following the closure or discontinuation of service.

657—19.3(155A) Registered pharmacist in charge. The permanent pharmacist in charge of the nonresident pharmacy shall be designated as such on the nonresident pharmacy license application. Beginning January 1, 2018, the pharmacist in charge shall be registered with the board. The pharmacist in charge shall submit a completed application and a registration fee of \$75. The registration shall expire on December 31 following the date of issuance of the registration. An initial registration issued between November 1 and December 31 shall not require renewal until the following calendar year.

19.3(1) Registered pharmacist in charge application. The pharmacist in charge of an Iowa-licensed nonresident pharmacy who is not currently actively licensed to practice pharmacy in Iowa shall be registered with the board. The pharmacist in charge shall submit to the board an application that includes the following information:

- a.* The pharmacist’s name and contact information.
- b.* The pharmacist’s license or registration number in the state in which the nonresident pharmacy is located.
- c.* The pharmacist’s current place of employment.
- d.* Verification that the pharmacist’s license in the state in which the nonresident pharmacy is located is current and in good standing.
- e.* Documentation that the applicant has successfully completed the most current educational training module approved by the board regarding the board’s rules as they relate to nonresident pharmacy practice.
- f.* Criminal and disciplinary history information.

19.3(2) Registration changes and voluntary cancellation. A registered pharmacist in charge of a nonresident pharmacy shall notify the board in writing within ten days of any change of information included on the registration application, including the pharmacist’s name, contact information, home state license or registration information or status, and place of employment. If a registered pharmacist in charge ceases to be the pharmacist in charge of an Iowa-licensed nonresident pharmacy, the pharmacist may voluntarily request that the registration be canceled and the pharmacist shall not be subject to the inactive registration and reactivation procedure as identified in paragraph 19.3(3)“b.”

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19.3(3) Registration renewal. The registration of a pharmacist in charge at a nonresident pharmacy shall be renewed or canceled prior to January 1 of each year. The pharmacist in charge shall submit a completed application and fee as required in this rule.

a. Delinquent registration grace period. If the registration of a pharmacist in charge has not been renewed or canceled prior to expiration, but the pharmacist is in the process of renewing the registration, the registration becomes delinquent on January 1. A pharmacist in charge who submits a completed registration renewal application, application fee, and late penalty fee of \$75 postmarked or delivered to the board office by January 31 shall not be subject to disciplinary action for continuing to serve as pharmacist in charge without a current registration in the month of January.

b. Delinquent license reactivation beyond grace period. If the registration of a pharmacist in charge has not been renewed prior to the expiration of the one-month grace period identified in paragraph 19.3(3)“a,” the nonresident pharmacy may not continue to provide services to Iowa patients. A nonresident pharmacy that continues to provide services to Iowa patients without a currently registered pharmacist in charge may be subject to disciplinary sanctions. A pharmacist in charge without a current registration may apply for reactivation by submitting a registration application for reactivation and a \$300 reactivation fee. As part of the reactivation application, the nonresident pharmacy shall disclose the services, if any, that were provided to Iowa patients while the registration of the pharmacist in charge was delinquent.

657—19.4(124,155A) Applicability of board rules. A nonresident pharmacy shall comply with all requirements of this chapter, 657—Chapter 8, and any other board rules relating to the services that are provided by the pharmacy to patients in Iowa.

19.4(1) Type of pharmacy practice. A nonresident pharmacy, based on the principal type of pharmacy practice, shall comply with board rules as follows:

a. A “general pharmacy” as described in rule 657—6.1(155A) shall comply with all requirements of 657—Chapter 6.

b. A “hospital pharmacy” as described in rule 657—7.1(155A), excepting licensure pursuant to Iowa Code chapter 135B, shall comply with all requirements of 657—Chapter 7.

c. A “limited use pharmacy” as described in 657—subrule 8.35(2) shall comply with all requirements of the limited use pharmacy practice.

d. An “outsourcing facility” as described in rule 657—41.2(155A) shall comply with all requirements of 657—Chapters 41 and 20.

19.4(2) Controlled substances. A nonresident pharmacy providing prescription drugs identified as controlled substances under Iowa Code chapter 124 shall register with the board and comply with all requirements of 657—Chapter 10.

19.4(3) Compounding. A nonresident pharmacy engaged in the compounding of drug products as defined in rule 657—20.2(124,126,155A) shall comply with all requirements of 657—Chapter 20.

19.4(4) Long-term care services. A nonresident pharmacy providing services to Iowa patients in a long-term care facility as defined in 657—Chapter 23 shall comply with all requirements of 657—Chapters 22 and 23.

19.4(5) Electronic data. A nonresident pharmacy utilizing any electronic data processing or transmission devices or services shall comply with all requirements of 657—Chapter 21.

657—19.5 and 19.6 Reserved.

657—19.7(155A) Confidential data. Pursuant to rule 657—8.3(155A), each nonresident pharmacy shall have policies and procedures to ensure patient confidentiality and to protect patient identity and patient-specific information from inappropriate or nonessential access, use, or distribution pursuant to the requirements of rule 657—8.16(124,155A).

657—19.8(124,155A) Storage and shipment of drugs and devices. Pursuant to rule 657—8.3(155A), each nonresident pharmacy shall have policies and procedures to ensure compliance with rules

PHARMACY BOARD[657](cont'd)

657—8.7(155A) and 657—8.15(155A). Policies and procedures shall provide for the shipment of controlled substances via a secure and traceable method, and all records of such shipment and delivery to Iowa patients shall be maintained for a minimum of two years from the date of delivery.

657—19.9(155A) Patient record system, prospective drug use review, and patient counseling.

19.9(1) Patient record system. A patient record system shall be maintained pursuant to rule 657—6.13(155A) for Iowa patients for whom prescription drug orders are dispensed.

19.9(2) Prospective drug use review. A pharmacist shall, pursuant to the requirements of rule 657—8.21(155A), review the patient record and each prescription drug order before dispensing.

19.9(3) Patient counseling. Pursuant to rule 657—8.3(155A), each nonresident pharmacy shall have policies and procedures to ensure that Iowa patients receive appropriate counseling pursuant to the requirements of rule 657—6.14(155A).

657—19.10(155A) Reporting discipline and criminal convictions. A nonresident pharmacy or registered pharmacist in charge shall provide notice to the board of any discipline imposed by any licensing authority on any license or registration held by the pharmacy or pharmacist in charge no later than 30 days after the final action. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. A nonresident pharmacy or pharmacist in charge shall provide written notice to the board of any criminal conviction of the pharmacy, of any pharmacy owner, or of the pharmacist in charge that is related to prescription drugs or related to the operation of the pharmacy no later than 30 days after the conviction. The term “criminal conviction” includes instances when the judgment of conviction or sentence is deferred.

657—19.11(155A) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a nonresident pharmacy license or pharmacist in charge registration for any of the following:

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulations promulgated under the Act. A warning letter issued by the FDA shall be conclusive evidence of a violation.

2. Any conviction of a crime related to prescription drugs or the practice of pharmacy committed by the nonresident pharmacy, pharmacist in charge, or individual owner, or if the pharmacy is an association, joint stock company, partnership, or corporation, by any managing officer.

3. Refusal of access to the pharmacy or pharmacy records to an agent of the board for the purpose of conducting an inspection or investigation.

4. Employing or continuing to employ a pharmacist in charge without a current and active registration pursuant to rule 657—19.3(155A).

5. Any violation of Iowa Code chapter 124, 124A, 124B, 126, 155A, or 205 or any rule of the board.

These rules are intended to implement Iowa Code sections 124.301, 124.306, 155A.13, 155A.13A, 155A.13C, 155A.19, and 155A.35.

ARC 3038C**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 155A.13C, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 20, “Compounding Practices,” and to adopt new Chapter 41, “Outsourcing Facilities,” Iowa Administrative Code.

These amendments were approved at the November 2, 2016, regular meeting of the Board of Pharmacy.

The proposed amendments are intended to implement the changes made to Iowa Code section 155A.13C in 2016 Iowa Acts, Senate File 453, enacted by the General Assembly, which identified as a specific license category an outsourcing facility and authorized the Board to promulgate rules for such licensure and activity. The proposed amendments add to various rules in Chapter 20 references to proposed Chapter 41 for outsourcing facilities. The amendments also introduce language, consistent with federal draft guidance, regarding criteria for the Board to consider when determining if a compounded drug preparation is essentially a copy of an approved drug. Compounding of a drug that is essentially a copy of an approved drug is a violation of federal regulations.

Proposed Chapter 41 establishes the requirements for licensure of outsourcing facilities and includes requirements relating to operations of an outsourcing facility, disclosure of inspection information including identification of determined deficiencies and the actions taken to cure those deficiencies, and disclosure of administrative and criminal actions taken against the facility and primary facility personnel.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on May 16, 2017. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

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

These amendments are intended to implement Iowa Code sections 124.301, 155A.13, and 155A.13C. The following amendments are proposed.

ITEM 1. Amend rule 657—20.1(124,126,155A) as follows:

657—20.1(124,126,155A) Purpose and scope. The requirements of this chapter apply to compounded preparations that are dispensed, distributed, or administered to an ultimate user in the state of Iowa, regardless of the location of the pharmacy or outsourcing facility where the preparation was compounded. This chapter applies to compounded preparations intended for humans and animals. In addition to the requirements in this chapter, all pharmacies and outsourcing facilities engaged in compounding shall comply with all applicable federal laws and regulations governing compounding and all applicable state laws, rules and regulations governing the practice of pharmacy. In the event the requirements in this chapter directly conflict with any federal law or regulation, the federal law or regulation shall supersede the requirements in this chapter. The requirements of 657—Chapter 16 apply to the compounding of radiopharmaceuticals. The requirements of 657—Chapter 41 apply to outsourcing facilities.

PHARMACY BOARD[657](cont'd)

ITEM 2. Amend rule **657—20.2(124,126,155A)**, definition of “Outsourcing facility,” as follows:

“Outsourcing facility” or “facility” means a any compounding facility that is located at a single geographic location and has registered with the FDA as an outsourcing facility in accordance with Section 503B of the Federal Food, Drug, and Cosmetic Act, as defined in 21 U.S.C. Section 353b, that distributes sterile compounded human drug products without a patient-specific prescription to an authorized agent or practitioner in this state.

ITEM 3. Amend rule 657—20.5(126,155A) as follows:

657—20.5(126,155A) Delayed compliance. ~~A pharmacy that is unable to meet the requirements for full compliance with these rules and with USP Chapter 795 or USP Chapter 797 by May 18, 2016, shall, prior to that date, request and obtain from the board a waiver of the specific requirement or requirements that the pharmacy is unable to meet.~~ A pharmacy that cannot meet the requirements for full compliance with these rules, including applicable USP chapters, and that has not obtained from the board a waiver of the specific requirement or requirements shall not engage in compounding until the pharmacy is in full compliance with all requirements or the board has approved a waiver of the specific requirement or requirements.

ITEM 4. Amend rule 657—20.6(126,155A) as follows:

657—20.6(126,155A) Compounding standards for outsourcing facilities. An FDA-registered outsourcing facility shall be properly licensed in Iowa pursuant to 657—Chapter 41 and shall follow the FDA’s current good manufacturing practices (cGMPs) for outsourcing facilities when compounding preparations for hospitals, practitioners, or patients in the state of use in Iowa.

ITEM 5. Amend rule 657—20.11(126,155A) as follows:

657—20.11(126,155A) Prohibition on resale of compounded preparations. The sale of compounded preparations to other pharmacies, prescribers, or facilities entities, except as explicitly authorized by this chapter, is considered manufacturing.

ITEM 6. Adopt the following **new** subrules 20.12(1) and 20.12(2):

20.12(1) Essentially a copy. The board may consider the existence of the following factors as an indication that a compounded preparation is essentially a copy of an approved drug:

a. The compounded preparation has the same active pharmaceutical ingredient(s) as the commercially available drug product;

b. The active pharmaceutical ingredient(s) has the same, similar, or an easily substitutable dosage strength; and

c. The commercially available drug product can be used by the same route of administration as prescribed for the compounded preparation.

20.12(2) Clinically significant difference. The prescription for a compounded preparation that is essentially a copy of an approved drug shall clearly indicate the relevant change and the significant clinical difference produced for the patient. A prescription that identifies only a patient name and compounded preparation formulation is insufficient documentation for a pharmacy or outsourcing facility to rely upon to conclude that the prescriber made a determination regarding a clinically significant difference.

ITEM 7. Amend rule 657—20.15(124,126,155A) as follows:

657—20.15(124,126,155A) Compounding for office use.

20.15(1) Human compounded preparations. Only an FDA-registered outsourcing facility properly licensed in Iowa pursuant to 657—Chapter 41 may distribute to a practitioner for office use human compounded preparations without a patient-specific prescription.

20.15(2) Veterinary compounded preparations. Veterinary compounded preparations may be sold to a practitioner for office use if the preparations are compounded by an Iowa-licensed pharmacy or

PHARMACY BOARD[657](cont'd)

outsourcing facility and sold directly to the practitioner by the ~~compounding~~ pharmacy or outsourcing facility.

20.15(3) and **20.15(4)** No change.

ITEM 8. Amend subrule 20.16(1) as follows:

20.16(1) *By an FDA-registered outsourcing facility.* Only an FDA-registered outsourcing facility properly licensed in Iowa pursuant to 657—Chapter 41 may distribute human compounded preparations to a hospital or hospital pharmacy in the absence of a patient-specific prescription. The compounded preparation shall be labeled in compliance with subrule 20.19(3).

ITEM 9. Amend paragraph **20.19(3)“k”** as follows:

k. The statement “Not for resale” and, if the preparation is dispensed or distributed other than pursuant to a patient-specific prescription for an individual identified patient, the statement “OFFICE USE ONLY.”

ITEM 10. Amend **657—Chapter 20**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 124.302, 124.303, 124.306, 124.308, 124.501, 126.9, 126.10, 126.18, 155A.2, 155A.13, 155A.13C, 155A.28, 155A.33, and 155A.35.

ITEM 11. Adopt the following new 657—Chapter 41:

CHAPTER 41 OUTSOURCING FACILITIES

657—41.1(155A) Purpose and scope. The purpose of this chapter is to establish the minimum standard of practice for outsourcing facilities that intend to provide compounding services in or into Iowa. The requirements of these rules, in addition to any other board rules applicable to the facility’s operation, apply to all Iowa-licensed outsourcing facilities that provide compounded medications in or into Iowa whether pursuant to a patient-specific prescription or not.

657—41.2(155A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Board*” means the Iowa board of pharmacy.

“*FDA*” means the United States Food and Drug Administration.

“*Home state*” means the state in which an outsourcing facility is located.

“*Outsourcing facility*” or “*facility*” means any compounding facility that is registered as an outsourcing facility, as defined in 21 U.S.C. Section 353b, that distributes sterile compounded human drug products without a patient-specific prescription to an authorized agent or practitioner in this state.

657—41.3(155A) Outsourcing facility license. Beginning January 1, 2018, an outsourcing facility shall apply for and obtain an outsourcing facility license from the board prior to providing non-patient-specific compounded human drug products in this state. The applicant shall submit a completed application along with an application fee of \$400. An outsourcing facility that intends to distribute controlled substances in or into Iowa shall also, prior to distributing such substances in or into Iowa, apply for and obtain an Iowa controlled substances Act registration pursuant to 657—Chapter 10.

41.3(1) Application requirements. The application shall require demographic information about the facility; ownership information; the name, signature and home state license number for the supervising pharmacist; an attestation that the supervising pharmacist has read and understands the laws and rules relating to sterile compounding in Iowa; information about the entity’s registered agent; criminal and disciplinary history information; and a description of the scope of services to be provided in Iowa. As part of the application process, the applicant shall also:

a. Submit evidence of possession of a valid registration with the FDA as an outsourcing facility.

b. If one or more inspections have been conducted by the FDA in the five-year period immediately preceding the application, submit a copy of any correspondence from the FDA as a result of the inspection, including but not limited to any form 483s, warning letters, or formal responses, and all correspondence from the applicant to the FDA related to such inspections, including but not limited

PHARMACY BOARD[657](cont'd)

to formal responses and corrective action plans. In addition, the applicant shall submit evidence of correction of all deficiencies discovered in such inspections and evidence of compliance with all directives from the FDA.

c. Submit evidence that the supervising pharmacist, as described in 21 U.S.C. Section 353b(a), holds a valid pharmacist license in the state in which the facility is located and that such license is in good standing.

d. Submit information to facilitate a national criminal history record check.

41.3(2) Provision of patient-specific prescriptions. If an outsourcing facility intends to dispense prescription drugs pursuant to patient-specific prescriptions to individual patients in Iowa, the outsourcing facility shall also obtain and maintain a valid Iowa pharmacy license. If the pharmacy is located in Iowa, the pharmacy shall obtain and maintain a valid Iowa pharmacy license pursuant to 657—Chapter 8; if the pharmacy is located outside Iowa, the pharmacy shall, prior to dispensing prescriptions to patients located in Iowa, obtain and maintain a valid Iowa nonresident pharmacy license pursuant to 657—Chapter 19.

41.3(3) License renewal. The outsourcing facility license shall be renewed by January 1 of each year. The facility shall submit the license application and fee as provided in this rule. An outsourcing facility may renew its license beginning November 1 prior to license expiration. An initial outsourcing facility license issued between November 1 and December 31 shall not require renewal until the following calendar year. The fee for license renewal shall be \$400.

a. *Delinquent license grace period.* If an outsourcing facility license has not been renewed or canceled prior to expiration, but the facility is in the process of renewing the license, the license becomes delinquent on January 1. An outsourcing facility that submits a completed license renewal application, application fee, and late penalty fee of \$400 postmarked or delivered to the board office by January 31 shall not be subject to disciplinary action for continuing to provide services to Iowa customers in the month of January.

b. *Delinquent license reactivation beyond grace period.* If an outsourcing facility license has not been renewed prior to the expiration of the one-month grace period identified in paragraph 41.3(3) “a,” the facility may not continue to provide services to Iowa customers. An outsourcing facility that continues to provide services to Iowa customers without a current license may be subject to disciplinary sanctions. An outsourcing facility without a current license may apply for reactivation by submitting an application for license reactivation and a \$1,600 reactivation fee. As part of the reactivation application, the facility shall disclose the services, if any, that were provided to Iowa customers while the license was delinquent.

41.3(4) License changes. If an outsourcing facility has a change of name, ownership, location or supervising pharmacist, the facility shall submit to the board an outsourcing facility license application and applicable fee within ten days of the FDA’s issuance of an updated registration. Following processing of the completed license application and fee, the board shall issue a new license certificate that reflects the change or changes.

41.3(5) License cancellation. If an outsourcing facility ceases to be registered as an outsourcing facility with the FDA, the facility shall immediately cease distribution of non-patient-specific compounded drug products in or into this state and shall return its Iowa outsourcing facility license to the board within ten days of such occurrence. Upon receipt, the board shall administratively cancel the outsourcing facility license. If an outsourcing facility intends to discontinue business in this state, the facility shall notify the board in writing of its intent at least 30 days in advance of the discontinuation of services and request that the license be administratively canceled. To the extent possible to avoid unnecessary delays in obtaining product for patients, an outsourcing facility that intends to discontinue services in Iowa should provide advance notice to its customers of the date that the outsourcing facility intends to cease distributing products in this state. The notice requirements of this rule shall not apply in the case of a board-approved emergency or unforeseeable closure, including but not limited to emergency board action, foreclosure, fire, or natural disaster.

PHARMACY BOARD[657](cont'd)

657—41.4(155A) Applicability of board rules. An outsourcing facility shall comply with all requirements of this chapter, 657—Chapter 20, and any other board rules relating to the services that are provided to Iowa customers.

41.4(1) *Controlled substances.* An outsourcing facility providing prescription drugs identified as controlled substances under Iowa Code chapter 124 to Iowa customers or patients shall comply with all requirements of 657—Chapter 10.

41.4(2) *Electronic data.* An outsourcing facility utilizing any electronic data processing or transmission devices or services shall comply with all requirements of 657—Chapter 21.

41.4(3) *Patient-specific prescriptions.* An outsourcing facility that also provides patient-specific compounded medications pursuant to a prescription shall comply with all requirements of 657—Chapters 8, 19, and 20.

657—41.5(155A) Reporting discipline and criminal convictions. An outsourcing facility shall provide written notice to the board of any disciplinary or enforcement action imposed by any licensing or regulatory authority on any license or registration held by the facility. Written notice shall be received no later than 30 days after the final action. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. An outsourcing facility shall provide written notice to the board of any criminal conviction of the facility or of any owner that is related to the operation of the facility no later than 30 days after the conviction. The term “criminal conviction” includes instances when the judgment of conviction or sentence is deferred.

657—41.6(155A) Discipline. Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on an outsourcing facility license for any of the following:

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulations promulgated under the Act. A warning letter issued by the FDA shall be conclusive evidence of a violation.
2. Any conviction of a crime related to prescription drugs or the practice of pharmacy committed by the outsourcing facility, supervising pharmacist, or individual owner, or if the outsourcing facility is an association, joint stock company, partnership, or corporation, by any managing officer.
3. Refusing access to the outsourcing facility or facility records to an agent of the board for the purpose of conducting an inspection or investigation.
4. Failure to maintain licensure pursuant to 657—Chapter 8 or 657—Chapter 19 when dispensing compounded drugs pursuant to patient-specific prescriptions into the state.
5. Any violation of Iowa Code chapter 155A, 124, 124A, 124B, 126, or 205 or any rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

These rules are intended to implement Iowa Code sections 124.301 and 155A.13C.

ARC 3036C

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3, 421.14, and 452A.59, the Department of Revenue proposes to amend Chapter 68, “Motor Fuel and Undyed Special Fuel,” Iowa Administrative Code.

The proposed amendment is necessary to implement a change to the tax rates on motor fuels effective July 1, 2017. The change in the tax rates on motor fuels reflects a change in the ethanol distribution

REVENUE DEPARTMENT[701](cont'd)

percentage for calendar year 2016. Under Iowa Code section 452A.3(1) and 701—paragraph 68.2(2)“a,” the rate of excise tax on motor fuels for the fiscal year is based on the ethanol distribution percentage as measured in the previous calendar year.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than May 31, 2017, to Matt Bishop, Legal Services, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Alternatively, requests may be e-mailed to matt.bishop@iowa.gov. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before May 16, 2017. Such written comments should be e-mailed to Matt Bishop at matt.bishop@iowa.gov or mailed to Matt Bishop, Legal Services, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact Matt Bishop, Legal Services, Department of Revenue, at (515)725-1106 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by May 16, 2017.

Any person who believes that the application of the discretionary provisions of this rule would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Reducing taxes generally stimulates economic growth. However, the Department is unable to predict the specific impact this amendment will have on jobs.

This amendment is intended to implement Iowa Code section 452A.3.

The following amendment is proposed.

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:

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 (beginning for July 1, 2016, through June 30, 2017)
Ethanol blended gasoline	30.5¢ per gallon (beginning July 1, 2017)
	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)
E-85 gasoline	29¢ per gallon (beginning July 1, 2016)
	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)
Aviation gasoline	29.3¢ per gallon (for July 1, 2015, through June 30, 2016)
	29¢ per gallon (beginning July 1, 2016)
	8¢ per gallon (beginning July 1, 1988)

REVENUE DEPARTMENT[701](cont'd)

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)

ARC 3035C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 316.9, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 111, "Real Property Acquisition and Relocation Assistance," Iowa Administrative Code.

Iowa Code section 316.9 requires the Department to adopt administrative rules to ensure compliance with federal Uniform Relocation Assistance and Real Property Acquisition Policies (Uniform Act). To comply with this rule-making requirement, the Department adopts by reference Section II of the manual entitled "Uniform Manual, Real Property Acquisition and Relocation Assistance." This manual, which is published by the Department and available on the Department's Web site at www.iowadot.gov, is based on federal regulations, 49 CFR Part 24, which implement the Uniform Act.

This rule making proposes to adopt a new edition of Section II of the manual. Section II is revised to reflect changes made to 49 CFR Part 24. The revised federal regulations include some technical changes. Some of the more significant changes are:

- Occupancy requirement for homeowner's reduction and replacement housing payment monetary limit increase.
 - o Reduction of 180-day occupancy to 90-day occupancy.
 - o Increase of 90-day homeowner payment from \$22,500 to \$31,000.
- Replacement housing payment limit increase for tenants.
 - o Monetary increase for 90-day tenants from \$5,250 to \$7,200.
- Moving and related expenses.
 - o Increase in business reestablishment payment monetary limit from \$10,000 to \$25,000.
 - o Monetary increase in fixed payments in lieu of actual moving and reestablishment expenses from \$20,000 to \$40,000.
- Increase in the appraisal waiver limit from \$10,000 to \$25,000.

A marked-up draft of the proposed changes to this manual is available at <http://www.iowadot.gov/rightofway/manuals.html>.

Other proposed amendments correct an Iowa Code citation and add a reference to the Department's Web site.

TRANSPORTATION DEPARTMENT[761](cont'd)

These rules do not provide for 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.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@iowadot.us.
5. Be received by the Department's rules administrator no later than May 16, 2017.

A meeting to hear requested oral presentations is scheduled for Thursday, May 18, 2017, at 10 a.m. at the Administration Building, Third Floor Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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

These amendments are intended to implement Iowa Code section 316.9.

The following amendments are proposed.

ITEM 1. Amend rule 761—111.1(316), introductory paragraph, as follows:

761—111.1(316) Acquisition and relocation assistance manual. The ~~April 2006~~ September 2017 edition of Section II of the manual entitled “Uniform Manual, Real Property Acquisition and Relocation Assistance” is adopted by reference.

ITEM 2. Amend paragraph **111.1(2)“d”** as follows:

d. In accordance with Iowa Code subsection ~~316.9(4)~~ 316.9(3), an entity that provides relocation assistance benefits for any program or project is required to provide an appeal process, regardless of the source of funding for the program or project. The appeal process provided shall not diminish the rights of the appellant or the scope of the appeal as described in Section II.

ITEM 3. Amend subrule 111.1(3) as follows:

111.1(3) Availability of manual. Copies of the manual or portions thereof are available from the Office of Right of Way, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or on the department's Web site at www.iowadot.gov.

ARC 3034C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 920, “State Transit Assistance,” Chapter 921, “Advanced Allocations of State Transit Assistance Funding,” and Chapter 924, “Public Transit Infrastructure Grant Program,” Iowa Administrative Code.

The proposed amendments to Chapter 920 update the general information and definitions, align special project purposes with current goals for passenger transportation outreach and coordination, and remove restrictive project guidelines to allow more flexibility in expenditure of funds. Other proposed

TRANSPORTATION DEPARTMENT[761](cont'd)

amendments to Chapter 920 make changes to the items not eligible for assistance by removing from the list expenses related to heavy rail transit service, including planning, capital, or operations, to allow public transit agencies to think more broadly in terms of their public transit offerings, if appropriate; remove the qualifier of reserving \$300,000 of state transit assistance for special projects only when the year's receipts are expected to equal or be greater than \$500,000 because annual appropriations now top \$14 million; and add a new subrule concerning allowing advance payment of monthly advance allocations of formula project funding to Iowa's public transit systems. In the appendix, the formula is unchanged, but the definition of programmed eligibility (PE) is stricken and the definition of formula percentage (FP) is added to clarify that the transit systems receive this funding based on past performance statistics entered into a formula and not based on individual projects programmed for consideration by the Department.

The proposed amendments to Chapter 921 update the scope of the chapter and the office contact information and change the distribution of state transit assistance from quarterly to monthly. The calculation of available state transit assistance funding is based on the previous month's sales of motor vehicles and vehicle-related equipment; the amount varies month to month based on actual sales. The funds are distributed to the Department on a monthly basis; therefore, a quarterly advance to a public transit system would be based on sales projections rather than on actual sales. Also, on occasion, the Office of Public Transit must withhold state transit assistance funds from a transit agency until a late report is submitted. The funds are released once the reporting is current. Chapter 921 allows the advancement of quarterly state transit assistance funds to transit agencies upon request. If that request were granted, the ability to withhold the funds to encourage timely reporting would diminish.

The proposed amendments to Chapter 924 amend the definition of "vertical infrastructure," update the office contact information, require project justification within the application, remove the requirement that the Department review the applications with an industry advisory committee since many of the potential committee members would themselves be representing public transit system applicants, and add a new subrule which states that the transit system must retain ownership of the new, renovated or repaired structure or facility for its useful life and requires that a prorated repayment be made to the Department if the structure or facility is sold or transferred prior to useful life expiration.

These rules do not provide for 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.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@iowadot.us.
5. Be received by the Department's rules administrator no later than May 16, 2017.

A meeting to hear requested oral presentations is scheduled for Friday, May 19, 2017, at 10 a.m. in the Administration Building, First Floor, South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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

These amendments are intended to implement Iowa Code chapter 324A.

The following amendments are proposed.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 1. Amend subrule 920.1(1) as follows:

920.1(1) Development, maintenance and improvement of transit services for the general public and for transportation disadvantaged persons, ~~as defined in Iowa Code section 324A.1.~~

ITEM 2. Amend rule 761—920.2(324A) as follows:

761—920.2(324A) General information. The department shall ~~send post~~ annually to ~~each public transit system in Iowa~~ the required forms and instructions for applying for state transit assistance to the department's Web site at www.iowadot.gov and notify each public transit system in Iowa of the availability. Requests for assistance and questions about application preparation should be directed to: Office of Public Transportation Transit, Air and Transit Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870.

ITEM 3. Rescind rule 761—920.3(324A) and adopt the following new rule in lieu thereof:

761—920.3(324A) Definitions. The definitions in Iowa Code section 324A.1 apply to this chapter. In addition:

“Formula assistance” means state transit assistance appropriations minus funds reserved for special projects.

“Joint participation agreement” means a contract between the department and a public transit system for either operations or capital assistance needed for implementation of a transit service project or projects. Each agreement shall include, but not be limited to, a project budget, method of payment, and period of performance.

“Project” means a concerted set of actions that will develop, maintain, or improve one or more elements of the public transit system's service.

ITEM 4. Amend rule 761—920.4(324A) as follows:

761—920.4(324A) Types of projects.

920.4(1) Programmed Formula projects. A ~~programmed formula~~ project may involve operations assistance, capital assistance, ~~or both planning, or any combination of the three.~~ These projects are developed, analyzed and ranked through the transit planning process which involves the following steps:

a. No change.

b. Each public transit system shall submit its ranked list of proposed projects to the ~~air and transit division~~ department.

920.4(2) Special projects.

a. Special projects are extraordinary, emergency or innovative in nature, and may include, but are not limited to, the following purposes:

(1) No change.

(2) ~~Improving the performance or fiscal viability of the transit system~~ Increasing the public's awareness and understanding of transit.

(3) and (4) No change.

(5) Increasing the cooperation and coordination between private and public sectors.

~~(6) Providing incentives for increased commitment of private or public support.~~

~~(7) (6)~~ Developing, demonstrating, or refining ~~some~~ a technical, procedural, or mechanical innovation so that it may be ~~successfully employed~~ utilized by other public transit systems in Iowa.

~~(8) (7)~~ Responding to an emergency situation that places an extraordinary and unforeseen strain on the resources of a public transit system.

b. Proposals for special projects may be submitted to the ~~air and transit division~~ department at any time. ~~However, because of limited funding, special projects should be submitted with the programmed projects, if possible.~~

TRANSPORTATION DEPARTMENT[761](cont'd)

~~e. A special project may either involve assistance to an individual public transit system or to several systems as a group.~~

ITEM 5. Amend rule 761—920.5(324A) as follows:

761—920.5(324A) Standards for projects.

920.5(1) Requirements for transit system. A public transit system is eligible for project assistance if the system is in compliance with all of the following criteria:

~~a. It uses a centralized accounting system that maintains primary documentation for all revenues and expenses.~~ The transit system abides by all applicable state and federal laws and regulations.

~~b. One person is responsible for managing the assets, operations and funding of the system.~~ The transit system maintains primary documentation for all revenues and expenses for a period of at least three years.

~~c. It maintains its~~ The transit system maintains the system's policies, routes, schedules, fare structure, and budget in a manner that encourages public review, responsiveness to user concerns, energy conservation, and fiscal solvency.

~~d. It has received~~ The transit system received departmental approval of ~~its~~ the system's plan or schedule for repayment of any loan administered by the department.

~~e. The transit system accurately reports all services to be supported with project formula assistance and ensures that all services are open to the general public.~~

920.5(2) Project conditions. The department shall obligate state transit assistance for joint projects that meet the following criteria:

~~a. Each special project shall have a preestablished basis for determining success using a specified means of performance measurement, and a detailed budget of the resources available and the assistance necessary for implementation.~~ must be included in the current year of the locally adopted transportation improvement program.

~~b. Each project shall contain payment criteria, through the joint participation agreement, which are mutually agreed upon by the department and the contracting officer of the transit system.~~

~~c. A project may involve either capital assistance or operations assistance but a separate joint participation agreement is required for each type of assistance funded.~~ Each special project shall have a preestablished basis for determining success using a specified means of performance management and shall have a detailed budget of the resources available and the assistance necessary for implementation.

~~d. State assistance for a special project involving capital expense shall not exceed 43.3 85 percent of the project's total capital expense. State assistance for a special project involving operating support shall not exceed 50 80 percent of the project's total operating expense in the first year and 50 percent of the project's total operating expense in the second year. In special or emergency situations, these requirements may be waived by the director of the air and transit division to permit a fiscal year maximum of \$5000 for any one system.~~

920.5(3) Items not eligible for assistance.

~~a. Any expense related to heavy rail transit service, including planning, capital, or operations.~~

~~b. a. Administrative, operations, or capital expense~~ expenses which is ~~are~~ determined by the department to be inconsistent with department policies, public law, officially approved planning and programming documents, or inconsistent with the purpose of improving the effectiveness and quality of transit services.

~~e. b. Development of managerial, administrative, or operational systems which duplicate programs made available at no charge to the transit system by the department.~~

920.5(4) Determination of system eligibility for ~~programmed project~~ formula assistance.

~~a. Prior to the beginning of each fiscal year, each state-designated public transit system's programmed eligibility formula percentage shall be determined through the process shown in the appendix located at the end of this chapter of rules and included as part of this chapter.~~

(1) Transit system data used in determining ~~programmed eligibility~~ formula percentage is based only on services which are open to the general public and is derived from the last fiscal year for which complete information is available.

TRANSPORTATION DEPARTMENT[761](cont'd)

(2) No change.

~~b. If a known dollar amount of state transit assistance has been appropriated for the fiscal year, the~~ The amount of each system's eligibility for programmed project formula assistance from this appropriation shall be determined by multiplying the system's programmed eligibility formula percentage by the amount of the appropriation not reserved for special projects.

~~c. If the dollar amount of state transit assistance is not known until the funds are actually deposited in the state transit assistance fund account, the amount of each system's eligibility for programmed project formula assistance from these funds shall be determined as follows: At the beginning of each fiscal quarter month, the system's programmed eligibility formula percentage shall be multiplied by the amount of new funds not reserved for special projects that were deposited in the state transit assistance fund account during the previous quarter month.~~

~~d. No change.~~

~~920.5(5) Determination of amount reserved for special projects. Each fiscal year, up to at least \$300,000 may will be reserved from state transit assistance appropriations for special projects if the appropriations for the year are expected to equal or exceed \$500,000. Any special project funds not obligated in the previous fiscal year and any funds made available through closeout of previously approved projects may also be reserved for special projects. Special project funds are distributed by the department on a discretionary basis in accordance with subrule 920.4(2) of this chapter.~~

ITEM 6. Amend rule 761—920.6(324A) as follows:

761—920.6(324A) Processing.

~~920.6(1) Review. The department, through its air and transit division and planning and research division, shall review the proposed projects.~~

~~920.6(2) Program. Based on available funds and the project priorities established by the transit systems, the air and transit division department shall prepare a list of both programmed and special projects recommended for funding approval set of funding recommendations.~~

~~920.6(3) Approval. The air and transit division shall submit the list to the transportation commission for approval.~~

~~920.6(4) Agreement Approval and agreement. Upon approval of the projects by the transportation commission, the air and transit division department shall prepare a joint participation agreement and send it to the each public transit system for signing execution. The agreement shall be returned to the air and transit division for signing by the department.~~

~~920.6(4) Advance payment allowed. Each transit system with a signed joint participation agreement may be paid formula assistance monthly, in advance of project expenditures, if all of the following conditions are met:~~

~~a. The transit system included in its application a request for advance allocations as set forth in Iowa Code section 324A.6.~~

~~b. The transit system is current on all reporting required by the department.~~

~~c. The transit system is current on all scheduled repayments under loan contracts from the department.~~

ITEM 7. Amend **761—Chapter 920**, implementation sentence, as follows:

~~Rules 920.1(324A) to 920.6(324A) These rules are intended to implement Iowa Code chapter 324A.~~

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 8. Amend **761—Chapter 920**, appendix, as follows:

APPENDIX TO
761—920.5(324A)

FP	<u>Formula percentage.</u> The percentage of any state transit assistance appropriation that a public transit system is eligible to receive from the nondiscretionary portion of the appropriation. Determination of a public transit system's formula percentage shall be made using the method diagrammed in this appendix.
FY	Fiscal year. The 12-month period beginning July 1 of one year and ending June 30 of the following year.
LDI	Locally determined income. All transit system revenue dedicated for operations expense during a fiscal year, minus federal operating assistance from the U.S. Department of Transportation and minus all special project operating support and programmed-eligibility <u>formula assistance</u> funds received from the Iowa Department of Transportation.
OpExp	Operations expense. All eligible transit system expenses related to operating, maintaining, and administering transit operations.
Pass	Passenger. A person boarding a transit vehicle for the purpose of making a trip. A passenger is counted each time a that person boards a vehicle, even though the person may be on the same journey from origin to <u>for travel to a destination.</u>
PE	Programmed eligibility. The percentage of any state transit assistance appropriation that a public transit system is eligible to receive from the nondiscretionary portion of the appropriation. Determination of a public transit system's "programmed-eligibility" shall be made using the method diagrammed in this appendix.
	System programmed eligibility is reduced by 25 percent for each quarter of any fiscal year in which no joint participation agreement with the department has been executed. The director of the air and transit division may waive this reduction.
RevMi	Revenue Miles <u>miles</u> . Total vehicle miles traveled by revenue vehicles of public transit systems while in revenue service. Excludes miles traveled to and from storage facilities and other deadhead travel.

ITEM 9. Amend **761—Chapter 920**, second appendix, title, as follows:

FORMULA FOR DETERMINATION OF ~~PROGRAMMED-ELIGIBILITY~~ FORMULA
PERCENTAGE

ITEM 10. Amend **761—Chapter 920**, second appendix, to change the acronym "PE" to "FP."

ITEM 11. Amend rule 761—921.1(324A) as follows:

761—921.1(324A) Scope of chapter. This chapter shall apply only to those transit systems eligible for and having or proposing to have a "~~Joint Participation Agreement~~" joint participation agreement in force with the Iowa department of ~~transportation~~ for state transit assistance funding as set forth in ~~rules~~ 761—Chapter 920. This chapter implements provisions for advance allocations of state transit assistance funding as set forth in Iowa Code ~~subsection 324A.6(5)~~ section 324A.6(4). The definitions in Iowa Code section 324A.1 apply to this chapter. The requirements for the award of state funds for state transit assistance and subsequent procedures are found in ~~rules~~ 761—Chapter 920.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 12. Amend rule 761—921.2(324A) as follows:

761—921.2(324A) ~~Basic types of advance~~ Advance allocations. Advance allocations of state transit assistance are paid prior to the time actual expenditures are incurred. ~~Three basic types of advance allocations shall be available:~~

921.2(1) ~~Payment of one-fourth~~ one-twelfth (or ~~25~~ 8.33 percent) of the total “~~Joint Participation Agreement~~” joint participation agreement amount ~~is made prior to or during each fiscal quarter~~ month, starting on the execution date of the “~~Joint Participation Agreement.~~” joint participation agreement.

921.2(2) ~~Payment of an amount to be denoted in the “Joint Participation Agreement” prior to or during each fiscal quarter, starting on the execution date of the “Joint Participation Agreement.”~~

921.2(3) ~~Payment of the total “Joint Participation Agreement” amount prior to or during the project period, starting on the execution date of the “Joint Participation Agreement.”~~

ITEM 13. Amend rule 761—921.3(324A) as follows:

761—921.3(324A) Application for advance allocations.

921.3(1) Transit systems having or proposing to have a “~~Joint Participation Agreement~~” joint participation agreement with the department for state transit assistance funding may make written application for advance allocations of the “~~Joint Participation Agreement~~” joint participation agreement amount. The application shall be directed to: Office of Public ~~Transportation, Air and Transit Division~~ Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; ~~telephone (515)233-7870.~~ Applications are available on the department’s Web site at www.iowadot.gov or by telephone at (515)233-7870.

921.3(2) Transit systems applying for state transit assistance funding, pursuant to 761—Chapter 920, may make written application for advance allocations of a proposed or existing “~~Joint Participation Agreement~~” joint participation agreement amount as part of the application for state transit assistance.

921.3(3) No application for advance allocation shall be complete without:

a. and *b.* No change.

c. A statement from the transit system which indicates the specific existing or proposed “~~Joint Participation Agreement~~” joint participation agreement from which advance allocations are to be derived.

d. and *e.* No change.

f. ~~If varied advance allocations per quarter are requested pursuant to subrule 921.2(2), the following shall also be included in the application:~~

(1) ~~A statement denoting the proposed advance allocations for each quarter, including the dollar amounts and the percentage of each quarter’s proposed advance allocation to the total “Joint Participation Agreement” amount.~~

(2) ~~A statement of justification for the varied allocation amounts requested.~~

(3) ~~A detailed transit system cash flow analysis projected for the performance period of the “Joint Participation Agreement.”~~

921.3(4) ~~Rescinded, effective April 16, 1986.~~

ITEM 14. Amend rule 761—921.4(324A) as follows:

761—921.4(324A) Application approval. ~~The air and transit division of the Iowa department of transportation shall review all applications for advance allocations of state transit assistance. It~~ The department shall also approve, disapprove or defer all such applications. Provisions of applications which are approved shall be written into and made a part of the transit system’s state transit assistance “Joint Participation Agreement,” joint participation agreement, if it is in effect, or written into such “Joint Participation Agreement” joint participation agreement when awarded by the department pursuant to rules 761—Chapter 920. The transit system shall be so notified of such action. Transit systems whose applications for advance allocations are disapproved or deferred shall be so notified by the department, including the reason(s) for such actions.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 15. Amend rule 761—921.5(324A) as follows:

761—921.5(324A) Consideration in determining the approval of advance allocation application. The ~~air and transit division~~ department shall give consideration to the following items in determining the approval, disapproval or deferment of advance allocation applications:

921.5(1) No change.

921.5(2) Previous experience of the ~~air and transit division~~ department in dealing with the transit system making application including but not limited to the following:

a. Timeliness of contract and application materials, as assessed by the ~~air and transit division~~ department.

b. Fiscal management capability of the transit system, as assessed by the ~~air and transit division~~ department.

ITEM 16. Amend rule 761—921.7(324A) as follows:

761—921.7(324A) Reports, and suspension and termination of allocations.

921.7(1) Transit systems receiving advance allocations shall provide quarterly and end-of-the-year financial and statistical reports to the ~~air and transit division~~ department in the manner and within the time limits described in the state transit assistance ~~“Joint Participation Agreements.”~~ joint participation agreements. These reports shall be made ~~on forms prescribed for that purpose and through an online portal furnished to the transit systems by the~~ air and transit division department.

921.7(2) Failure to file quarterly and end-of-the-year financial and statistical reports by any transit system with the ~~air and transit division~~ department in the manner and within the time limits described in the state transit assistance ~~“Joint Participation Agreement”~~ joint participation agreement shall be cause for suspension or termination of those provisions of the ~~“Joint Participation Agreement,”~~ joint participation agreement, and therefore, suspension or termination of advance allocation payments made by the Iowa department of transportation. The ~~air and transit division~~ department shall notify any transit system of such actions.

921.7(3) Payment of eligible ~~“Joint Participation Agreement”~~ joint participation agreement expenses to a transit system that has had advance allocation contract provisions suspended or terminated by the ~~air and transit division~~ department shall be by the method of reimbursement payments as described in the state transit assistance ~~“Joint Participation Agreements.”~~ joint participation agreements.

ITEM 17. Amend rule 761—921.9(324A) as follows:

761—921.9(324A) ~~“Joint Participation Agreement”~~ Joint participation agreement close and audits.

921.9(1) Each transit system receiving advance allocations shall, as part of the end-of-the-year financial and statistical report, calculate the total ~~“Joint Participation Agreement”~~ joint participation agreement amount eligible for payment by the Iowa department of transportation within the limits stated in the ~~“Joint Participation Agreement.”~~ joint participation agreement. This eligible ~~“Joint Participation Agreement”~~ joint participation agreement amount shall be compared to the total amount of the advance allocations for that ~~“Joint Participation Agreement.”~~ joint participation agreement. If the advance allocations' total is greater than the eligible ~~“Joint Participation Agreement”~~ joint participation agreement amount, the transit system must repay the Iowa department of transportation the difference. After verification of these calculations, the department shall issue to the public transit system an invoice for the amount of the required repayment. Failure to make this repayment shall be grounds for:

a. Termination of other transit assistance ~~“Joint Participation Agreements”~~ joint participation agreements with that transit system,

b. Suspension or termination of further advance allocations made on future ~~“Joint Participation Agreements,”~~ joint participation agreements,

c. Reduction of Iowa department of transportation participation in existing or future ~~“Joint Participation Agreements,”~~ joint participation agreements, or

TRANSPORTATION DEPARTMENT[761](cont'd)

d. Reducing future ~~“Joint Participation Agreement”~~ joint participation agreement reimbursement requests of the transit system by an amount not to exceed the unpaid debt owed the Iowa department of ~~transportation~~ and crediting the outstanding debt of the project being closed out.

921.9(2) The ~~air and transit division~~ department may institute any such action(s) as stated in subrule 921.9(1) above and shall notify any transit system of such action taken against ~~them~~ the transit system.

921.9(3) After the repayment and end-of-the-year financial and statistical reports are submitted, or after the ~~air and transit division~~ department has instituted any action(s) for failure to do so, the Iowa department of ~~transportation~~ shall audit the transit system’s books, accounts, records and other material and information necessary to determine ~~“Joint Participation Agreement”~~ joint participation agreement compliance. The advance allocations paid to the transit system shall be taken into consideration and made part of the amount to be audited.

ITEM 18. Amend **761—Chapter 921**, implementation sentence, as follows:

~~Rules 921.1 to 921.9~~ These rules are intended to implement Iowa Code chapter 324A.

ITEM 19. Amend rule **761—924.2(324A)**, definition of “Vertical infrastructure,” as follows:

“Vertical infrastructure” ~~is~~ means the same as defined in Iowa Code section 8.57, ~~subsection 6~~ 8.57(5).

ITEM 20. Amend rule 761—924.3(324A) as follows:

761—924.3(324A) Information and forms. Information, instructions, and application forms ~~may be obtained~~ are available from the Office of Public Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1875 ~~(515)233-7870~~; or the department’s Web site at www.iowadot.gov. ~~Information and forms are also available through the Internet at <http://www.iatransit.com>.~~

ITEM 21. Rescind and reserve rule **761—924.5(324A)**.

ITEM 22. Amend subrule 924.11(1) as follows:

924.11(1) Project applications shall be submitted to the ~~office of public transit~~ department.

ITEM 23. Amend paragraph **924.11(2)“c”** as follows:

c. Documentation of project ~~feasibility and costs~~ justification.

ITEM 24. Amend rule 761—924.15(324A) as follows:

761—924.15(324A) Review and approval. Department staff shall review project applications ~~with an industry advisory committee~~ and shall submit recommendations to the transportation commission. The transportation commission is responsible for approving the projects to be funded.

ITEM 25. Amend rule 761—924.16(324A) as follows:

761—924.16(324A) Project agreement, and administration and ownership.

924.16(1) and **924.16(2)** No change.

924.16(3) Ownership. The transit system must retain ownership of the new, renovated or repaired structure or facility for its useful life. If the structure or facility is transferred to a subcontracted entity or is sold before the useful life has expired, the transit system must repay the prorated state interest to the department.

ITEM 26. Amend **761—Chapter 924**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 8.57, ~~and 324A.1 and 2006 Iowa Acts, chapter 1179, section 55~~ 324A.6A.

ARC 3041C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services hereby amends Chapter 64, "Benefits," Iowa Administrative Code.

This rule making discusses out-of-state travel procedures and amends subrule 64.10(2). This amendment aligns the Department's administrative rules with the current Iowa Code provision. Out-of-state travel is now approved by the administrative head of the agency as outlined in Iowa Code section 8A.512A and subrule 41.4(2) and is no longer approved by the Executive Council. The statutory language for this out-of-state travel approval procedure changed in 2011.

The proposed amendment was published under Notice of Intended Action in the October 26, 2016, Iowa Administrative Bulletin as **ARC 2789C**. A public hearing was held on November 15, 2016. No one attended the hearing, and no public comment was received. The amendment proposed to strike the reference to 2003 Iowa Code Supplement section 8A.512 and to instead state that if attendance is outside the state of Iowa, travel must be authorized by the proper authority. However, based on comment from the Administrative Rules Review Committee, the Department has removed the words "the proper authority" and replaced them with "the head of the employee's department pursuant to Iowa Code section 8A.512A(2)'a.'"

While this amendment will result in operational efficiency, the fiscal impact is indeterminable and believed minimal.

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

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

This amendment is intended to implement Iowa Code section 8A.512A.

This amendment will become effective May 31, 2017.

The following amendment is adopted.

Amend subrule 64.10(2) as follows:

64.10(2) *Workshop, seminar, or conference attendance.* The appointing authority may approve education financial assistance for an employee attending a workshop, seminar, or conference conducted by a professional, educational, or governmental organization or institution when attendance by the employee would not require a reduction in job responsibilities.

a. Assistance for meeting continuing education requirements may be approved when the assistance is applied toward maintaining a professional registration, certification, or license and the workshop, seminar, or conference is related to the duties and responsibilities of the employee's position.

b. Payment of registration fees and other costs, such as lodging, meals, and travel, shall be in accordance with the policies and procedures of the department of administrative services.

c. ~~If attendance is outside the state of Iowa, travel must first be authorized by the executive council pursuant to 2003 Iowa Code Supplement section 8A.512.~~ be authorized by the head of the employee's department pursuant to Iowa Code section 8A.512A(2)'a.'

[Filed 3/30/17, effective 5/31/17]

[Published 4/26/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/26/17.

ARC 3042C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(21), the State Board of Education hereby rescinds Chapter 65, “Innovative Programs for At-Risk Early Elementary Students,” and adopts a new Chapter 65, “Programs for At-Risk Early Elementary Students,” Iowa Administrative Code.

The new Chapter 65 will simplify the grant award process, distribute grant funds to school districts on a timeline that will allow for timely hiring and budgeting, and allow recipient school districts to spend more time on instruction and less time on preparing grant applications. New Chapter 65 will allow greater flexibility to local school districts in determining how best to provide grant-funded services at elementary school buildings with large numbers of at-risk students.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the February 15, 2017, Iowa Administrative Bulletin as **ARC 2939C**. Public comments were allowed until 4:30 p.m. on March 7, 2017, and a public hearing was held on that date. Two commenters from one school district appeared and offered comment about clearly specifying that activities and materials to improve academic achievement are allowable uses of funds, which comment was also provided in writing. An additional written comment requested, for purposes of this chapter, specifically aligning grant eligibility with student eligibility for free and reduced-price meals, which is the current practice for this grant. All commenters were in support of the Department’s rule making. Changes from the Notice were made to address these well-founded comments. The Iowa Department of Education also made additional nonsubstantive changes.

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

This amendment is intended to implement Iowa Code sections 256.7(21) and 279.51(1)“c.”

These rules will become effective May 31, 2017.

The following amendment is adopted.

Rescind 281—Chapter 65 and adopt the following **new** chapter in lieu thereof:

CHAPTER 65

PROGRAMS FOR AT-RISK EARLY ELEMENTARY STUDENTS

281—65.1(279) Purpose. These rules set forth procedures and conditions under which state funds shall be granted to public school districts that have elementary schools that demonstrate the greatest need for programs for at-risk students in early elementary grades.

281—65.2(279) Definitions.

“*At-risk student*” means, for purposes of this chapter, a student in early elementary grades who is eligible for free or reduced-price meals.

“*Awardee*” means a public school district designated to receive the at-risk early elementary school award funds for buildings serving early elementary grades with a high percentage of at-risk students.

“*Department*” means the department of education.

“*Early elementary grades*” means kindergarten through grade three.

281—65.3(279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the department shall grant awards to districts for buildings serving early elementary grades with a high percentage of at-risk students.

281—65.4(279) Award allocation procedure. Using a formula determined by the department, the department will distribute awards based on the number of early elementary students in the identified buildings serving a high percentage of at-risk students.

65.4(1) As specified in Iowa Code section 279.51(1)“c,” \$75,000 will be distributed to districts with an actual student population of less than 10,000 and an actual non-English speaking student population

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of greater than 5 percent. These funds must be directed by the awardee to the building(s) serving the highest percentage of at-risk early elementary students.

65.4(2) Remaining funds will be allocated to school districts not meeting the threshold stated in subrule 65.4(1) for buildings serving the highest percentage of at-risk early elementary students. The department shall have final discretion regarding awarding of funds.

281—65.5(279) Award acceptance process. The department shall notify eligible districts of the opportunity to be granted an award for a three-year cycle. A district shall make formal acceptance using forms issued and procedures established by the department. Districts shall verify that an official with vested authority has approved the acceptance.

281—65.6(279) Awardee responsibilities. Each year the awardee shall complete reports on forms provided by the department, including the following:

1. An initial report including a proposed budget and expected outcomes.
2. A midyear report including expenditures through the end of the calendar year.
3. An end-of-the-year report including total expenditures and a statement of impact on expected outcomes.

281—65.7(279) Allowable expenditures. As set forth in Iowa Code section 279.51(1)“c,” school districts receiving awards shall, at a minimum, provide activities and materials designed to encourage children’s self-esteem, provide role modeling and mentoring techniques in social competence and social skills, and discourage inappropriate drug use. Additional allowable expenditures include salaries and benefits for teachers and paraeducators, and activities and materials to improve academic achievement. These funds shall be used for instruction, activities, and materials that are in addition to the regular school curricula for children participating in these programs and shall only be used in the building for which the award is made. Inappropriate uses of award funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures, student transportation other than that which is directly related to the activities and materials described in this rule, or administrative costs. Moneys received shall be subject to the general provisions described in rules 281—98.1(257) and 281—98.2(257).

281—65.8(279) Evaluation. The awardee shall cooperate with the department and provide requested information to determine how well the outcomes in rule 281—65.6(279) are being met. Statewide leadership teams will review final reports and provide useful feedback about buildings to awardees. This feedback will include information about innovative components to building programs. Buildings demonstrating innovation will be given preference the following grant cycle.

281—65.9(279) Budget revisions. The awardee shall obtain the approval of the department for any revisions in the proposed budget in excess of 10 percent of a line item, provided the revisions do not increase the total amount of the award.

281—65.10(279) Termination for convenience. The award may be terminated, in whole or in part, upon agreement of both parties. The parties shall agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated. The awardee shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

281—65.11(279) Termination for cause. The award may be terminated, in whole or in part, at any time before the date of completion, whenever it is determined by the department that the awardee has failed to comply substantially with the conditions of the award. The awardee shall be notified in writing by the department of the reasons for the termination and the effective date. The awardee shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

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The department shall administer the at-risk early elementary school awards contingent upon the availability of state funds. If there is a lack of funds necessary to fulfill the fiscal responsibility of the awards, the awards shall be terminated or renegotiated. The department may terminate or renegotiate an award upon 30 days' notice when there is a reduction of funds by executive order.

281—65.12(279) Responsibility of awardee at termination. Within 45 days of the effective date of award termination, the awardee shall supply the department with a financial statement detailing all program expenditures up to the effective date of the termination. The awardee shall be solely responsible for all expenditures after the effective date of termination.

281—65.13(279) Appeals from terminations. Any awardee aggrieved by a unilateral termination of an award pursuant to rule 281—65.11(279) may appeal the decision to the director of the department in writing within 30 days of the decision to terminate.

65.13(1) Form of appeal. In the notice of appeal, the awardee shall give a short and plain statement of the reason for the appeal.

65.13(2) Appeal procedures. The hearing procedures found at 281—Chapter 6 shall be applicable to appeals of terminated awards. The director shall issue a decision within a reasonable time, not to exceed 120 days from the date of hearing.

65.13(3) Grounds for reversal. Termination of an award under this chapter shall be reversed only if the awardee proves the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members.

65.13(4) Mandatory denial of appeal. In lieu of a decision on the merits of an appeal, the director of the department shall deny an appeal if the director finds any of the following:

- a. The appeal is untimely;
- b. The appellant lacks standing to appeal;
- c. The appeal is not in the required form or is based upon frivolous grounds;
- d. The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties; or
- e. The termination of the award was beyond the control of the department due to lack of available funds.

These rules are intended to implement Iowa Code section 279.51.

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ARC 3043C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby amends Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest," Chapter 42, "Adjustments to Computed Tax and Tax Credits," and Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," and adopts a new Chapter 250, "Sales and Use Tax Refund for Biodiesel Production," Iowa Administrative Code.

These amendments are necessary to implement changes to the various renewable fuels tax credits and rebates contained in 2016 Iowa Acts, Senate File 2309. Senate File 2309 extended the expiration dates of the E-15 plus gasoline promotion tax credit, the E-85 gasoline promotion tax credit, the biodiesel blended fuel tax credit, and the sales and use tax refund for biodiesel production. Senate File 2309 also

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changed the credit amount of the biodiesel blended fuel tax credit. These amendments update rules to implement these changes.

Notice of Intended Action was published in IAB Vol. XXXIX, No. 15, p. 1416, January 18, 2017, as **ARC 2896C**. The Department allowed public comments until February 20, 2017. No public comments were received. However, nonsubstantive stylistic changes have been made to the examples in subrule 52.31(2) to use “multiplied by” instead of “times.” These amendments are otherwise identical to those published under Notice.

Any person who believes that the application of the discretionary provisions of these rules 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).

These amendments are intended to implement Iowa Code sections 422.11O, 422.11P, 422.11Y, 422.33, and 423.4 as amended by 2016 Iowa Acts, Senate File 2309.

These amendments will become effective on May 31, 2017.

The following amendments are adopted.

ITEM 1. Rescind rule 701—12.18(423) and adopt the following **new** rule in lieu thereof:

701—12.18(423) Biodiesel production refund. Information on the sales and use tax refund for biodiesel production is available at rule 701—250.1(423).

ITEM 2. Amend rule 701—42.33(422) as follows:

701—42.33(422) E-85 gasoline promotion tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. “E-85 gasoline” means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 135.

42.33(1) Claiming the credit.

a. Amount of the credit. The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

Calendar years 2006, 2007, and 2008	25 cents
Calendar years 2009 and 2010	20 cents
Calendar year 2011	10 cents
Calendar years 2012 through 2017 2024	16 cents

b. Claiming the credit with other credits. A taxpayer may claim the E-85 gasoline promotion tax credit even if the taxpayer also claims the ethanol blended gasoline tax credit provided in rule 701—42.20(422) for gallons sold prior to January 1, 2009, or the ethanol promotion tax credit provided in rule 701—42.39(422) for gallons sold on or after January 1, 2009, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

c. Refundability. Any credit in excess of the taxpayer’s tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. Transferability. The credit may not be transferred to any other person.

e. Example.

EXAMPLE: A taxpayer operated one retail motor fuel site in 2008 and sold 200,000 gallons of gasoline, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer may claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold during 2008. Taxpayer is also entitled to claim the ethanol blended

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gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold for the 2008 tax year.

~~42.33(1)~~ **42.33(2)** *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2018 2025, a taxpayer whose tax year ends prior to December 31, 2017 2024, may continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2017 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

See 701—subrule ~~52.30(1)~~ 52.30(2) for examples illustrating how this subrule is applied.

~~42.33(2)~~ **42.33(3)** *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the E-85 ethanol promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11O as amended by 2011 2016 Iowa Acts, Senate File 534 2309.

ITEM 3. Amend rule 701—42.34(422) as follows:

701—42.34(422) Biodiesel blended fuel tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. “Biodiesel blended fuel” means a blend of biodiesel with petroleum-based diesel fuel ~~which~~ that meets the standards provided in Iowa Code section 214A.2. ~~The biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit for gallons sold on or after January 1, 2006, but before January 1, 2013. For gallons sold on or after January 1, 2013, but before January 1, 2018, the biodiesel blended fuel must be formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit. In addition, of the total gallons of diesel fuel sold by the retail dealer, 50 percent or more must be biodiesel blended fuel to be eligible for the tax credit for tax years beginning prior to January 1, 2009. In determining the minimum percentage by volume of biodiesel, the department will take into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864.~~

42.34(1) Calculating the credit.

a. Gallonage requirement.

(1) Tax years beginning on or after January 1, 2006, but prior to January 1, 2009. In order for a retail dealer to qualify for the biodiesel blended fuel tax credit for tax years beginning on or after January 1, 2006, but prior to January 1, 2009, of the total gallons of diesel fuel that the retail dealer sells and dispenses during the tax year, 50 percent or more of those gallons must be biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel. The gallonage amounts for all motor fuel sites of a retail dealer are combined when calculating this gallonage requirement.

(2) Tax years beginning on or after January 1, 2009, but prior to January 1, 2012. For tax years beginning on or after January 1, 2009, but before prior to January 1, 2012, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel.

(3) Tax years beginning on or after January 1, 2012. For tax years beginning on or after January 1, 2012, the requirement that 50 percent of all diesel fuel gallons sold be biodiesel gallons to be eligible for the tax credit is eliminated. A retail dealer may qualify for the biodiesel blended fuel tax credit even if

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the number of gallons of biodiesel blended fuel sold is less than 50 percent of the total gallons of diesel fuel sold.

b. Amount of credit.

(1) Fuel sold on or after January 1, 2006, but prior to January 1, 2012. For biodiesel blended fuel sold on or after January 1, 2006, but prior to January 1, 2012, the tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year for gallons sold through December 31, 2011. Qualifying biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel.

(2) For gallons sold during the 2012 calendar year, Fuel sold on or after January 1, 2012, but prior to January 1, 2013. For biodiesel blended fuel sold on or after January 1, 2012, but prior to January 1, 2013, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel and plus four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel. In addition, the gallonage requirements described in paragraph 42.34(1) "a" do not apply to fuel sold on or after January 1, 2012.

(3) For gallons sold during the 2013 to 2017 calendar years, Fuel sold on or after January 1, 2013, but prior to January 1, 2018. For biodiesel blended fuel sold on or after January 1, 2013, but prior to January 1, 2018, the tax credit equals four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel. In determining the minimum percentage by volume of biodiesel, the department will take into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864. Diesel fuel sold that contains less than 5 percent by volume of biodiesel does not qualify for the biodiesel blended fuel tax credit.

(4) Fuel sold on or after January 1, 2018, but prior to January 1, 2025.

1. Amount of credit. For biodiesel blended fuel sold on or after January 1, 2018, but prior to January 1, 2025, the tax credit equals the sum of three and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel plus five and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 11 percent by volume of biodiesel. Diesel fuel sold that contains less than 5 percent by volume of biodiesel does not qualify for the biodiesel blended fuel tax credit.

2. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has inadvertently been blended with petroleum-based diesel fuel so that the mixture fails to contain 11 percent by volume of biodiesel, a 1 percent tolerance applies in determining the credit amount for the blended product as described in 42.34(1) "b"(4) "2":

- If the amount of the biodiesel erroneously blended with petroleum-based diesel is at least 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.

- If the amount of biodiesel blended with petroleum-based diesel is at least 5 percent but less than 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel.

- Numbered paragraph 42.34(1) "b"(4) "2" applies only if a retail dealer intends to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel. If a retail dealer does not intend to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel and the product sold and dispensed contains less than 11 percent biodiesel by volume, no error has occurred and the product does not qualify for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.

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c. Refundability. Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. Transferability. The credit may not be transferred to any other person.

e. Examples.

EXAMPLE 1: A taxpayer operated four retail motor fuel sites during 2008 and sold a combined total at all four sites of 100,000 gallons of diesel fuel, of which 55,000 gallons was biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. Because 50 percent or more of the diesel fuel sold was biodiesel blended fuel, the taxpayer may claim the biodiesel blended fuel tax credit totaling \$1,650, which is 55,000 gallons multiplied by three cents.

EXAMPLE 2: A taxpayer operated two retail motor fuel sites during 2008, and each site sold 40,000 gallons of diesel fuel. One site sold 25,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel, and the other site sold 10,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. The taxpayer would not be eligible for the biodiesel blended fuel tax credit because only 35,000 gallons of the total 80,000 gallons, or 43.75 percent of the total diesel fuel gallons sold, was biodiesel blended fuel. The 50 percent requirement is based on the aggregate number of diesel fuel gallons sold by the taxpayer, and the fact that one retail motor fuel site met the 50 percent requirement does not allow the taxpayer to claim the biodiesel blended fuel tax credit for the 2008 tax year.

EXAMPLE 3: ~~If the facts in this example had occurred during the 2009 tax year, the Same facts as in example 2, except the fuel sales occurred in 2009. The taxpayer could~~ can claim a biodiesel blended fuel tax credit totaling \$750, which is 25,000 gallons multiplied by three cents, since one of the retail motor fuel sites met the 50 percent biodiesel blended fuel requirement.

EXAMPLE 4: Same facts as in example 2, except the fuel sales occurred in 2016, and all biodiesel blended fuel sold contains a minimum percentage of 5 percent by volume of biodiesel. The taxpayer can claim a biodiesel blended fuel tax credit totaling \$1,575, which is 35,000 gallons multiplied by four and one-half cents, since the 50 percent biodiesel blended fuel requirement has been eliminated.

~~42.34(1)~~ **42.34(2)** *Fiscal year filers.* Taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, ~~2018~~ 2025, a taxpayer whose tax year ends prior to December 31, ~~2017~~ 2024, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, ~~2017~~ 2024.

See 701—subrule ~~52.31(1)~~ 52.31(2) for examples illustrating how this subrule is applied.

~~42.34(2)~~ **42.34(3)** *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the biodiesel blended fuel tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11P as amended by ~~2011~~ 2016 Iowa Acts, Senate Files ~~531 and 533~~ File 2309.

ITEM 4. Amend rule 701—42.46(422) as follows:

701—42.46(422) E-15 plus gasoline promotion tax credit. Effective for eligible gallons sold on or after July 1, 2011, a retail dealer of gasoline may claim an E-15 plus gasoline promotion tax credit. "E-15 plus gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 15 percent and 69 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form ~~IA-138~~ IA 138.

42.46(1) *Calculating the credit.*

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a. Amount of credit. The tax credit is calculated by multiplying the total number of E-15 plus gallons sold by the retail dealer during the tax year by the following designated rates:

Gallons sold from July 1, 2011, through December 31, 2013	3 cents
Gallons sold from January 1 through May 31 and from September 16 through December 31 for the 2014-2017 <u>2014-2024</u> calendar years	3 cents
Gallons sold from June 1 through September 15 for the 2014-2017 <u>2014-2024</u> calendar years	10 cents

b. Claiming the credit with other credits. A taxpayer may claim the E-15 plus gasoline promotion tax credit even if the taxpayer also claims the ethanol promotion tax credit provided in rule 701—42.39(422) for gallons sold on or after January 1, 2011, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

c. Refundability. Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. Transferability. The credit may not be transferred to any other person.

~~42.46(1)~~ **42.46(2)** *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-15 plus gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, ~~2018~~ 2025, a taxpayer whose tax year ends prior to December 31, ~~2017~~ 2024, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, ~~2017~~ 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-15 plus credit on the previous return, the dealer may claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year. However, for taxpayers whose fiscal year ends ~~before~~ prior to December 31, 2011, the dealer must claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year.

EXAMPLE 1: A taxpayer who is a retail dealer of gasoline has a fiscal year ending October 31, 2011. The taxpayer sold 2,000 gallons of E-15 plus gasoline for the period from July 1, 2011, through October 31, 2011, and sold 7,000 gallons of E-15 plus gasoline for the period from November 1, 2011, through October 31, 2012. The taxpayer is entitled to a total E-15 plus gasoline promotion tax credit of \$270 for the fiscal year ending October 31, 2012, which consists of a \$60 credit (2,000 gallons multiplied by 3 cents) for the period from July 1, 2011, through October 31, 2011, and a credit of \$210 (7,000 gallons multiplied by 3 cents) for the period from November 1, 2011, through October 31, 2012.

EXAMPLE 2: A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2012. The taxpayer sold 4,000 gallons of E-15 plus gasoline between July 1, 2011, and April 30, 2012. The taxpayer sold 9,000 gallons of E-15 plus gasoline between May 1, 2012, and April 30, 2013. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$120 (4,000 gallons ~~times~~ multiplied by 3 cents) for the fiscal year ending April 30, 2012. In lieu of claiming the credit on the return for the period ending April 30, 2012, the taxpayer can claim the E-15 plus gasoline promotion tax credit on the tax return for the period ending April 30, 2013, for all E-15 plus gasoline gallons sold for the period from July 1, 2011, through April 30, 2013.

EXAMPLE 3: A taxpayer who is a retail dealer of gasoline has a fiscal year ending February 28, ~~2018~~ 2025. The taxpayer sold 20,000 total gallons of E-15 plus gasoline for the entire period from March 1, ~~2017~~ 2024, through February 28, ~~2018~~, 2025. of which 16,000 gallons were sold between March 1, 2017, and December 31, 2017. Six thousand of these 16,000 gallons were sold between June 1, 2017, and September 15, 2017. For the period from March 1 through May 31, 2024, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$120 (4,000 gallons multiplied by 3 cents). For the period from June 1 through September 15, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$600 (6,000 gallons multiplied by 10

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cents). For the period from September 16 through December 31, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$180 (6,000 gallons multiplied by 3 cents). For the period from January 1 through February 28, 2025, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which occurred after expiration of the credit. The taxpayer is entitled to claim ~~an~~ a total E-15 plus gasoline promotion tax credit of \$900 (~~10,000 gallons times 3 cents plus 6,000 gallons times 10 cents~~ \$120 plus \$600 plus \$180) on the taxpayer's Iowa income tax return for the period ending February 28, ~~2018~~ 2025.

42.46(2) 42.46(3) *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the E-15 plus gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11Y as amended by ~~2014~~ 2016 Iowa Acts, Senate File ~~2344~~ 2309.

ITEM 5. Amend rule 701—52.30(422) as follows:

701—52.30(422) E-85 gasoline promotion tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 135.

52.30(1) *Claiming the credit.*

a. Amount of credit. The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

Calendar years 2006, 2007, and 2008	25 cents
Calendar years 2009 and 2010	20 cents
Calendar year 2011	10 cents
Calendar years 2012 through 2017 2024	16 cents

b. Claiming the credit with other credits. A taxpayer may claim the E-85 gasoline promotion tax credit even if the taxpayer also claims the ethanol blended gasoline tax credit provided in rule 701—52.19(422) for gallons sold prior to January 1, 2009, or the ethanol promotion tax credit provided in rule 701—52.36(422) for gallons sold on or after January 1, 2009, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

c. Refundability. Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. Transferability. The credit may not be transferred to any other person.

e. Example.

EXAMPLE: A taxpayer operated one retail motor fuel site in 2006 and sold 200,000 gallons of gasoline, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer may claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold during 2006. Taxpayer is also entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold for the 2006 tax year.

52.30(1) 52.30(2) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, ~~2018~~ 2025, a

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taxpayer whose tax year ends prior to December 31, ~~2017~~ 2024, can continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, ~~2017~~ 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

EXAMPLE 1: A taxpayer who is a retail dealer of gasoline has a fiscal year ending March 31, 2009. The taxpayer sold 2,000 gallons of E-85 gasoline for the period from April 1, 2008, through December 31, 2008, and sold 500 gallons of E-85 gasoline for the period from January 1, 2009, through March 31, 2009. The taxpayer is entitled to a total E-85 gasoline promotion tax credit of \$600 for the fiscal year ending March 31, 2009, which consists of a \$500 credit (2,000 gallons multiplied by 25 cents) for the period from April 1, 2008, through December 31, 2008, and a credit of \$100 (500 gallons multiplied by 20 cents) for the period from January 1, 2009, through March 31, 2009.

EXAMPLE 2: A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2006. The taxpayer sold 800 gallons of E-85 gasoline for the period from January 1, 2006, through April 30, 2006. The taxpayer is entitled to claim an E-85 gasoline promotion tax credit of \$200 (800 gallons ~~times~~ multiplied by 25 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2006. In lieu of claiming the credit on the return for the period ending April 30, 2006, the taxpayer can claim the E-85 gasoline promotion tax credit on the tax return for the period ending April 30, 2007, including all E-85 gallons sold for the period from January 1, 2006, through April 30, 2007.

52.30(2) 52.30(3) *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the E-85 gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by ~~2011~~ 2016 Iowa Acts, Senate File ~~531~~ 2309.

ITEM 6. Amend rule 701—52.31(422) as follows:

701—52.31(422) Biodiesel blended fuel tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. "Biodiesel blended fuel" means a blend of biodiesel with petroleum-based diesel fuel ~~which~~ that meets the standards provided in Iowa Code section 214A.2. ~~The biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit for gallons sold on or after January 1, 2006, but before January 1, 2013. For gallons sold on or after January 1, 2013, but before January 1, 2018, the biodiesel blended fuel must be formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit. In addition, of the total gallons of diesel fuel sold by the retail dealer, 50 percent or more must be biodiesel blended fuel to be eligible for the tax credit for tax years beginning prior to January 1, 2009. In determining the minimum percentage by volume of biodiesel, the department will take into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864.~~

52.31(1) Calculating the credit.

a. Gallonage requirement.

(1) Tax years beginning on or after January 1, 2006, but prior to January 1, 2009. In order for a retail dealer to qualify for the biodiesel blended fuel tax credit for tax years beginning on or after January 1, 2006, but prior to January 1, 2009, of the total gallons of diesel fuel that the retail dealer sells and dispenses during the tax year, 50 percent or more of those gallons must be biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel. The gallonage amounts for all motor fuel sites of a retail dealer are combined when calculating this gallonage requirement.

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(2) Tax years beginning on or after January 1, 2009, but prior to January 1, 2012. For tax years beginning on or after January 1, 2009, but before prior to January 1, 2012, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel.

(3) Tax years beginning on or after January 1, 2012. For tax years beginning on or after January 1, 2012, the requirement that 50 percent of all diesel fuel gallons sold be biodiesel gallons to be eligible for the tax credit is eliminated. A retail dealer may qualify for the biodiesel blended fuel tax credit even if the gallons of biodiesel blended fuel sold is less than 50 percent of the total gallons of diesel fuel sold.

b. Amount of credit.

(1) The Fuel sold on or after January 1, 2006, but prior to January 1, 2012. For biodiesel blended fuel sold on or after January 1, 2006, but prior to January 1, 2012, the tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year for gallons sold through December 31, 2011. Qualifying biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel.

(2) For gallons sold during the 2012 calendar year, Fuel sold on or after January 1, 2012, but prior to January 1, 2013. For biodiesel blended fuel sold on or after January 1, 2012, but prior to January 1, 2013, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel and plus four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel. In addition, the gallonage requirements described in paragraph 52.31(1)“a” do not apply to fuel sold on or after January 1, 2012.

(3) For gallons sold during the 2013 to 2017 calendar years, Fuel sold on or after January 1, 2013, but prior to January 1, 2018. For biodiesel blended fuel sold on or after January 1, 2013, but prior to January 1, 2018, the tax credit equals four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. In determining the minimum percentage by volume of biodiesel, the department will taken into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864. Diesel fuel sold that contains less than 5 percent by volume of biodiesel does not qualify for the biodiesel blended fuel tax credit.

(4) Fuel sold on or after January 1, 2018, but prior to January 1, 2025.

1. Amount of credit. For biodiesel blended fuel sold on or after January 1, 2018, but prior to January 1, 2025, the tax credit equals the sum of three and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel plus five and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 11 percent by volume of biodiesel.

2. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has inadvertently been blended with petroleum-based diesel fuel so that the mixture fails to contain 11 percent by volume of biodiesel, a 1 percent tolerance applies in determining the credit amount for the blended product as described in 52.31(1)“b”(4)“2”:

• If the amount of the biodiesel erroneously blended with petroleum-based diesel is at least 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.

• If the amount of biodiesel blended with petroleum-based diesel is at least 5 percent but less than 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel.

• Numbered paragraph 52.31(1)“b”(4)“2” applies only if a retail dealer intends to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel. If a retail dealer does not intend to sell and dispense biodiesel blended fuel that has a minimum percentage

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of 11 percent by volume of biodiesel and the product sold and dispensed contains less than 11 percent biodiesel by volume, no error has occurred and the product does not qualify for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.

c. Refundability. Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. Transferability. The credit may not be transferred to any other person.

e. Examples.

EXAMPLE 1: A taxpayer operated four retail motor fuel sites during 2006 and sold a combined total at all four sites of 100,000 gallons of diesel fuel, of which 55,000 gallons was biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. Because 50 percent or more of the diesel fuel sold was biodiesel blended fuel, the taxpayer may claim the biodiesel blended fuel tax credit totaling \$1,650, which is 55,000 gallons multiplied by three cents.

EXAMPLE 2: A taxpayer operated two retail motor fuel sites during 2006, and each site sold 40,000 gallons of diesel fuel. One site sold 25,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel, and the other site sold 10,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. The taxpayer would not be eligible for the biodiesel blended fuel tax credit because only 35,000 gallons of the total 80,000 gallons, or 43.75 percent of the total diesel fuel gallons sold, was biodiesel blended fuel. The 50 percent requirement is based on the aggregate number of diesel fuel gallons sold by the taxpayer, and the fact that one retail motor fuel site met the 50 percent requirement does not allow the taxpayer to claim the biodiesel blended fuel tax credit for the 2006 tax year.

EXAMPLE 3: ~~If the facts in this example had occurred during the 2009 tax year, the~~ Same facts as in example 2, except the fuel sales occurred in 2009. ~~The taxpayer could~~ can claim a biodiesel blended fuel tax credit totaling \$750, which is 25,000 gallons multiplied by three cents, since one of the retail motor fuel sites met the 50 percent biodiesel blended fuel requirement.

EXAMPLE 4: Same facts as in example 2, except the fuel sales occurred in 2016, and all biodiesel blended fuel sold contains a minimum percentage of 5 percent by volume of biodiesel. The taxpayer can claim a biodiesel blended fuel tax credit totaling \$1,575, which is 35,000 gallons multiplied by four and one-half cents, since the 50 percent biodiesel blended fuel requirement has been eliminated.

52.31(1) 52.31(2) Fiscal year filers. For taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, the taxpayer may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, ~~2018~~ 2025, a taxpayer whose tax year ends prior to December 31, ~~2017~~ 2024, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, ~~2017~~ 2024.

EXAMPLE 1: A taxpayer who operates one retail motor fuel site has a fiscal year ending April 30, 2006. The taxpayer sold 60,000 gallons of diesel fuel for the period from May 1, 2005, through April 30, 2006, of which 28,000 gallons was biodiesel blended fuel. However, for the period from January 1, 2006, through April 30, 2006, the taxpayer sold 20,000 gallons of diesel fuel, of which 12,000 gallons was biodiesel blended fuel. The taxpayer is entitled to claim the biodiesel blended fuel tax credit of \$360 (12,000 gallons ~~times~~ multiplied by 3 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2006, since more than 50 percent of all diesel fuel sold during the period from January 1, 2006, through April 30, 2006, was biodiesel blended fuel.

EXAMPLE 2: A taxpayer who operates one retail motor fuel site has a fiscal year ending June 30, 2006. The taxpayer sold 80,000 gallons of diesel fuel for the period from July 1, 2005, through June 30, 2006, of which 42,000 gallons was biodiesel blended fuel. However, for the period from January 1, 2006, through June 30, 2006, the taxpayer sold 40,000 gallons of diesel fuel, of which 19,000 gallons was biodiesel blended fuel. The taxpayer is not entitled to claim the biodiesel blended fuel tax credit on the taxpayer's Iowa income tax return for the period ending June 30, 2006, since less than 50 percent of all diesel fuel sold during the period from January 1, 2006, through June 30, 2006, was biodiesel

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blended fuel, even though more than 50 percent of all diesel fuel sold during the period from July 1, 2005, through June 30, 2006, was biodiesel blended fuel.

EXAMPLE 3: A taxpayer who operates one retail motor fuel site has a fiscal year ending February 28, ~~2012~~ 2025. The taxpayer sold 100,000 gallons of diesel fuel for the period from March 1, ~~2011~~ 2024, through February 28, ~~2012~~ 2025, of which 60,000 gallons was biodiesel blended fuel containing a minimum percentage of 5 percent by volume of biodiesel. For the period from March 1, ~~2011~~ 2024, through December 31, ~~2011~~ 2024, the taxpayer sold 85,000 gallons of diesel fuel, of which 50,000 gallons was biodiesel fuel. The taxpayer is entitled to claim the biodiesel blended fuel tax credit of ~~\$1,500~~ \$2,250 (50,000 gallons ~~times 3~~ multiplied by 4.5 cents) on the taxpayer's Iowa income tax return for the period ending February 12, ~~2012~~ 2025, since the credit is computed only on gallons sold through December 31, ~~2011~~ 2024.

~~52.31(2)~~ **52.31(3)** *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the biodiesel blended fuel tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by ~~2011~~ 2016 Iowa Acts, Senate File ~~531~~ 2309.

ITEM 7. Amend rule 701—52.43(422) as follows:

701—52.43(422) E-15 plus gasoline promotion tax credit. Effective for eligible gallons sold on or after July 1, 2011, a retail dealer of gasoline may claim an E-15 plus gasoline promotion tax credit. "E-15 plus gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 15 percent and 69 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form ~~IA-138~~ IA 138.

52.43(1) *Calculating the credit.*

a. Amount of credit. The tax credit is calculated by multiplying the total number of E-15 plus gallons sold by the retail dealer during the tax year by the following designated rates:

Gallons sold from July 1, 2011, through December 31, 2013	3 cents
Gallons sold from January 1 through May 31 and from September 16 through December 31 for the 2014-2017 <u>2014-2024</u> calendar years	3 cents
Gallons sold from June 1 through September 15 for the 2014-2017 <u>2014-2024</u> calendar years	10 cents

b. Claiming the credit with other credits. A taxpayer may claim the E-15 plus gasoline promotion tax credit even if the taxpayer also claims the ethanol promotion tax credit provided in rule 701—52.36(422) for gallons sold on or after January 1, 2011, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

c. Refundability. Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. Transferability. The credit may not be transferred to any other person.

~~52.43(1)~~ **52.43(2)** *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-15 plus gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, ~~2018~~ 2025, a taxpayer whose tax year ends prior to December 31, ~~2017~~ 2024, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, ~~2017~~ 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-15 plus credit on the

REVENUE DEPARTMENT[701](cont'd)

previous return, the dealer may claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year. However, for taxpayers whose fiscal year ends ~~before~~ prior to December 31, 2011, the dealer must claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year.

EXAMPLE 1: A taxpayer who is a retail dealer of gasoline has a fiscal year ending October 31, 2011. The taxpayer sold 2,000 gallons of E-15 plus gasoline for the period from July 1, 2011, through October 31, 2011, and sold 7,000 gallons of E-15 plus gasoline for the period from November 1, 2011, through October 31, 2012. The taxpayer is entitled to a total E-15 plus gasoline promotion tax credit of \$270 for the fiscal year ending October 31, 2012, which consists of a \$60 credit (2,000 gallons multiplied by 3 cents) for the period from July 1, 2011, through October 31, 2011, and a credit of \$210 (7,000 gallons multiplied by 3 cents) for the period from November 1, 2011, through October 31, 2012.

EXAMPLE 2: A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2012. The taxpayer sold 4,000 gallons of E-15 plus gasoline between July 1, 2011, and April 30, 2012. The taxpayer sold 9,000 gallons of E-15 plus gasoline between May 1, 2012, and April 30, 2013. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$120 (4,000 gallons ~~times~~ multiplied by 3 cents) for the fiscal year ending April 30, 2012. In lieu of claiming the credit on the return for the period ending April 30, 2012, the taxpayer can claim the E-15 plus gasoline promotion tax credit on the tax return for the period ending April 30, 2013, for all E-15 plus gasoline gallons sold for the period from July 1, 2011, through April 30, 2013.

EXAMPLE 3: A taxpayer who is a retail dealer of gasoline has a fiscal year ending February 28, ~~2018~~ 2025. The taxpayer sold 20,000 total gallons of E-15 plus gasoline for the entire period from March 1, ~~2017~~ 2024, through February 28, ~~2018~~, 2025. ~~of which 16,000 gallons were sold between March 1, 2017, and December 31, 2017. Six thousand of these 16,000 gallons were sold between June 1, 2017, and September 15, 2017.~~ For the period from March 1 through May 31, 2024, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$120 (4,000 gallons multiplied by 3 cents). For the period from June 1 through September 15, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$600 (6,000 gallons multiplied by 10 cents). For the period from September 16 through December 31, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of \$180 (6,000 gallons multiplied by 3 cents). For the period from January 1 through February 28, 2025, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which occurred after expiration of the credit. The taxpayer is entitled to claim ~~an~~ a total E-15 plus gasoline promotion tax credit of \$900 (~~10,000 gallons times 3 cents plus 6,000 gallons times 10 cents~~ \$120 plus \$600 plus \$180) on the taxpayer's Iowa income tax return for the period ending February 28, ~~2018~~ 2025.

~~52.43(2)~~ **52.43(3)** *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the E-15 plus gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code ~~section~~ sections 422.11Y and 422.33 and 2014 Iowa Acts, Senate File 2344 as amended by 2016 Iowa Acts, Senate File 2309.

ITEM 8. Adopt the following new 701—Chapter 250:

CHAPTER 250
SALES AND USE TAX REFUND FOR BIODIESEL PRODUCTION

701—250.1(423) Biodiesel production refund. A refund of sales or use tax is available for certain producers of biodiesel for calendar years 2012 to 2024.

REVENUE DEPARTMENT[701](cont'd)

250.1(1) *Qualifications for the refund.* A biodiesel producer must meet the following criteria to be eligible for the refund.

a. The producer must be engaged in the manufacture of biodiesel and have registered with the United States Environmental Protection Agency as a manufacturer in accordance with the requirements of 40 CFR Part 79.4.

b. The biodiesel produced must be for use in biodiesel blended fuel in accordance with Iowa Code section 214A.2.

c. The biodiesel must be produced in Iowa.

250.1(2) *Calculation of the refund.*

a. The refund is calculated by multiplying the total number of gallons produced by the biodiesel producer in this state during each quarter of the calendar year by the following rate:

- (1) For the calendar year 2012, three cents.
- (2) For the calendar year 2013, two and one-half cents.
- (3) For the calendar years 2014 to 2024, two cents.

b. The refund is calculated on the first 25 million gallons of biodiesel produced at each facility during the calendar year. No refund will be allowed on gallons produced in excess of 25 million gallons at a facility during each of the calendar years 2012 to 2024. No refund will be allowed for gallons produced at a facility on or after January 1, 2025.

250.1(3) *Claiming the refund.* To claim the refund, the biodiesel producer must file Form IA 843, Claim for Refund, for each calendar quarter. The filing must include the number of biodiesel gallons produced during the quarter, the calculation of the biodiesel production refund, and the amount of biodiesel production refund claimed. The biodiesel producer must timely file all sales and use tax returns due and timely pay all sales and use taxes owed on its purchases, even when the amount of the biodiesel production refund due exceeds the amount of sales and use taxes owed for the quarter. The department shall reduce the amount of the refund issued by the amount of any sales and use taxes owed by the biodiesel producer.

EXAMPLE: A biodiesel producer produced 5 million gallons during the first quarter of 2018. The producer also owes \$10,000 of Iowa consumers use tax based on purchases made during the first quarter of 2018. The producer must timely file an Iowa consumers use tax return and pay \$10,000 of use tax with the return. The producer may also file Form IA 843, Claim for Refund, to request a refund of \$100,000 (5 million gallons multiplied by 2 cents per gallon) for the first quarter of 2018.

This rule is intended to implement Iowa Code section 423.4 as amended by 2016 Iowa Acts, Senate File 2309.

[Filed 4/4/17, effective 5/31/17]

[Published 4/26/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/26/17.

ARC 3044C

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

This amendment updates references to the tables which determine payroll taxes, as required by Iowa Code section 85.61(6).

Notice of Intended Action was published on February 15, 2017, as **ARC 2940C**. No comments were received. The rule was on the agenda for the Administrative Rules Review Committee meeting on March 10, 2017, and no questions or comments were received during the meeting. This amendment is identical to the amendment published under Notice of Intended Action.

This amendment will have no fiscal impact on the state of Iowa.

WORKERS' COMPENSATION DIVISION[876](cont'd)

This amendment will have no impact on small business within the meaning of Iowa Code section 17A.4A.

This amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

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

This amendment is intended to implement Iowa Code section 85.61(6).

This amendment will become effective May 31, 2017.

The following amendment is adopted.

Amend rule 876—8.8(85,17A) as follows:

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, ~~2016~~ 2017, through June 30, ~~2017~~ 2018, are the tables in effect on July 1, ~~2016~~ 2017, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [~~2015~~ 2016].)

2. Iowa Withholding Tax Guide. (Iowa Department of Revenue Iowa Withholding Tax Rate Tables [Effective April 1, 2006].)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [~~2015~~ 2016].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed 4/4/17, effective 5/31/17]

[Published 4/26/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/26/17.

AGENCY	RULE	DELAY
Attorney General[61]	34.1 [IAB 3/15/17, ARC 2979C]	Effective date of April 19, 2017, delayed 70 days by the Administrative Rules Review Committee at its meeting held April 7, 2017. [Pursuant to §17A.4(7)]