



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

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### CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2018

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
21	Friday, March 23, 2018	April 11, 2018
22	Friday, April 6, 2018	April 25, 2018
23	Friday, April 20, 2018	May 9, 2018

**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\*\*\***

**ARCHITECTURAL EXAMINING BOARD[193B]**

Need for professional architectural services—exceptions, 5.1, 5.3, 5.4 IAB 2/28/18 <b>ARC 3661C</b>	Board Office, Suite 350 200 E. Grand Ave. Des Moines, Iowa	March 20, 2018 9 to 9:30 a.m.
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**EDUCATION DEPARTMENT[281]**

High-quality standards for computer science, 12.11 IAB 2/14/18 <b>ARC 3613C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 27, 2018 9 to 10 a.m.
Special education—regular high school diploma, assessments, 41.102(1), 41.160 IAB 2/14/18 <b>ARC 3614C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 27, 2018 10 to 11 a.m.
Child development grants and coordinating council, amendments to ch 64 IAB 2/14/18 <b>ARC 3612C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 27, 2018 1 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Initial issuance of NPDES General Permit Nos. 8 and 9, 64.3, 64.4, 64.6, 64.15, 64.16 IAB 2/14/18 <b>ARC 3625C</b>	Urbandale Public Library 3520 86th St. Urbandale, Iowa	March 14, 2018 4 p.m.
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**LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]**

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**MEDICINE BOARD[653]**

Standards of practice—medical cannabidiol, 13.15 IAB 3/14/18 <b>ARC 3675C</b>	Board Office, Suite C 400 S.W. Eighth St. Des Moines, Iowa	April 4, 2018 8:30 a.m.
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**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

Collective bargaining, amendments to chs 2, 4 to 7, 13 IAB 3/14/18 <b>ARC 3671C</b>	Starkweather Conference Room Vocational Rehabilitation Offices 510 East 12th St. Des Moines, Iowa	April 4, 2018 2 p.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

License to disconnect or reconnect existing air-conditioning and refrigeration systems, 502.2(9)“b” IAB 2/28/18 <b>ARC 3656C</b>	First Floor Public Conference Room 125 Oran Pape State Office Bldg. Des Moines, Iowa	March 20, 2018 10 a.m.
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The following list will be updated as changes occur.

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

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

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

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**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Notice of Intended Action**

**Proposing rule making related to economic fraud control bureau and providing an opportunity for public comment**

The Department of Inspections and Appeals hereby proposes to rescind Chapter 72, “Public Assistance Front End Investigations,” and to adopt a new Chapter 72, “Economic Fraud Control Bureau,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 10A.401 to 10A.403.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 10A.105 and 10A.401 to 10A.403.

*Purpose and Summary*

The proposed rule making is the result of a comprehensive review of the Department’s Investigations Division rules. The rule making conforms the Department’s rules with current practices, laws, regulations and rules affecting the Economic Fraud Control Bureau.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 3, 2018. Comments should be directed to:

Director  
Department of Inspections and Appeals  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319-0083  
Fax: 515.242.6863  
Email: [david.werning@dia.iowa.gov](mailto:david.werning@dia.iowa.gov)



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

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Rescind 481—Chapter 72 and adopt the following **new** chapter in lieu thereof:

CHAPTER 72  
ECONOMIC FRAUD CONTROL BUREAU

**481—72.1(10A) Definitions.**

“*Client*” means any person who has made an application for or is receiving state or federal public assistance from DHS or any other state or federal agency.

“*Collateral contact*” means a reliable source other than the client who is knowledgeable about information relative to pertinent public assistance case factors.

“*Department*” means the department of inspections and appeals.

“*DHS*” means the department of human services.

“*Division*” means the investigations division of the department.

“*EBT*” or “*electronic benefit transfer*” means the electronic process that allows a client to authorize transfer of the client’s benefits from a financial account to a retailer to pay for eligible items received. Clients are issued an EBT card similar to a bank ATM or debit card to receive and use their food assistance.

“*EBT trafficking or misuse*” means the use of food assistance benefits for something other than their intended use.

“*EFCB*” or “*bureau*” means the economic fraud control bureau.

“*Intentional program violation*” or “*IPV*” means having intentionally made a false or misleading statement; or misrepresented, concealed, or withheld facts; or committed an act that is a violation of the Food Stamp Act, Supplemental Nutrition Assistance Program regulations, or any state rule relating to the use, presentation, transfer, acquisition, receipt or possession of a benefit transfer instrument.

“*Pertinent public assistance case factors*” means information considered necessary to verify household composition, income, resources or any other potential program violation.

“*Program violation*” means action that is contrary to the rules of eligibility for any state or federal public assistance program.

“*Public assistance*” means child care assistance, family investment program, food assistance, medical assistance, state supplementary assistance, refugee cash assistance, or any other state or federal assistance program.

“*Referral*” means a request to investigate pertinent public assistance case factors for potential program violations and eligibility issues.

“*Referring agency*” means DHS or any other state or federal agency.

**481—72.2(10A) Economic fraud control bureau (EFCB).** The EFCB is comprised of two units, the program integrity/EBT unit and the divestiture unit. The functions of each unit are described

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

in 481—paragraph 1.4(1)“c” [see **ARC 3649C**, IAB 2/28/18]. Generally, the EFCB conducts investigations of public assistance fraud in order to maintain integrity and accountability in the administration of public assistance benefits. Divestiture unit rules are found in 481—Chapter 75.

**481—72.3(10A) Types of investigations.** The EFCB conducts three types of investigations.

**72.3(1) *Front-end investigations.*** The EFCB conducts front-end investigations to determine whether a client has accurately reported the information necessary to become eligible for or to retain public assistance benefits.

**72.3(2) *Fraud investigations.*** The EFCB conducts a fraud investigation when the referring agency suspects that a client received public assistance benefits the client was not entitled to receive.

**72.3(3) *EBT trafficking or misuse.*** The EFCB conducts an investigation to determine whether a client is responsible for EBT trafficking or misuse.

**481—72.4(10A) Referrals.** DHS shall initiate public assistance eligibility referrals and EBT trafficking or misuse referrals to the division. EBT trafficking or misuse investigations also may be initiated by the division without a referral. Referrals from other referring agencies may be made directly to the division.

**481—72.5(10A) Investigation procedures.**

**72.5(1) *Client contact.*** The bureau may, but is not required to, contact the client during the course of an investigation. If the bureau contacts the client and the client does not respond, the client’s nonresponse will be included in the bureau’s investigation findings.

**72.5(2) *Evidence gathered.*** The bureau may conduct record reviews and gather evidence to verify a client’s employment, wages, residence, household composition, income versus expenses, or property ownership or other relevant facts.

**72.5(3) *Subpoenas.*** The director of the department or the director’s designee may issue subpoenas pursuant to Iowa Code section 10A.104 and 481—subrules 1.1(6) to 1.1(9) to obtain information necessary to an investigation. Subpoenas may be personally served by division personnel upon the respondent of the subpoena or the respondent’s registered agent, mailed directly to the respondent or the respondent’s registered agent via USPS mail, or electronically transmitted directly to the respondent or the respondent’s registered agent via facsimile or email. Division personnel shall have the authority to determine the appropriate method by which the respondent is requested to deliver information in response to a subpoena duces tecum.

**72.5(4) *Collateral contacts.*** The division may use collateral contacts to collect information pertinent to an investigation or verify information provided by the client.

**72.5(5) *Cooperation.*** The division may cooperate with local, state or federal law enforcement agencies in conducting an investigation.

**481—72.6(10A) EBT trafficking or misuse investigations.** In addition to the procedures outlined in rule 481—72.5(10A), the following apply to EBT trafficking or misuse investigations.

**72.6(1) *Probable cause.*** Probable cause must be established before an EBT trafficking or misuse investigation may be conducted.

**72.6(2) *Referrals.*** Referrals to the division may come from DHS, retailers, law enforcement agencies or the general public. A referral may be initiated following the identification of questionable EBT card transactions through federal or state databases. The bureau may open an investigation without an outside referral.

**481—72.7(10A) Findings.** At the completion of an investigation, the bureau will transmit its findings in writing to the appropriate state or federal agency and make recommendations based on the evidence obtained or provided during the investigation.

**72.7(1) *Decisions about public assistance eligibility.*** The appropriate state or federal agency makes all decisions about public assistance eligibility. DHS will report the case action taken and any determination of overpayment, cost avoidance, or intentional program violation to the division.

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

**72.7(2) Testimony and hearings.** Staff of the division may be called to testify in administrative and legal proceedings related to an investigation, in addition to conducting EBT intentional program violation hearings.

**481—72.8(10A) Confidentiality.** The EFCB shall maintain confidentiality of investigative case information in accordance with Iowa Code sections 10A.105 and 22.7(5) and any other applicable state or federal law.

These rules are intended to implement Iowa Code sections 10A.105 and 10A.401 to 10A.403.

**ARC 3668C****INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action****Proposing rule making related to Medicaid fraud control unit and providing an opportunity for public comment**

The Department of Inspections and Appeals hereby proposes to rescind Chapter 73, “Medicaid Fraud Control Bureau,” and to adopt a new Chapter 73, “Medicaid Fraud Control Unit,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 10A.104(5).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 10A.104(6), 10A.105, 10A.402(5) and 10A.403.

*Purpose and Summary*

The proposed rule making is the result of a comprehensive review of the Department’s Investigations Division rules. The rule making conforms the Department’s rules with current practices, laws, regulations and rules affecting the Medicaid Fraud Control Unit.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 3, 2018. Comments should be directed to:

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

Director  
Department of Inspections and Appeals  
Lucas State Office Building  
Des Moines, Iowa 50319-0083  
Fax: 515.242.6863  
Email: [david.werning@dia.iowa.gov](mailto:david.werning@dia.iowa.gov)

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Rescind 481—Chapter 73 and adopt the following **new** chapter in lieu thereof:

CHAPTER 73  
MEDICAID FRAUD CONTROL UNIT

**481—73.1(10A) Definitions.**

“*Abuse*” or “*neglect*” means any act that constitutes abuse or neglect of a patient or resident under applicable state law and includes, but is not limited to, incidents involving physical harm inflicted as a result of an intentional act or negligence, consensual or nonconsensual sexual contact, misappropriation of money or property, theft of medications, or degradation of personal dignity. The victim is a patient or resident receiving health care services in a health care facility that receives Medicaid funds or in a board and care facility at the time of the abuse or neglect.

“*Board and care facility*” means a residential setting where two or more unrelated adults reside and receive one or both of the following:

1. Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.
2. A substantial amount of personal care services that assist residents with activities of daily living, including personal hygiene, dressing, bathing, eating, personal sanitation, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.

“*Department*” means the department of inspections and appeals.

“*Director*” means the director of the department of inspections and appeals.

“*Fraud*” means an intentional deception or misrepresentation made by an individual or entity with the knowledge that the deception or misrepresentation could result in an unauthorized benefit to the individual or entity, or another individual or entity, and includes any act that constitutes fraud under applicable federal or state law, including but not limited to Iowa Code chapters 249A and 685.

“*Medicaid provider*” means:

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

1. Any individual, agency, institution, or organization enrolled with the department of human services, Iowa Medicaid enterprise, or contracted managed care organizations (MCOs), and approved to provide goods or services to Iowa Medicaid beneficiaries and be paid by Iowa Medicaid enterprise, or contracted MCOs, for the provided goods or services; or

2. Any third party acting on behalf of or under the authority or direction of a Medicaid provider as defined in “1” to prepare or submit necessary documentation to Iowa Medicaid enterprise, or contracted MCOs, in order for the Medicaid provider to receive payment for goods or services.

“*MFCU director*” means the director of the Iowa MFCU.

“*Overpayment*” means any payment greater than that to which a Medicaid provider is entitled.

“*Prosecutorial agency*” includes, but is not limited to, county attorney offices, United States Attorney offices or the Iowa attorney general’s office.

“*Referral*” means any information submitted to the Iowa Medicaid fraud control unit in written or verbal form indicating potential criminal or fraudulent activity which the Iowa MFCU maintains jurisdiction to investigate.

“*Regulatory agency*” includes, but is not limited to, state licensing boards, other divisions or bureaus of the department of inspections and appeals, or other divisions or bureaus of the U.S. Department of Health and Human Services.

“*Respondent*” means the recipient of a subpoena and may be an individual or an organization.

“*State medical assistance program*” or “*Medicaid*” means medical assistance programs per the Code of Federal Regulations, Title 42, Chapter IV, Subchapter C, Parts 430 through 489. Iowa Code chapter 249A authorizes Iowa’s participation in the program. The policies specific to the Medicaid program are in 441—Chapters 73 to 88.

“*Unit*” or “*Iowa MFCU*” or “*MFCU*” means the Iowa Medicaid fraud control unit.

“*Unit personnel*” includes investigators, auditors, and attorneys assigned to the Iowa Medicaid fraud control unit, along with the MFCU director.

**481—73.2(10A) Investigative authority.**

**73.2(1)** Pursuant to Iowa Code section 10A.402(5), the unit is responsible for conducting investigations involving the state medical assistance program. These investigations include, but are not limited to, allegations involving:

- a. Fraud within the administration of the Iowa Medicaid program.
- b. Fraud in the provision of medical assistance or activities of Medicaid providers.
- c. Incidents of abuse or neglect.
- d. Any aspect of the provision of health care services and activities of Medicaid providers upon the approval of the U.S. Department of Health and Human Services, Office of the Inspector General.

**73.2(2)** Pursuant to Iowa Code section 10A.403, investigators assigned to the unit shall have the powers and authority of peace officers when acting within the scope of their responsibilities to conduct investigations as specified in Iowa Code section 10A.402(5).

**481—73.3(10A) Referrals.**

**73.3(1)** The MFCU director reviews referrals in order to confirm that the unit has jurisdiction to investigate the allegation(s).

**73.3(2)** Upon confirming MFCU jurisdiction and taking into consideration numerous factors and referral-specific information, the MFCU director shall determine the disposition of the referral, which may include, but is not limited to the following:

- a. Opening a case and assigning the case to unit personnel.
- b. Referring the allegations to appropriate outside agencies for further review.
- c. Declining the referral and taking no further action in the matter.

**481—73.4(10A) Investigations.** Unit personnel investigate referrals opened and assigned as MFCU cases by utilizing all legally authorized means to identify any of the following:

1. Criminal activity resulting in violations of state or federal criminal code.

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

2. Fraudulent activity resulting in violations of state or federal civil statutes.
3. Financial damages sustained by the Iowa Medicaid program.
4. Victims involved in incidents of abuse or neglect.
5. Perpetrators involved in Medicaid provider fraud schemes or incidents of abuse or neglect.
6. Overpayments received by Medicaid providers as a result of fraudulent or criminal activity.

**481—73.5(10A) Access to records.** In addition to the authority maintained by investigators with the unit pursuant to Iowa Code section 10A.403, the unit is established as a health oversight agency, as defined by 45 CFR 164.501, exempt from the privacy regulations of the federal Health Insurance Portability and Accountability Act (HIPAA) and authorized to engage in health oversight activities in accordance with 45 CFR 164.512.

**73.5(1)** Unit personnel shall have the authority to request, review, and retain any medical, clinical, financial, or personnel records maintained by a Medicaid provider in order for unit personnel to investigate allegations of incidents that fall within MFCU's investigative authority as established in rule 481—73.2(10A).

**73.5(2)** For Medicaid provider fraud investigations, unit personnel shall have access to any records pertaining to Medicaid and non-Medicaid recipients of health care goods and services to verify that:

- a. Medicaid claims for goods and services have been accurately paid.
- b. Medicaid recipients actually received the goods and services claimed by the Medicaid provider.
- c. Medicaid providers have retained supporting documentation to substantiate claims.

**73.5(3)** For abuse or neglect investigations, unit personnel shall have access to any records pertaining to any Medicaid patients or residents identified during the course of an investigation who are receiving health care services in a health care facility that receives Medicaid funds or in a board and care facility. Unit personnel may obtain access via subpoena or other legal methods to any records pertaining to any non-Medicaid patients or residents identified during the course of an investigation.

**481—73.6(10A) Subpoenas.** The director or the director's designee may issue subpoenas in connection with MFCU investigations. In addition to the provisions of 481—subrules 1.1(6) to 1.1(9), the following apply.

**73.6(1)** Unit personnel may serve subpoenas during the course of an open MFCU case investigation. The subpoena must be approved and signed by the director or the director's designee.

**73.6(2)** Subpoenas may be personally served by unit personnel upon the respondent of the subpoena or the respondent's registered agent, mailed directly to the respondent or the respondent's registered agent via USPS mail, or electronically transmitted directly to the respondent or the respondent's registered agent via facsimile or email.

**73.6(3)** Unit personnel shall have the authority to determine the appropriate method by which the respondent is requested to deliver information in response to a subpoena duces tecum.

**481—73.7(10A) Investigation results.**

**73.7(1)** Investigations resulting in sufficient evidence to support criminal or civil prosecution will be referred to the appropriate prosecutorial agency to be reviewed for a charging decision by the prosecutorial agency.

**73.7(2)** For investigations that result in identification of potential overpayment made to a Medicaid provider, unit personnel will either attempt to collect such overpayment or refer the matter to an appropriate state agency for collection.

**73.7(3)** Investigations that result in the identification of potential regulatory violations committed by a Medicaid provider may be referred to the appropriate regulatory agency for administrative review.

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

**481—73.8(10A) Confidentiality.** The unit shall maintain confidentiality of all investigative case information in accordance with Iowa Code sections 22.7(5) and 685.6, 42 CFR 1007.11(f), and any other applicable state or federal law.

These rules are intended to implement Iowa Code sections 10A.104(6), 10A.105, 10A.402(5), and 10A.403.

**ARC 3675C****MEDICINE BOARD[653]****Notice of Intended Action****Proposing rule making related to medical cannabidiol standards of practice and providing an opportunity for public comment**

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

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 147.76.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2017 Iowa Acts, House File 524, and Iowa Code chapters 124E, 147, 148, and 272C.

*Purpose and Summary*

The purpose of Chapter 13 is to establish standards of practice and principles of medical ethics for administrative medicine physicians, medical physicians and surgeons, and osteopathic physicians and surgeons. The proposed rule relates to the use of medical cannabidiol for patients with a qualifying illness. This rule establishes the process by which the Board of Medicine receives recommendations from the Medical Cannabidiol Board concerning amendments for the list of debilitating medical conditions that could be treated with medical cannabidiol and the form and quantity of the medical cannabidiol. This rule also provides grounds for discipline for physicians who violate the rule.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on February 16, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

MEDICINE BOARD[653](cont'd)

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 4, 2018. Comments should be directed to:

Mark Bowden, Executive Director  
Board of Medicine  
RiverPoint Office Park  
400 S.W. Eighth Street, Suite C  
Des Moines, Iowa 50309  
Fax: 515.242.5908  
Phone: 515.242.3268  
Email: [mark.bowden@iowa.gov](mailto:mark.bowden@iowa.gov)

*Public Hearing*

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

April 4, 2018	Board Office, Suite C
8:30 a.m.	400 S.W. Eighth Street
	Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Adopt the following **new** rule 653—13.15(124E,147,148,272C):

**653—13.15(124E,147,148,272C) Standards of practice—medical cannabidiol.**

**13.15(1) Definitions.** For purposes of this rule:

“*Board of medicine*” means the board established pursuant to Iowa Code chapters 147 and 148.

“*Bordering state*” means the same as defined in Iowa Code section 331.910.

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

1. Cancer, if the underlying condition or treatment produces one or more of the following:
  - Severe or chronic pain.
  - Nausea or severe vomiting.
  - Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.



## MEDICINE BOARD[653](cont'd)

5. Crohn's disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
  - Severe or chronic pain.
  - Nausea or severe vomiting.
  - Cachexia or severe wasting.
8. Parkinson's disease.
9. Untreatable pain.

*"Department"* means the Iowa department of public health.

*"Form and quantity"* means the types and amounts of medical cannabidiol allowed to be dispensed to a patient or primary caregiver as approved by the department subject to recommendation by the medical cannabidiol board and approval by the board of medicine.

*"Medical cannabidiol"* means any pharmaceutical grade cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* or any other preparation thereof that has a tetrahydrocannabinol level of no more than 3 percent and that is delivered in a form recommended by the medical cannabidiol board, approved by the board of medicine, and adopted by the department pursuant to rule.

*"Medical cannabidiol board"* means the board established pursuant to Iowa Code section 124E.5.

*"Primary caregiver"* means a person who is a resident of this state or a bordering state, including but not limited to a parent or legal guardian, at least 18 years of age, who has been designated by a patient's health care practitioner as a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol pursuant to the provisions of this chapter.

*"Untreatable pain"* means any pain whose cause cannot be removed and, according to generally accepted medical practice, the full range of pain management modalities appropriate for the patient has been used without adequate result or with intolerable side effects.

*"Written certification"* means a document signed by a physician licensed pursuant to Iowa Code chapter 148 with whom the patient has established a patient-physician relationship and who is the patient's primary care provider which states that the patient has a debilitating medical condition and identifies that condition and provides any other relevant information.

**13.15(2) *Written certification.*** A physician who is a patient's primary care provider may provide the patient a written certification of diagnosis if, after examining and treating the patient, the physician determines, in the physician's medical judgment, that the patient suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol pursuant to Iowa Code chapter 124E.

*a.* The physician shall provide explanatory information as provided by the department to the patient about the therapeutic use of medical cannabidiol and the possible risks, benefits, and side effects of the proposed treatment.

*b.* Subsequently, the physician shall do the following:

(1) Determine, on an annual basis, if the patient continues to suffer from a debilitating medical condition and, if so, may issue the patient a new written certification of that diagnosis.

(2) Otherwise comply with all requirements established by the department pursuant to rule.

*c.* A physician may provide, but has no duty to provide, a written certification pursuant to this rule.

**13.15(3) *Adding or removing debilitating medical conditions and amending form and quantity of medical cannabidiol.*** Recommendations made by the medical cannabidiol board pursuant to Iowa Code section 124E.5 relating to the addition or removal of allowable debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial or to the amendment of the form and quantity of allowable medical uses of cannabidiol shall be made to the board of medicine for consideration. The medical cannabidiol board shall submit a written recommendation, a copy of the petition and all other information received during consideration of the petition. The board of medicine shall consider the information received from the medical cannabidiol board and may seek information from other sources if it is deemed relevant by the board of medicine. The decision regarding a recommendation by the medical cannabidiol board is at the sole discretion of the board of medicine.

## MEDICINE BOARD[653](cont'd)

The board of medicine shall make its decision within 180 days of receipt of the recommendation from the medical cannabidiol board. If the recommendation is approved by the board of medicine, it shall be adopted by rule.

**13.15(4) *Financial interests.*** A physician shall not share office space with, accept referrals from, or have any financial relationship with a medical cannabidiol manufacturer or dispensary.

**13.15(5) *Criminal prosecution.*** A physician, including any authorized agent or employee thereof, shall not be subject to prosecution for the unlawful certification, possession, or administration of marijuana under the laws of this state for activities arising directly out of or directly related to the certification or use of medical cannabidiol in the treatment of a patient diagnosed with a debilitating medical condition as authorized by Iowa Code chapter 124E.

**13.15(6) *Civil or disciplinary penalties.*** A physician, including any authorized agent or employee thereof, shall not be subject to any civil or disciplinary penalties by the board of medicine or any business, occupational, or professional licensing board or entity, solely for activities conducted relating to a patient's possession or use of medical cannabidiol as authorized by Iowa Code chapter 124E. Nothing in this rule prevents the board of medicine from taking action in response to violations of any other sections of law or rule.

**13.15(7) *Grounds for discipline.*** A physician may be subject to disciplinary action for violation of these rules or the rules found in 653—Chapter 23. Grounds for discipline include, but are not limited to, the following:

*a.* The physician provides an individual a written certification without establishing a patient-physician relationship, including examining and treating the individual, or without being the individual's primary care provider.

*b.* The physician provides a patient a written certification without determining, in the physician's medical judgment, that the patient suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol pursuant to Iowa Code chapter 124E.

*c.* The physician provides a patient a written certification without providing explanatory information as provided by the department to the patient about the therapeutic use of medical cannabidiol and the possible risks, benefits, and side effects of the proposed treatment.

*d.* The physician provides an individual a new written certification without determining, on an annual basis, that the patient continues to suffer from a debilitating medical condition.

*e.* The physician shares office space with, accepts referrals from, or has a financial relationship with a medical cannabidiol manufacturer or dispensary.

This rule is intended to implement Iowa Code chapters 124E, 147, 148 and 272C.

**ARC 3671C****PUBLIC EMPLOYMENT RELATIONS BOARD[621]****Notice of Intended Action****Proposing rule making related to collective bargaining  
and providing an opportunity for public comment**

The Public Employment Relations Board hereby proposes to amend Chapter 2, "General Practice and Hearing Procedures," Chapter 4, "Bargaining Unit and Bargaining Representative Determination," Chapter 5, "Elections," Chapter 6, "Negotiations and Negotiability Disputes," Chapter 7, "Impasse Procedures," and Chapter 13, "Mediators," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 20.6(5).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 20.

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

*Purpose and Summary*

The agency adopted emergency rules effective August 10, 2017, to implement provisions of 2017 Iowa Acts, House File 291. These proposed amendments are intended to clarify those rules, add rules where required by House File 291 and make changes based on elections conducted in the fall of 2017.

Items 1 and 2 are conforming amendments based on renumbering proposed in Chapters 5 and 4, respectively. The agency is proposing amendments in Items 3 through 13 and 15, which restructure the chapter with additions for explanation and clarification of petitions and procedures. Item 14 is based on constituent feedback and proposes an amendment to allow employee organizations to wait for Board approval before filing final agency reports for dissolved organizations in amendment of certification proceedings.

The agency proposes a number of amendments to Chapter 5. Item 16 proposes amendments to change the time period for the payment of election fees; to eliminate election fee refunds when the employee organization has paid the fee, but the election does not occur; and to conform the chapter to the voter eligibility changes contained in Item 17. Item 17 proposes amendments to change the voter eligibility for retention and recertification elections to a date certain prior to the start of the election period, to clarify the responsibilities of the employer and the employee organization in providing the voter list and updating the list, and to summarize challenges for all the types of elections and change the deadline for telephonic/web-based election challenges. Due to the cutoff date for voter eligibility and the change to challenge deadlines, Item 17 also proposes additional amendments to allow for postelection challenges for retention and recertification elections. Item 18 proposes amendments to allow the agency to utilize voting machines for in-person elections, to allow for voter registration if necessary for telephonic/web-based elections, to allow the Board to extend an election period for telephonic/web-based elections when the systems are inoperable for an extended period, and to further clarify existing election practices. Item 19 proposes amendments to clarify the objection procedure to reflect current practice, to specify the parties that may object pursuant to changes required by House File 291, and to clarify what constitutes objectionable conduct regarding speeches. Items 20 and 22 propose amendments to conform to voter eligibility changes in Item 17 and to restructure the rules regarding certification and decertification elections for clarification to constituents. Item 21 proposes amendments for the same purpose for retention and recertification elections and for conformance to postelection challenges for these types of elections. The amendments also set the date upon which an extension of an agreement must be executed, require the parties to notify the agency of the extension, and allow the agency the option of conducting elections for education-related entities in October. Items 23 and 24 propose amendments for the restructuring of rules which cover professional/nonprofessional and amendment of unit elections. Item 25 proposes an amendment to reflect the accurate name of the order issued by the agency.

Items 26 and 27 propose amendments to reflect current word usage. Item 28 proposes amendments to change the dates by which public safety status stipulations are due to the agency. Item 29 proposes an amendment to revise the rule.

Item 30 proposes amendments for the renumbering of subrules due to the addition of a new subrule contained in Item 31 and due to rule restructuring. Item 31 proposes a new subrule to set forth the requirements for state contract negotiations when a new governor takes office as set forth in House File 291.

Item 32 proposes an amendment to add arbitration as a type of proceeding in which a mediator shall not testify, as set forth in House File 291.

*Fiscal Impact*

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

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

*Jobs Impact*

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

*Waivers*

These rules do not provide for a waiver of their terms, but are instead subject to the agency's general waiver provisions found at rule 621—1.9(17A,20).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 4, 2018. Comments should be directed to:

Amber DeSmet/Diana Machir  
Public Employment Relations Board  
Jessie Parker Office Building  
510 East 12th Street, Suite 1B  
Des Moines, Iowa 50319  
Phone: 515.281.4414  
Email: [amber.desmet@iowa.gov](mailto:amber.desmet@iowa.gov)  
[diana.machir@iowa.gov](mailto:diana.machir@iowa.gov)

*Public Hearing*

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

April 4, 2018	Vocational Rehabilitation Services
2 p.m.	Starkweather Conference Room
	Jessie Parker Office Building
	510 East 12th Street
	Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 621—2.4(20) as follows:

**621—2.4(20) Intervention and additional parties.** Any interested person may request intervention in any proceeding before the public employment relations board. An application for intervention shall be

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

in writing, except that applications made during a hearing may be made orally to the hearing officer, and shall contain a statement of the reasons for such intervention. When an application for intervention is filed regarding a petition for bargaining representative determination, 621—subrules 4.3(2), 4.4(4), 5.1(2), 5.5(2), and ~~5.5(3)~~ 5.5(4) shall apply.

Where necessary to achieve a more proper decision, the board or administrative law judge may, on its own motion or the motion of any party, order the bringing in of additional parties. When so ordered, the board shall serve upon such additional parties all relevant pleadings and allow such parties a reasonable time to respond thereto where appropriate.

ITEM 2. Amend rule 621—2.23(20) as follows:

**621—2.23(20) Informal disposition.** The board may assign an administrative law judge to assist the parties in reaching a settlement of any dispute which is the subject of an adjudicatory proceeding. However, no party shall be required to participate in mediation or settle the dispute pursuant to this rule. An administrative law judge assisting the parties under this rule shall not serve as a presiding officer in any proceeding related to the dispute. Adjudicatory proceedings may be voluntarily dismissed without consent of the board except as provided in rule 621—3.6(20) and 621—subrule 4.1(3) 4.1(5).

ITEM 3. Renumber subrules **4.1(1)** to **4.1(3)** as **4.1(3)** to **4.1(5)**.

ITEM 4. Adopt the following **new** subrule 4.1(1):

**4.1(1) General.**

*a.* The agency shall determine an appropriate bargaining unit when requested by petition. Once a unit is initially determined, parties may request by petition: reconsideration of the unit, amendment of the unit, or clarification of the unit.

*b.* The agency may certify an employee organization to be the exclusive bargaining representative for a unit when requested by a petition or an application for intervention. Once certified, the employee organization will be subject to retention and recertification elections and may be subject to decertification if a petition is filed by an employee of the bargaining unit. The employee organization's certification may be amended when requested by petition by the employee organization or by the public employer, or when the agency files notice.

*c.* The employee organization shall have its certification revoked for failure to pay its election fees, or its certification may be revoked for failure to comply with the requirements of Iowa Code section 20.25.

ITEM 5. Adopt the following **new** subrule 4.1(2):

**4.1(2) Representation elections.**

*a. Initial certification, retention and recertification, and decertification elections.* The initial certification, retention and recertification, and decertification of an employee organization require elections in accordance with 621—Chapter 5. The three types of elections affecting the bargaining representative determination or an employee organization's certification status are as follows:

(1) A certification election, which is initiated by the filing of a petition by the employee organization or the public employer, for the initial certification of an employee organization to be the exclusive bargaining representative for a bargaining unit of public employees;

(2) A retention and recertification election, which is initiated by the filing of notice by the agency, for the retention and recertification of a certified employee organization; and

(3) A decertification election, which is initiated by a public employee of a bargaining unit, for the decertification of an existing certified employee organization that represents the unit.

*b. Other elections—professional/nonprofessional unit and amendment of unit.* When a bargaining unit is determined or amended, an election may be required as provided in 621—Chapter 5. The two types of other elections are as follows:

(1) A professional and nonprofessional election occurs when the agency files an order directing the election after determining that professional and nonprofessional employees are appropriately included in the same bargaining unit.

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

(2) An amendment of unit election occurs when the agency files an order directing the election after determining that a job classification or classifications are appropriately amended into a bargaining unit, but a question of representation exists. A question of representation exists when the amended classifications existed at the time the bargaining unit was originally determined and those classifications would separately constitute an appropriate unit.

ITEM 6. Amend renumbered subrule 4.1(3) as follows:

**4.1(3) *Separate or combined petitions.*** ~~Request~~ Requests for the initial bargaining unit determination and the bargaining representative determination certification shall be by petitions which may be filed separately or on a combined petition form pursuant to rule 621—4.4(20). ~~Where~~ When a request has been made to a public employer to bargain collectively with a designated group of public employees and the ~~board~~ agency has not previously determined the bargaining unit, the petitions shall be filed jointly or on a combined form ~~provided by the board~~ prescribed by the agency.

ITEM 7. Adopt the following **new** subrule 4.1(6):

**4.1(6) *Method of filing of all petitions.*** All petitions and subsequent documents submitted pursuant to this chapter shall be electronically filed pursuant to 621—Chapter 16, unless otherwise stated in these rules.

ITEM 8. Amend rule 621—4.2(20) as follows:

**621—4.2(20) Unit determination.**

**4.2(1) *Content of petition.*** A petition for bargaining unit determination shall be on an agency-prescribed form and filed with the agency. The petition shall ~~contain an identification and description of~~ identify and describe the proposed unit and indicate the unit's status as a public safety or non-public safety unit.

**4.2(2) *Notice to parties.*** Upon the filing of a proper petition, the agency shall serve copies thereof upon other interested parties by certified mail, return receipt requested. The agency shall file a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under ~~the Act~~ Iowa Code chapter 20. The employer shall promptly post the petition and notice to employees in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the public employer shall also promptly distribute the petition and notice to employees by those means.

**4.2(3) *Notice of hearing.*** The board or administrative law judge shall file a notice of hearing setting forth the time, date and place of the hearing and any other relevant information. The public employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the employer shall also promptly distribute the notice to employees by those means.

**4.2(4) *Intervention.*** See rule 621—2.4(20).

**4.2(5) *Professional and nonprofessional unit elections.*** Should the agency determine, in any case, that professional and nonprofessional employees are appropriately included in the same bargaining unit, the agency shall file an order directing that an election be conducted to determine whether the professional and nonprofessional employees wish to be represented in a single bargaining unit. The election shall be conducted in accordance with rule 621—5.8(20).

**4.2(6) *Informal settlement of bargaining unit determination.*** Cases on bargaining unit determination may be informally settled in the following manner:

a. The parties may stipulate to the composition of the unit.

(1) The petitioning party shall prepare a stipulation setting forth in detail the composition of the bargaining unit as agreed upon by all parties. The stipulation shall be signed by the authorized representatives of the parties involved and shall be filed with the agency for informal review and tentative approval. In the event the parties agree to a combined unit of professional and nonprofessional

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employees, the stipulation shall set forth both those job classifications included within the professional category and those job classifications included within the nonprofessional category.

(2) If the agency fails to tentatively approve the stipulation, the agency shall notify the parties and, unless the parties amend the stipulation in a manner to gain tentative approval of the agency, the matter shall proceed to hearing.

(3) If the agency tentatively approves the stipulation, the agency shall file a public notice of proposed decision. The public employer shall promptly post copies of the notice of the proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public and in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the employer shall also promptly distribute such notice to employees by those means. The public employer shall also have copies of the notice available for distribution to the public upon request.

b. Notice of the proposed decision shall identify the parties; specify the terms of the proposed decision; list the names, addresses, ~~and~~ and telephone numbers, and email addresses of the parties or their authorized representatives to whom inquiries by the public should be directed; and, further, state the date and method by which written objection to the proposed decision must be filed with the agency ~~and the address to which such objections should be sent~~.

c. Objections to the proposed decision must be filed with the agency, electronically, by ordinary mail or by personal delivery, by the date posted in the notice of proposed decision. Objections shall be in writing and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, ~~and~~ and telephone number, and email address, if available. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the agency deems the objections to be of substance, the parties may, with agency approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the agency of the amendment. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.

d. Final board decision on the ~~informed~~ informal settlement shall be reserved until expiration of the time for filing of objections. If no objections have been filed; or if filed objections have been resolved through amendment of the proposed decision; or if filed objections, after inquiry by the board, were found to be frivolous, the board shall endorse the proposed decision as final.

e. If interested parties are unable to informally settle a case on bargaining unit determination within 15 days of service of a petition, the board or administrative law judge may order any interested party to file ~~with the board~~ its proposed unit description.

ITEM 9. Amend rule 621—4.3(20) as follows:

**621—4.3(20) Bargaining representative determination (election petitions).**

**4.3(1) Form of petition.** Petitions for bargaining representative determination (election petition) shall be on an agency-prescribed form and filed with the agency. These petitions shall be of three types:

a. A certification petition, filed by an employee organization requesting that through an election it be certified as the exclusive bargaining representative of an appropriate unit of public employees. The name of the employee organization which appears on the petition, or the petition as amended, shall be the name which appears on the election ballot.

b. A decertification petition, filed by ~~an~~ a bargaining unit employee requesting an election to determine whether a majority of the employees in the bargaining unit wish to continue to be represented by a certified employee organization.

c. A representation petition, filed by a public employer requesting an election to determine the bargaining representative, if any, of the employees in the bargaining unit.

**4.3(2) Showing of interest—certification—decertification—intervention.** Whenever a petition for certification or decertification is filed, or whenever intervention is requested for the purpose of being placed on an election ballot, the petitioner or intervenor shall submit, by ordinary mail or personal delivery, evidence that the petition or application for intervention is supported by 30 percent of the

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employees in the bargaining unit. In petitions for certification or applications for intervention, such ~~interest~~ showing of interest shall be dated and signed not more than one year prior to its submission; shall contain the job classification of the signatory; and shall contain a statement that the signatory is a member of the employee organization or has authorized it to bargain collectively on the signatory's behalf. In petitions for decertification, evidence of interest shall be as provided above, except the evidence of interest shall instead contain a statement that the signatory no longer wishes to be represented by the certified employee organization. When a representation petition is filed by an employer, no ~~show~~ showing of interest will be required.

**4.3(3) *Determination of showing of interest.*** The public employer shall, within seven days of receipt of notice of a certification or decertification petition, ~~submit to~~ file with the agency a list of the names and job classifications of the employees in the unit which is the subject of the petition or, in the case of a combined petition, the employees in the unit requested by the petitioner. The agency shall administratively determine the sufficiency of the showing of interest upon receipt of the list. This determination, including the identification and number of signers of the showing of interest, shall be confidential and not subject to review, and parties other than the party submitting the ~~interest~~ showing of interest shall not be entitled to a copy or examination of the showing of interest. If the employer fails to furnish the list of employees, the agency shall determine the sufficiency of the showing of interest by whatever means it deems appropriate.

**4.3(4) *Notice.*** Upon the filing of a petition for certification, decertification or representation, the agency shall file a notice to employees, giving notice that an election petition has been filed and setting forth the rights of employees under ~~the Act~~ Iowa Code chapter 20. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the employer shall also promptly distribute the notice to employees by those means.

**4.3(5) *Direction of election.*** Whenever an election petition is filed which conforms to these rules and ~~the Act~~ Iowa Code chapter 20 and the appropriate bargaining unit has been previously determined, an election shall be directed and conducted under the provisions of 621—Chapter 5.

**4.3(6) *Intervention.*** See 4.1(2) rule 621—2.4(20).

ITEM 10. Amend rule 621—4.4(20) as follows:

**621—4.4(20) Concurrent (combined) petitions.**

**4.4(1) *When to file.*** A combined petition for both bargaining unit determination and bargaining representative ~~determination~~ certification shall be filed whenever ~~a question of representation exists~~ and the bargaining unit has not been previously determined and a representative has not been certified by the board agency.

**4.4(2) *Content of petition.*** A combined petition for unit determination and representative ~~determination (election)~~ certification shall be on a an agency-prescribed form provided by the board and shall be filed by delivery to the board.

**4.4(3) *Notice of petition, hearing, and notice to employees.*** Upon ~~receipt~~ the filing of a combined petition, notice shall be as provided in subrules 4.2(2), 4.2(3) and 4.3(4).

**4.4(4) *Showing of interest.*** Showing of interest shall be as provided in subrules 4.3(2) and 4.3(3). Should the board determine an appropriate unit different than that requested, any employee organization affected may request a reasonable period of time to submit additional evidence of interest sufficient to satisfy the requirements of ~~the Act~~ Iowa Code chapter 20.

**4.4(5) *Scope of hearing.*** Hearings on combined petitions shall resolve all issues with regard to both bargaining unit determination and bargaining representative ~~determination~~ certification.

**4.4(6) *Intervention.*** See 4.1(2) rule 621—2.4(20).

**4.4(7) *Professional and nonprofessional elections.*** See subrule 4.2(5) and rule 621—5.8(20).



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ITEM 11. Amend rule 621—4.5(20) as follows:

**621—4.5(20) Unit reconsideration.** A petition for reconsideration of an agency-established bargaining unit may be filed by an employee organization, public employer, or an employee of the public employer. This petition may be filed only in combination with a certification petition. Rules 621—4.1(20), 621—4.2(20), 621—4.3(20) and 621—4.4(20) shall apply. A petition for reconsideration of an agency-established bargaining unit covering state employees may not be filed for at least one year after the initial unit determination. The agency may dismiss the petition for unit reconsideration if the petitioner fails to establish that the previously determined bargaining unit is inappropriate.

ITEM 12. Amend rule 621—4.6(20) as follows:

**621—4.6(20) Amendment of unit.**

**4.6(1) Petition.** A petition for amendment of an agency-determined bargaining unit may be filed by the public employer or the certified employee organization. The petition shall contain:

- a. The names, addresses, telephone numbers and ~~e-mail~~ email addresses of the public employer, and the employee organization, and or their respective representatives.
- b. An identification and description of the proposed amended unit.
- c. The names and addresses of any other employee organizations which claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.
- d. Job classifications of the employees as to whom the issue is raised, the number of employees, if any, in each classification, and whether each job classification qualifies as a public safety employee.
- e. A statement identifying the current status of the unit as either a public safety or a non-public safety unit and the change, if any, to the status of the unit which would result from the requested amendment.
- f. A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant facts.

**4.6(2) Procedure—decision.** Insofar as applicable, rule 621—4.2(20) shall apply.

**4.6(3) Elections; when required.** When a question of representation exists, the agency will conduct an amendment of unit election pursuant to rule 621—5.9(20). A question of representation exists when the job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

ITEM 13. Amend rule 621—4.7(20) as follows:

**621—4.7(20) Unit clarification.** A petition to clarify the inclusion or exclusion of job classifications or employees in an agency-determined bargaining unit may be filed by the public employer, an affected public employee, or the certified employee organization. Such petition ~~must~~ may be ~~in the absence of a question of representation~~ filed only if the bargaining unit is represented by a certified bargaining representative. Insofar as applicable, the procedures for such filing shall be as provided in subrule 4.6(1).

ITEM 14. Amend subrule 4.8(2) as follows:

**4.8(2) Employee organization.** The employee organization must file its petition with the following:

- a. An affidavit(s) that establishes:
  - (1) The act or occurrence, which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and
  - (2) Substantial continuity of representation has been maintained.
- b. Updated agency reports if there is a change in the employee organization's name or if there is a change to the employee organization's governing body. The reports shall include the following:
  - (1) An updated PERB annual report that covers the time period from the last annual report to the time of the filing of the petition.

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- (2) An updated PERB registration report.
- (3) An updated constitution and bylaws.

c. Final agency reports for dissolved organizations resulting from a merger. The final agency report shall include a PERB annual report that covers the time period from the last annual report to the time of the merger and shall reflect the closing of the books and accounts of the dissolved employee organization. The certified employee organization may wait and submit its final agency reports following the board's tentative approval of the amendment of certification.

ITEM 15. Amend subrule 4.8(5) as follows:

**4.8(5) Public employer posting, decisions and objection period.** When a petition for amendment of certification is filed which the agency deems sufficient to fulfill the requirements of this rule, the agency shall file a public notice of its proposed decision to amend the employee organization's certification upon the non-petitioning interested parties. Upon receipt, the public employer shall promptly post the notice of proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public and in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the employer shall also promptly distribute such notice to employees by those means. The public employer shall also have copies of the proposed decision available for distribution to the public upon request.

a. The notice of the proposed decision shall identify the parties; specify the terms of the proposed decision; list the names, addresses, ~~and~~ telephone numbers, and email addresses of the parties or their authorized representatives to whom inquiries by the public should be directed; and state the date and method by which written objection to the proposed decision must be filed.

b. Objections to the proposed decision must be filed with the agency, electronically, by ordinary mail or by personal delivery, by the date specified in the notice. Objections shall be in writing and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, telephone number and ~~e-mail~~ email address. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. When an objection is raised, the agency may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.

c. A final agency decision shall be reserved until the expiration of the time for filing objections. If no objections have been filed, the agency may endorse the proposed decision as final.

ITEM 16. Amend subrules 5.1(2) and 5.1(3) as follows:

**5.1(2) Election fees.**

a. For certification, retention and recertification, and decertification elections, the employee organization is responsible for and shall prepay the election fees in accordance with this chapter and rules relevant to the specific election. Employee organizations intervening in a certification election shall pay a proportionate share of the election fees.

b. A certified employee organization may make file a written request to with the agency for an extension of time in which to pay its election fees. The employee organization may make file the request after the filing of a certification or decertification petition, but no later than 7 days after the agency's filing of an order ~~of directing an election~~. For a retention and recertification election, a certified employee organization may make file a request after the agency's filing of its intent to conduct an election, but shall file the request no later than 30 days prior to the commencement of the election period the date the election fee is due as provided in the notice of intent to conduct an election. In no event will the agency conduct an election prior to an employee organization's payment of election fees.

c. A certified employee organization may file notice of nonpayment to indicate that it will not pay the election fees for a decertification or retention and recertification election. The notice of nonpayment may be filed at any time, but must be filed no later than 7 days after the agency's filing of an order for a decertification election or no later than 30 days prior to the commencement of a retention and recertification election period. The notice shall be signed by an authorized representative of the organization, state that the organization will not pay the election fees, and acknowledge that the agency will not conduct the applicable election and the employee organization's certification will be revoked.

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*d.* ~~The~~ For retention and recertification elections, the applicable election fee is based upon the number of employees on the voter eligibility list submitted to the agency pursuant to ~~paragraph 5.2(2)“a.”~~ subrule 5.2(2). For certification and decertification elections, the applicable election fee is based upon the list provided pursuant to 621—subrule 4.3(3) to verify the showing of interest.

(1) When the list contains 10 or fewer eligible voters, the election fee is ~~\$10.00~~ \$10. When the list contains more than 10 eligible voters, the election fee is ~~\$1.00~~ \$1 per eligible voter. When the list contains more than 50 eligible voters and subsequent increases or decreases as contemplated by ~~paragraph 5.2(2)“b”~~ subparagraph 5.2(2)“a”(2) or 5.2(2)“b”(2) or successful challenges pursuant to subrule 5.2(3) alter the number of eligible voters by 5 percent or more, the employee organization shall make an additional payment to reflect the increased number of eligible voters or, in the case of a decrease, the agency shall reimburse the employee organization for its overpayment.

(2) ~~The agency will not request additional payment and will not reimburse the employee organization for an amount less than \$10. The agency will not refund the election fee in the event the election fee is paid but the election does not occur.~~

**5.1(3) *Date of elections election.*** For purposes of this chapter, the date of an election shall be the date on which the ballots were ~~counted~~ tallied.

ITEM 17. Amend rule 621—5.2(20) as follows:

**621—5.2(20) Eligibility—voter eligibility list lists.**

**5.2(1) *Eligible voters.*** ~~Eligible voters are those employees who:~~

*a. Certification, decertification, professional/nonprofessional, amendment of unit elections.* ~~For certification, decertification, professional/nonprofessional, or amendment of unit elections, eligible voters are those employees who:~~

(1) ~~Were employed and included in the bargaining unit during the payroll period immediately preceding the direction of~~ on the date of the order directing an election unless another date is agreed upon by the parties and the agency, and

~~b. (2) Are employed in the bargaining unit on the date of the election.~~

*b. Retention and recertification elections.*

(1) For retention and recertification elections, eligible voters are those employees who were employed and included in the bargaining unit on the date of the order directing the election, or were employed on another date or dates agreed upon by the parties and the agency.

(2) ~~In addition to voter eligibility challenges made pursuant to subrule 5.2(3), employee organizations may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections.~~

1. ~~The certified employee organization may file a postelection challenge to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board’s findings and conclusions.~~

2. ~~The employer is responsible for ensuring the accuracy of the list after its submission and throughout the election period. The employer shall promptly notify the certified employee organization whenever an eligible voter leaves employment and is no longer in the bargaining unit prior to the close of the election or election period.~~

**5.2(2) *Eligible voter list.***

*a. Certification, decertification, professional/nonprofessional, and unit amendment elections—eligible voter list.*

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(1) List for determining fees. The agency will determine the election fee based on the initial employer-provided list of employees used to verify the showing of interest pursuant to 621—subrule 4.3(3).

(2) Voter eligibility list.

1. When the agency files a notice of intent to conduct a retention and recertification election or an order that an election, other than a retention and recertification election, be conducted, the employer shall, within seven days of the notice or order, e-mail email to the agency an alphabetical list of the names; addresses; e-mail email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote, except as provided in subrule 5.6(8). Where When a telephonic/Web-based telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency.

b. 2. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official voting list for the election to be conducted. The agency shall provide to the employee organization the voter list with the employees' contact information. The employer or employee organization shall e-mail email proposed additions or deletions of employees' names, changes in job classifications, or addresses, contact information, or other eligible voter changes to the agency to reflect the current status of eligible voters and to the other party. The parties may further amend the list by agreement.

b. Retention and recertification elections—eligible voter list.

(1) List for determining fees.

1. The agency will determine the election fee based on the following initial employer-provided list of employees. When the agency files a notice of intent to conduct a retention and recertification election, the employer shall, within seven days of the notice, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list.

2. The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the employee organization the voter list with the employees' contact information.

(2) Voter eligibility list.

1. When the agency files an order that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the original list the employer provided for determining fees is unchanged, the employer does not need to email a subsequent list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voter list for the election to be conducted. The agency shall provide to the employee organization the voter list with the employees' contact information.

2. The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

**5.2(3) Challenges.**

a. Types of challenges.

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(1) A party may challenge, for good cause, the eligibility of any voter in accordance with subrule 5.3(2), 5.3(3) or 5.3(4), whichever is applicable to the election being conducted. The agency shall attempt to resolve the challenge. Whenever challenged ballots are unresolved and determinative of the outcome of an election, a hearing to determine the eligibility of the challenged voter(s) shall be scheduled and conducted. After the conclusion of the hearing, the board may, if necessary, order a new election, and the cost may be taxed to the nonprevailing party.

(2) In addition to voter eligibility challenges made pursuant to this subrule, employee organizations may make postelection challenges to the total number of bargaining unit employees for the employee organizations' respective retention and recertification elections in accordance with paragraph 5.2(1) "b."

b. Methods of voter eligibility challenges. A party may challenge the eligibility of a voter as follows:

(1) In-person elections. A party shall challenge a voter's eligibility prior to the time the voter deposits the voter's ballot in the ballot box. In the event of a challenge, the challenged voter may mark the ballot in secret, and the election agent shall segregate the ballot by causing it to be placed in a challenged-ballot envelope with appropriate markings and depositing it in the ballot box.

(2) Mail-ballot elections. A party shall challenge a voter's eligibility prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both the secret envelope and the outer envelope shall remain sealed until the challenge is resolved.

(3) Telephonic/web-based elections. A party shall challenge a voter's eligibility in writing to the agency with a copy to the other interested party. For retention and recertification elections, a party shall challenge that voter's eligibility at least seven days prior to the commencement of the election period for telephonic/web-based elections. For all other elections utilizing this method, a party shall challenge that voter's eligibility prior to the end of the election period.

ITEM 18. Amend rule 621—5.3(20) as follows:

**621—5.3(20) Method Methods of voting—general procedures.**

**5.3(1) Types of elections.** The agency may conduct an election, in whole or in part, in person, by mail balloting ballot, or through a telephonic/Web-based telephonic/web-based system.

**5.3(2) 5.3(1) In-person election.** An eligible voter shall cast the voter's ballot by marking the voter's choice on the ballot and depositing it in the ballot box or inserting it in a voting machine, whichever is applicable. If a voter inadvertently spoils a ballot, the ballot may be returned to the agent who shall void and retain it and provide another ballot to the voter. Eligible voters may be asked to cast their votes via a nondocument ballot when there is a voting machine present that accommodates this technology.

a. Absentee ballot. An absentee ballot shall be delivered to an eligible voter upon the voter's written notice to the agency of the voter's inability to be present at the election for good cause. The voted marked absentee ballot must shall be in the possession of the election agent prior to the close of the in-person election in order to be counted and. The marked absentee ballot shall be contained in the official envelopes secret envelope provided for this purpose to the voter, and the postage-paid, return-addressed outer envelope provided for the return of the ballot to the agency shall be signed by the voter in order for the ballot to be counted.

a. b. Observers. Each party to an election may designate an equal number of representatives, not to exceed one per voting site, to act as the party's observers during the election and tally of ballots. Unless agreed to by the parties, observers shall not be supervisory employees of the public employer.

b. c. Ballot box. Upon examination by the observers and prior to the opening of the polls, the election agent shall seal the ballot box so that entry thereto is limited to one slot. In the event that the election is continued for more than one polling period or at more than one polling place, the ballot box shall be sealed in its entirety and shall remain in the custody of the election agent until immediately prior to the next polling period or the counting of the ballots.

d. Voting machines. The agency may utilize voting machines to assist with the casting or tabulation of votes.

e. e. Challenges and tally Tally. A challenge to a voter's eligibility shall be made with good cause prior to the time the voter deposits the voter's ballot in the ballot box. In the event of a challenge, the

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~~challenged voter may mark the ballot in secret and the election agent shall segregate the ballot by causing it to be placed in a challenged ballot envelope with appropriate markings and depositing it in the ballot box. The agency shall tally the ballots by manual count or electronic count and file the tally of ballots after the close of the election. Void ballots are those which do not indicate a preference or the clear intent of the voter or which appear to identify the voter. The employer shall promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~

~~5.3(3) 5.3(2) Mail-ballot Mail-ballot election.~~ When conducting a ~~mail-ballot mail-ballot~~ election, the agency shall send an official voting package to each eligible voter by ordinary mail and direct a date by which voted ballots must be received by the agency in order to be counted.

~~a. Contents of official voting packages.~~ Voting packages sent to eligible voters shall consist of voting instructions, a ballot, a secret envelope in which said the marked ballot is to be inserted, and a postage-paid, return-addressed outer envelope which identifies the voter for purposes of proposing challenges to the voter's eligibility. In the event of a challenge, both envelopes shall remain sealed until such time as the challenge is resolved.

~~b. Tally of ballots—observers—challenges.~~ The agency shall set a time and place for the tally of ballots, at which time ~~representatives of observers designated by~~ the parties to the election shall be entitled to be present and challenge for good cause the eligibility of any voter. Challenges must be made prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both the secret envelope and the outer envelope shall remain sealed until the challenge is resolved. ~~In the absence of a challenge, the~~ The voter's outer envelope shall be opened, and the secret envelope containing the voter's ballot shall be ~~deposited in the ballot box commingled with the other secret envelopes.~~ The agency shall tally the ballots and file the tally of ballots after the close of the election. Void ballots are those which do not indicate a preference or the clear intent of the voter, which appear to identify the voter, which are not enclosed in the secret envelope provided to the voter, or which are returned in an outer envelope which does not bear the voter's signature. The employer shall promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

~~5.3(4) 5.3(3) Telephonic/Web-based Telephonic/web-based election.~~ The agency may utilize an election services vendor for the receipt of telephonic and ~~Web-based web-based~~ ballots and for the ~~tallying tabulation~~ of those ballots.

~~a. Notice of election.~~ When conducting a ~~telephonic/Web-based telephonic/web-based~~ election, whether in whole or in part, the agency shall include in the notice of election the telephone number the voter is to call to cast a ballot, and the ~~Web-site website~~ address for ~~Web-based web-based~~ voting, as well as the ~~script of the ballot~~ and a sample ballot or script.

~~b. Registration.~~ Eligible voters may be required to register to vote prior to casting a ballot.

~~b. c. Tally and challenges.~~ The agency shall file the tally of ballots after the close of the election period. A party wishing to challenge for good cause the eligibility of any voter shall do so at least two hours prior to the close of the election period. In the event of a challenge, the tally of ballots will not include such vote until the challenge is resolved. ~~Following the close of the election period and the agency's receipt of the ballot tabulation from the election services vendor, the agency shall tally the ballots and file the tally.~~ Void or blank ballots are those which do not indicate a preference or clear choice by the voter in favor of one of the voting options presented by the ballot. The employer shall promptly post copies of the tally of ballots in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

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*d. Inoperable voting system.* The board may extend the period of the election due to inoperable voting systems.

~~5.3(5)~~ **5.3(4)** *Alternate voting method.* When a voter promptly informs the agency of the voter's inability to cast a ballot using the designated ~~method~~ methods of voting, the agency shall assist the voter in using an alternate method to cast a secret ballot.

ITEM 19. Amend rule 621—5.4(20) as follows:

**621—5.4(20) Objections to an election.**

~~5.4(1) Objections.~~ Whenever a party, or the board on its motion, files a timely objection, a hearing shall be scheduled. Objections Written objections to an election may be filed by any public employee, public employer, or employee organization involved in the election or by the board on its own motion. Objections must be filed with the agency within ten days of the filing of the tally of ballots, even when challenged ballots are challenges to eligible voters may be determinative of the outcome of the election; and. The objection must identify the objecting party; provide the objecting party's mailing address, telephone number, and email address if available; and contain a statement of facts upon which the objections are based. The objections shall be electronically filed with the agency The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing. Hearings on objections shall be conducted pursuant to 621—Chapter 2. The objecting party shall present its evidence first.

**5.4(2) Objectionable conduct during election campaigns.** The following types of activity, if conducted during the period beginning with the filing of an election petition with the agency or the agency's filing of a notice of intent to conduct a retention and recertification election and ending at the conclusion of the election, if determined by the agency that such activity could have affected the results of the election, shall be considered to be objectionable conduct sufficient to invalidate the results of an election:

- a.* Electioneering within 300 feet or within sound of the polling place established by the agency during the conduct of an in-person election;
- b.* Misstatements of material facts by any party to the election or its representative without sufficient time for the adversely affected party to adequately respond;
- c.* Any misuse of agency documents, including an indication that the agency endorses any particular choice appearing on the ballot;
- d.* Campaign speeches by an employer to assembled groups of employees during working hours within the 24-hour period beginning 24 hours before the opening of the polls in an in-person election, the mailing of ballots in a mail-ballot election, or the commencement of the telephonic/Web-based telephonic/web-based election period and extending until the close of the in-person polls, the deadline for the agency's receipt of mail ballots, or the close of the election period in a telephonic/web-based election;
- e.* Any polling of employees by a public employer which relates to the employees' preference for or against a bargaining representative;
- f.* Commission of a prohibited practice;
- g.* Any other misconduct or other circumstance which prevents employees from freely expressing their preferences in the election.

ITEM 20. Amend rule 621—5.5(20) as follows:

**621—5.5(20) Certification elections.**

**5.5(1) General procedures—notice of election.**

~~a.~~ Upon the agency's determination that a certification petition is supported by an adequate showing of interest in accordance with rule 621—4.3(20), the agency shall file an order directing that an election be conducted in a specified manner and that the employer ~~submit~~ email a list of eligible voters to the agency pursuant to rule 621—5.2(20).

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~~b. Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~

~~5.5(2) *Payment of election fee.*~~

~~a. The election fee shall be based on the initial employee list provided by the employer to verify the showing of interest pursuant to 621—subrule 4.3(3). Upon the filing of a certification petition, but no later than seven days after the agency's filing of an order directing an election, an employee organization shall pay the applicable election fee to the agency, unless an extension of time, upon written request, is granted by the agency. The agency will not conduct an election prior to receiving the applicable election fee from the petitioner. An employee organization's failure to pay the applicable election fee in a timely manner will result in the agency's dismissal of the certification petition. The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed.~~

~~b. An intervening employee organization shall pay the applicable election fee to the agency within seven days after the agency's grant of its application to intervene. Failure to pay the applicable election fee in a timely manner will result in the intervenor's exclusion from the ballot.~~

~~5.5(3) *Notice of election.* Following the employer's submission of the list of eligible voters, the employee organization's payment of the applicable election fee and the expiration of the time for intervention as provided in subrule 5.5(4), the agency shall file a notice of election containing a sample ballot or script and setting forth the date, time, place, method, and purpose of the election and such additional information as the agency may deem appropriate. The employer shall promptly post copies of the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.~~

~~5.5(3) 5.5(4) *Time for intervention Intervention.*~~

~~a. No employee organization other than the petitioner shall be placed on the ballot unless application for intervention, as provided in rule 621—2.4(20), is filed with the agency within seven days after the filing of the agency's order directing the election in which intervention is sought. An employee organization seeking intervention shall submit to the agency, by ordinary mail or personal delivery, an adequate showing of interest as provided in 621—subrule 4.3(2) within seven days after the agency's direction of an election.~~

~~b. An intervening employee organization shall pay the applicable election fee to the agency within seven days after the agency's grant of its application to intervene. The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed. Failure to pay the applicable election fee in a timely manner will result in the intervenor's exclusion from the ballot.~~

~~5.5(4) c. *Withdrawal from ballot.* An intervening employee organization may, upon its filing of a written request, be removed from the ballot with the approval of the agency.~~

~~5.5(5) *Ballots.* Ballots shall contain the question required by Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9. The question in an election where only one employee organization appears on the ballot shall ask, "Do you wish to be represented for purposes of collective bargaining by [name of employee organization]?" followed by the choices "Yes, I wish to be represented by [name of employee organization]" or "No, I do not wish to be represented"; the." The question in an election where more than one employee organization appears on the ballot shall ask: "Do you wish to be represented for purposes of collective bargaining by:" and shall then list horizontally or vertically~~



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thereafter the choices available, including the name of each employee organization and the choice of “Neither” or “No Representative,” as is applicable.

**5.5(6) Certification of results and compliance with Iowa Code section 20.25.**

a. Upon completion of a valid certification election in which an employee organization received the votes of a majority of the employees in the bargaining unit and the employee organization complies with the provisions of Iowa Code section 20.25, the agency shall file an order certifying that employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid certification election in which none of the employee organizations on the ballot received the votes of a majority of the employees in the bargaining unit, the agency shall file an order of noncertification.

c. If an employee organization which received the votes of a majority of the employees in the bargaining unit fails to comply with the provisions of Iowa Code section 20.25 within 90 days of the completion of a valid certification election, the agency shall file an order of noncertification; provided, however, that extensions of time to comply may be granted by the board upon good cause shown.

**5.5(7) Bars to certification elections.**

a. The agency shall not consider a petition for certification of an employee organization as the exclusive representative of a bargaining unit unless a period of two years has elapsed from the date of any of the following:

(1) The last certification election in which an employee organization was not certified as the exclusive representative of that bargaining unit.

(2) The last retention and recertification election in which an employee organization was not retained and recertified as the exclusive representative of that bargaining unit.

(3) The last decertification election in which an employee organization was decertified as the exclusive representative of that bargaining unit.

b. The agency shall not consider a petition for certification of an employee organization as the exclusive bargaining representative of a bargaining unit if the bargaining unit is already represented by a certified bargaining representative.

ITEM 21. Amend rule 621—5.6(20) as follows:

**621—5.6(20) Retention and recertification elections.**

**5.6(1) Timing of election periods.**

a. The agency shall conduct an election, prior to the expiration of a collective bargaining agreement between an employer and a certified employee organization, to determine if the employees in a represented bargaining unit wish to retain and recertify the unit’s certified representative. Elections will be conducted not less than once every five years.

b. For a certified employee organization that is a party to a collective bargaining agreement with a June 30 expiration date, the organization’s retention and recertification election shall occur not earlier than June 1 nor later than November 1 in the year prior to the expiration of the agreement.

c. For a certified employee organization that is a party to a collective bargaining agreement with an expiration date other than June 30, the organization’s retention and recertification election shall occur not earlier than 365 days nor later than 270 days prior to the expiration of the agreement, except as provided in subrule 5.6(10).

d. If the certified employee organization has paid the applicable election fee in a timely manner as provided in subrule ~~5-6(4)~~ 5.6(5), the organization’s status shall not be adversely affected if the election is not concluded ~~or the results of the election are not certified~~ in compliance with this rule.

e. When scheduling a retention and recertification election, the agency will presume the collective bargaining agreement is for a term of one year commencing July 1 and ending June 30 unless the agreement clearly states an alternate term and effective dates.

f. Should an employer fail to file a collective bargaining agreement with the agency as required by Iowa Code section 20.29 ~~as amended by 2017 Iowa Acts, House File 291, section 15,~~ or if the parties have no agreement, the agency will, for purposes of scheduling the election, presume a maximum expiration date of five years pursuant to Iowa Code section 20.9 ~~as amended by 2017 Iowa Acts, House File 291,~~

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~~section 6~~, or two years pursuant to Iowa Code section 20.15 ~~as amended by 2017 Iowa Acts, House File 291, section 9~~, whichever is applicable, unless the employer subsequently submits a collective bargaining agreement that allows the agency to conduct an earlier election in accordance with subrule 5.6(1).

g. An extension of a collective bargaining agreement will alter the timing of the retention and recertification election only if the parties have reached agreement on the extension and have notified the agency in writing prior to the date the fee is due as set forth in the notice of intent to conduct the election. Should the parties' collective bargaining agreement inclusive of any extensions exceed five years, the agency will, for purposes of scheduling the election, presume a maximum duration of five years pursuant to Iowa Code section 20.9 as amended by 2017 Iowa Acts, House File 291, section 6, or two years pursuant to Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9, whichever is applicable.

h. A At least 30 days prior to the commencement of the retention and recertification election period, a public employer shall notify the agency if the certified employee organization has not been correctly identified as one which requires an upcoming election. The public employer shall submit to the agency all relevant information requested. The agency shall conduct an investigation to determine whether the election is required by statute and rule.

**5.6(2) General procedure.**

a. Upon determining that a retention and recertification election is required, the agency shall file a notice of intent to conduct an election which shall contain the dates of the election period; the place, method, and purpose of the election; the date the voter list for determining fees is due; and the date upon which the employee organization shall pay the applicable election fee. The agency shall order the public employer's submission of the voter eligibility list in accordance with rule 621—5.2(20) and subrule 5.6(4).

b. Following the public employer's submission of the list of eligible voters as provided in subrule 5.6(4) and the agency's receipt of the applicable election fee from the certified employee organization, the agency will file an order directing a retention and recertification election- and

~~e. The agency will file~~ a notice of election, copies of which shall be promptly posted by the employer in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by ~~e-mail~~ email or hard copy, the public employer shall also promptly distribute such notice to employees by those means. Such notices shall contain a sample ballot or script and shall set forth the dates of the election period; time, place, method, and purpose of the election; and such additional information as the ~~board~~ agency may deem appropriate.

**5.6(3) Objection to notice of intent to conduct an election.**

a. The certified employee organization or public employer may file an objection asserting that the election should not be conducted for reasons set forth in the objection. The objection shall be in writing and electronically filed no later than seven days following the date of the notice of intent to conduct an election.

b. The agency may conduct a preliminary investigation of the objection and determine if the objection has merit. The agency will dismiss objections without merit and schedule hearings for all other objections. Hearings on objections shall be conducted pursuant to 621—Chapter 2. The objecting party shall present its evidence first.

**5.6(4) Eligible voter list for determining election fee.**

a. The public employer shall submit email to the agency by e-mail a list of the employees in the bargaining unit in question within seven days of the filing of the notice of intent to conduct an election; except as provided in subrule 5.6(8). This list shall be organized alphabetically and contain the names; addresses, e-mail; email addresses, if known; job classifications; dates of birth; the last four digits of the employees' social security numbers; and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list. The agency shall file the list following its redaction of employee dates of birth and partial social security numbers. This list shall become the official voting list for the election to be

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~~conducted. The employer shall e-mail additions or deletions of employees' names or any other changes in the list to the agency. The parties may further amend the list by agreement of eligible voters' names and job classifications. The agency shall provide to the certified employee organization the list with the employees' contact information. The certified employee organization shall use this list to determine the election fee as provided in subrule 5.6(5).~~

~~b. If the public employer fails to submit the list of eligible voters to the agency in a timely fashion by the deadline set in the notice, the agency will refrain from conducting not conduct the election; and will file an order recertifying the employee organization, and may require the employer to reimburse the agency or the employee organization for the cost of the election.~~

~~**5.6(5) Payment of election fee.** A certified employee organization shall pay the applicable election fee at least 30 days prior to the commencement of the election period as set forth in the notice of intent to conduct the election, except as otherwise authorized by this subrule or provided in subrule 5.6(8). The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed. The agency may grant a certified employee organization's written request for an extension of time to pay the fee for good cause if the request is filed at least 30 days prior to the commencement of the election period as set forth in the notice of intent to conduct the election. The agency will not conduct an election prior to receiving the applicable election fee. The certified employee organization's failure to pay the applicable election fee in a timely manner by the deadline set in the notice shall result in revocation of the organization's certification.~~

~~**5.6(6) Voter eligibility list.**~~

~~a. When the agency files an order directing that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the list the employer previously provided pursuant to subrule 5.6(4) is unchanged, the employer does not need to email a subsequent list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voting list for the election to be conducted. The agency shall provide to the certified employee organization the voter list with the employees' contact information.~~

~~b. The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.~~

~~**5.6(6) 5.6(7) Ballots.** Ballots shall contain the question required by Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9, asking "Do you want [name of certified employee organization] to be retained and recertified and continue to be your exclusive bargaining representative?" followed by the choices "Yes, I want [name of certified employee organization] to continue to represent me" or "No, I do not want [name of certified employee organization] to continue to represent me."~~

~~**5.6(8) Postelection challenges.**~~

~~a. In addition to voter eligibility challenges made pursuant to subrule 5.2(3), a certified employee organization may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections. The certified employee organization may file a postelection challenge to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or~~

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election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board's findings and conclusions.

*b.* The employer is responsible for ensuring the accuracy of the list after its submission and throughout the election period. The employer shall promptly notify the certified employee organization whenever an eligible voter leaves a position of employment in the bargaining unit prior to the close of the election or election period.

~~5.6(7)~~ **5.6(9)** *Certification of results.*

*a.* Upon completion of a valid retention and recertification election in which an employee organization received the votes of a majority of employees in the bargaining unit, the agency shall file an order recertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

*b.* Upon completion of a valid retention and recertification election in which an employee organization did not receive the votes of a majority of employees in the bargaining unit, the agency shall file an order decertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

~~5.6(8)~~ **5.6(10)** *Elections for employee organizations that represent employees of school districts, area education agencies and community colleges.*

*a.* If a certified employee organization representing employees of a school district, area education agency, or community college is scheduled for a retention and recertification election to be held in September of any given year, the following timeline applies:

The employer shall submit to the agency an employee list as described in subrule 5.6(4) at least 15 days prior to the commencement date of the election period. The certified employee organization shall pay the applicable election fee at least 10 days prior to the commencement of the election period.

*b.* If certified employee organizations representing employees of a school district, area education agency, or community college would otherwise be scheduled for a retention and recertification election to be held between May 1 and August 31 September 30, the agency will postpone those elections until October of that calendar year and the timelines of subrules 5.6(2), 5.6(4), and 5.6(5) will apply.

ITEM 22. Amend rule 621—5.7(20) as follows:

**621—5.7(20) Decertification election elections.**

**5.7(1)** *General procedure—eligibility list—notice of election Eligible voter list.*

*a.* Upon the agency's determination that a decertification petition is supported by an adequate showing of interest in accordance with rule 621—4.3(20), the agency shall file an order directing that an election be conducted in a specified manner not less than 150 days before the expiration date of the bargaining unit's collective bargaining agreement and that the employer submit a list of eligible voters pursuant to rule 621—5.2(20), unless the election is barred by subrule ~~5.7(5)~~ 5.7(6).

*b.* Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot and setting forth the date, time, place, method, and purpose of the election, and such additional information as the board may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

**5.7(2)** *Payment of election fee.* The election fee shall be based on the initial employee list provided by the employer to verify the showing of interest pursuant to 621—subrule 4.3(3). After the filing of a decertification petition, but no later than seven days after the agency's filing of an order directing an election, a the certified employee organization shall pay the applicable election fee to the agency, unless the organization's written request for an extension of time, upon written request, to pay the fee for good cause is granted by the agency. The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed. The agency will not conduct an election prior to receiving the applicable election fee. A certified employee organization's failure to pay

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the applicable election fee in a timely manner shall result in the revocation of the employee organization's certification.

~~5.7(3)~~ *Notice of election.* Following the employer's submission of the list of eligible voters and the employee organization's payment of the applicable election fee, the agency shall file a notice of election containing a sample ballot or script and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

~~5.7(3)~~ ~~5.7(4)~~ *Ballots.* Ballots shall contain the question required by Iowa Code section 20.15 as amended by 2017 Iowa Acts, House File 291, section 9, asking "Do you want [name of certified employee organization] to be decertified by the Public Employment Relations Board and cease to be your exclusive bargaining representative?" followed by the choices "Yes, I no longer wish to be represented by [name of certified employee organization]" or "No, I want to continue to be represented by [name of certified employee organization]."

~~5.7(4)~~ ~~5.7(5)~~ *Certification of results.*

a. Upon completion of a valid decertification election in which a majority of the employees in the bargaining unit voted to decertify the employee organization, the agency shall file an order decertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid decertification election in which a majority of the employees in the bargaining unit did not vote to decertify the employee organization, the agency shall file an order continuing the certification of the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

~~5.7(5)~~ ~~5.7(6)~~ *Bars to decertification election.*

a. The agency shall not consider a petition for decertification of an employee organization unless the collective bargaining agreement exceeds two years in duration. ~~The agency shall not consider a decertification petition during the pendency of a retention and recertification proceeding.~~

b. The agency shall not consider a decertification petition during pendency of a retention and recertification proceeding.

~~b. c.~~ The agency shall not schedule a decertification election within one year of a prior certification, retention and recertification, or decertification election involving the bargaining unit.

ITEM 23. Amend rule 621—5.8(20) as follows:

**621—5.8(20) Professional and nonprofessional election elections.**

~~5.8(1)~~ *General procedure—eligibility list—notice of election.*

~~a.~~ Should the agency determine, in any case, that professional and nonprofessional employees are appropriately included in the same bargaining unit, the agency shall file an order directing that an election be conducted to determine whether those professional and nonprofessional employees agree to be represented in a single bargaining unit and that the employer ~~submit by e-mail~~ email separate lists of eligible professional and nonprofessional voters pursuant to rule 621—5.2(20).

~~b.~~ The public employer shall e-mail the lists of employees in the professional and nonprofessional categories to the agency within seven days of the agency's order. The lists shall be organized alphabetically and contain the names, addresses, e-mail addresses, and job classifications of the employees eligible to vote, and any other information required by the agency. The lists submitted by the employer shall be filed by the agency and shall become the official voting lists for the election to be conducted. The employer shall e-mail additions or deletions of employees' names or any other changes in the list to the agency. The lists may be further amended by agreement of the parties.

~~c.~~ Following the employer's submission of the lists of eligible voters, the agency shall file a notice of election containing a sample ballot for each category of employee and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem

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appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

*d.*—No election fee is assessed for an election held pursuant to this rule.

**5.8(2) Voter eligibility list.**

*a.* The public employer shall email the lists of employees in the professional and nonprofessional categories to the agency within seven days of the agency's order. The lists shall be organized alphabetically and contain the names; addresses; email addresses, if known; and job classifications of the employees eligible to vote; and any other information required by the agency. The agency shall file the lists of eligible voters' names and job classifications. These lists shall become the official voting lists for the election to be conducted. The agency shall provide to the employee organization the voter lists with the employees' contact information.

*b.* The employer or employee organization shall email proposed additions or deletions of employees' names, changes in job classifications, addresses, contact information, or other eligible voter changes to the agency and other party. The parties may amend the lists by agreement.

**5.8(3) Notice of election.** Following the employer's submission of the lists of eligible voters, the agency shall file a notice of election containing a sample ballot or script for each category of employee and setting forth the date, time, place, method, and purpose of the election, and such additional information as the agency may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

**5.8(4) Election fee.** No election fee is assessed for an election held pursuant to this rule.

**5.8(2) 5.8(5) Ballots.** Ballots shall contain the following question, "Do you agree to the inclusion of professional and nonprofessional employees in the same bargaining unit?" followed by the choices "Yes" or "No."

**5.8(3) 5.8(6) Certification of results.**

*a.* Upon completion of a valid professional/nonprofessional election in which separate majorities of the eligible voters in both the professional and nonprofessional employees in the proposed unit categories voted in favor of their inclusion in the same bargaining unit, the agency shall define a bargaining unit which includes both professional and nonprofessional employees.

*b.* Upon completion of a valid professional/nonprofessional election in which separate majorities of the eligible voters in one or both of the professional and nonprofessional employees in the proposed unit categories did not vote in favor of their employees' inclusion in the same bargaining unit, the agency shall not define a bargaining unit which includes both professional and nonprofessional employees.

ITEM 24. Amend rule 621—5.9(20) as follows:

**621—5.9(20) Amendment of unit elections.**

**5.9(1) General procedure—eligibility list—notice of election.** Should the agency determine that a job classification or classifications are appropriately amended into a bargaining unit, but that those classifications existed at the time the employee organization was certified and would separately constitute an appropriate unit, the agency shall file an order directing that an election be conducted. The election will determine whether a majority of the employees in those classifications wish to be represented by the existing certified employee organization. The order shall further require the employer shall submit by e-mail to email a list of the employees in those classifications pursuant to rule 621—5.2(20).

*a.*—The public employer shall e-mail the list of employees to the agency within seven days of the agency's order. The list shall be organized alphabetically and contain the names, addresses, e-mail addresses, and job classifications of the employees eligible to vote. The agency shall file the list, which shall become the official voting list for the election to be conducted. The employer shall e-mail additions or deletions of employees' names or any other changes in the list to the agency. The parties may further amend the list by agreement.

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

~~b.~~— Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot and setting forth the date, time, place, method, and purpose of the election, and such additional information as the board may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

~~e.~~— No election fee is assessed for an election held pursuant to this rule.

5.9(2) Voter eligibility list. The public employer shall email the list of employees to the agency within seven days of the agency's order. The list shall be organized alphabetically and contain the names; addresses; email addresses, if known; and job classifications of the employees eligible to vote; and any other information required by the agency. The agency shall file the list of eligible voters' names and job classifications, which shall become the official voting list for the election to be conducted. The employer or employee organization shall email proposed additions or deletions of employees' names, changes in job classifications, addresses, contact information or other eligible voter changes to the agency and other party. The parties may further amend the list by agreement.

5.9(3) Notice of election. Following the employer's submission of the list of eligible voters, the agency shall file a notice of election containing a sample ballot or script and setting forth the date, time, place, method, and purpose of the election, and such additional information as the board may deem appropriate. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means.

5.9(4) Election fee. No election fee is assessed for an election held pursuant to this rule.

~~5.9(2) 5.9(5) Ballots.~~ Ballots shall contain the following question, "Do you wish to be represented for purposes of collective bargaining by [name of employee organization]?" followed by the choices "Yes, I wish to be represented by [name of employee organization]" or "No, I do not wish to be represented."

~~5.9(3) 5.9(6) Certification of results.~~

a. Upon completion of a valid amendment of unit election in which a majority of the eligible voters cast ballots in favor of representation by the certified employee organization, the agency shall file an order amending the unit as previously determined to be appropriate by the agency.

b. Upon completion of a valid amendment of unit election in which a majority of the eligible voters did not cast ballots in favor of representation by the certified employee organization, the agency shall file an order dismissing the amendment of unit petition.

ITEM 25. Amend rule 621—5.10(20) as follows:

**621—5.10(20) Destruction of ballots.** In the absence of litigation over the validity or outcome of an election and after a period of 60 days has elapsed from the date of the filing of an order of certification, noncertification, ~~retention and~~ recertification, decertification or continued certification of an employee organization pursuant to the election, the agency will cause the ballots cast in the election to be destroyed.

ITEM 26. Amend subrule 6.3(2) as follows:

**6.3(2) Petitions for expedited resolution.**

a. In the event that a negotiability dispute arises between the employer and the certified employee organization, either party may petition the agency for expedited resolution of the dispute. The petition shall be filed and set forth the following:

(1) The name and address of the petitioner and the name, address, telephone number, and ~~e-mail~~ email address of the petitioner's representative;

(2) The name and address of the respondent and the name, address, telephone number, and ~~e-mail~~ email address of the respondent's representative;

(3) The material facts of the dispute; and

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

(4) The verbatim text of the proposal at issue.

b. The petitioner shall promptly serve the other party with a copy of the petition and file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1).

ITEM 27. Amend subrule 6.4(5) as follows:

**6.4(5) Agreement and stipulation.** If the parties are in agreement, the parties shall complete a stipulation form prescribed by the agency. The stipulation shall be signed by the authorized representatives of the parties, and the certified employee organization shall submit it to the agency by ~~e-mail~~ email, ordinary mail, or personal delivery.

ITEM 28. Amend subrule 6.4(7) as follows:

**6.4(7) Deadlines.** The stipulation shall be submitted or a petition filed on or before the dates indicated:

- a. ~~July 1~~ August 1 for contracts that expire January 1 to March 31 of the subsequent year.
- b. ~~October 1~~ November 1 for contracts that expire April 1 to June 30 of the subsequent year.
- c. ~~January 1~~ February 1 for contracts that expire July 1 to September 30 of the same year.
- d. ~~April 1~~ May 1 for contracts that expire October 1 to December 31 of the same year.

ITEM 29. Amend rule 621—6.6(20) as follows:

**621—6.6(20) Filing of agreement.** A public employer shall file a copy of the collective bargaining agreement entered into between a the public employer and a certified employee organization and made final under Iowa Code chapter 20 shall be filed with the agency by the public employer. The public employer shall file the copy within ten days of the date on which the agreement is entered into.

ITEM 30. Renumber subrules **7.7(2)** to **7.7(5)** as **7.7(3)** to **7.7(6)**.

ITEM 31. Adopt the following **new** subrule 7.7(2):

**7.7(2) Procedures for state agreements effective in a year following an Iowa Code section 39.9 gubernatorial election.**

a. A ratification election referred to in Iowa Code section 20.17(4) shall not be held and the parties shall not request arbitration pursuant to Iowa Code section 20.22(1) until at least two weeks after the beginning date of the governor's term of office.

b. Within five days from the beginning date of the governor's term of office, the governor shall accept or reject a proposed statewide collective bargaining agreement if one exists. If the proposed agreement is rejected, the parties shall commence bargaining anew in accordance with Iowa Code section 20.17 and exchange initial proposals within the same five-day period.

c. Negotiations shall be complete not later than March 15 of that year unless the parties mutually agree to a different deadline.

d. The parties shall mutually agree to alternative deadlines for the completion of bargaining procedures set forth in Iowa Code sections 20.19, 20.20, and 20.22 to ensure the completion of negotiations not later than March 15 or other mutually agreeable deadline.

ITEM 32. Amend subrule 13.7(2) as follows:

**13.7(2) Mediator privilege.** In accordance with Iowa Code section 20.31(2), a mediator shall not testify in judicial, administrative, arbitration, or grievance proceedings regarding any matters occurring in the course of a mediation, including any verbal or written communication or behavior, other than facts relating exclusively to the timing or scheduling of mediation. A mediator shall not produce or disclose any documents, including notes, memoranda, or other work product, relating to mediation, other than documents relating exclusively to the timing or scheduling of mediation.



**ARC 3670C****REGENTS BOARD[681]****Notice of Intended Action****Proposing rule making related to traffic and parking at universities and providing an opportunity for public comment**

The Board of Regents hereby proposes to amend Chapter 4, “Traffic and Parking at Universities,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 262.9.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 262.9, 262.69 and 805.8A.

*Purpose and Summary*

The proposed amendment in Item 1 revises the definition of “bicycle” to include an electric/battery-powered bicycle with a motor of less than 750 watts. The proposed amendment in Item 2 revises subrule 4.30(4) regarding parking privileges for persons with disabilities to clarify the requirements for obtaining a permit to park in facilities designated for use by persons with disabilities. The proposed amendment in Item 3 revises subrule 4.31(2) regarding sanctions by increasing the monetary sanction imposed for certain violations of parking rules.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 681—19.18(17A).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 3, 2018. Comments should be directed to:

Aimee Claeys  
Board of Regents, State of Iowa  
11260 Aurora Avenue  
Urbandale, Iowa 50322-7905  
Fax: 515.281.6420  
Email: [aimee.claeys@iowaregents.edu](mailto:aimee.claeys@iowaregents.edu)

REGENTS BOARD[681](cont'd)

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **681—4.2(262)**, definition of “Bicycle,” as follows:

“Bicycle” means any wheeled vehicle which has two or three wheels and fully operable pedals and which is not self-propelled and which is a traditional bicycle designed solely to be pedaled by the rider. An electric/battery-powered bicycle designed not only to be pedaled by the rider but also propelled by an electric motor of less than 750 watts (one horsepower) may be treated as a bicycle and may be parked at bicycle racks.

ITEM 2. Amend subrule 4.30(4) as follows:

**4.30(4) Persons with disabilities.** Persons with disabilities will be granted parking privileges in parking facilities designated for use by persons with disabilities. ~~Persons with disabilities may apply for special parking privileges for up to six months upon issuance of a letter by the director of student health service, or the director’s designee, rehabilitation counselor, student counseling service; or by a personal physician, indicating the character, extent, probable duration of the disability, and certifying the need for special parking. After an initial six months, a faculty or staff member or a student~~ Persons must present a currently valid department of transportation parking permit for persons with disabilities to ~~renew~~ obtain the campus permit. Parking facilities designated for persons with disabilities shall be so regulated all hours of all days.

ITEM 3. Amend subrule 4.31(2) as follows:

**4.31(2) Sanction.** Reasonable monetary sanctions may be imposed for violation of these rules. The amount of the sanction approved by the board of regents, state of Iowa, is as follows:

<u>Offenses</u>	<u>Sanctions for Each Offense</u>
Altering, forging or counterfeiting any parking permit (4.30(5))	\$150
Unauthorized possession and use of a parking permit (4.30(5))	\$150
Failure to comply with signs regulating campus traffic flow (681—4.27(262))	\$30
Driving on campus walks or lawns (4.27(6), 4.27(8))	\$30
Driving on closed streets (4.27(3))	\$30
Driving on bike paths (4.27(7))	\$30
Access to restricted areas by means other than established gate openings (4.29(5))	\$30
Moving or driving around a barricade (4.29(5))	\$30
Improper use of gate card (681—4.29(262))	\$20
Illegal parking (4.29(7))	\$40 <u>\$50</u>
Improper parking (4.29(7))	\$15 <u>\$25</u>
Overtime parking at meters (4.29(2))	\$10 <u>\$15</u>

## REGENTS BOARD[681](cont'd)

<u>Offenses</u>	Sanctions for Each Offense
Parking without an appropriate permit in a reserved lot or space (681—4.29(262))	<del>\$30</del> <u>\$50</u>
Improper affixing or failure to display a permit (681—4.28(262))	\$5
Failure to purchase a parking receipt (4.29(2))	<del>\$10</del> <u>\$15</u>
Improper parking in a space or stall designated for persons with disabilities (681—4.29(262), 4.30(4))	\$200
Failure to display a current bicycle registration (4.28(4))	\$5
Bicycle improperly parked (4.29(9))	\$7.50
Improper use of roller skates, roller blades or skateboard (4.27(9))	\$25
All other violations	\$15

Violations that continue for more than one hour may receive additional sanctions.

Sanctions may be assessed against the owner or operator of the vehicle involved in each violation or against any person in whose name the vehicle is registered or parking privileges have been granted and may be charged to the violator's university account. Sanctions may be added to student tuition bills or may be deducted from student deposits or from the salaries or wages of employees or from other funds in the possession of the university.

**ARC 3674C**

## UTILITIES DIVISION[199]

### Notice of Intended Action

#### **Proposing rule making related to inmate calling rates and providing an opportunity for public comment**

The Utilities Board hereby proposes to amend Chapter 22, "Service Supplied by Telephone Utilities," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 17A.4, 17A.7, 476.2 and 476.91.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 476.91.

#### *Purpose and Summary*

This proposed rule making implements rate caps on charges that may be assessed to inmates in Iowa correctional facilities and their families for local and intrastate telephone calls.

The Board issued an order commencing rule making on February 9, 2018. The order is available on the Board's electronic filing system, [efs.iowa.gov](http://efs.iowa.gov), under Docket No. RMU-2017-0004.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

UTILITIES DIVISION[199](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 199—1.3(17A,474,476).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 3, 2018. Comments should be directed to:

Iowa Utilities Board  
Electronic Filing System (EFS) at [efs.iowa.gov](http://efs.iowa.gov)  
Phone: 515.725.7337  
Email: [efshelpdesk@iub.iowa.gov](mailto:efshelpdesk@iub.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. An oral presentation regarding this rule making will be scheduled at a later date.

*Review by Administrative Rules Review Committee*

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

The following rule-making action is proposed:

Adopt the following **new** subrule 22.19(8):

**22.19(8) AOS companies providing inmate telephone service.** AOS companies that provide local or intrastate telephone services to inmates housed in prisons, jails, or other correctional facilities operated or contracted for operation by Iowa government officials shall charge rates and fees for inmate telephone services that do not exceed the following rates:

*a.* For local and intrastate collect calling services, AOS companies may not charge a rate of more than \$0.25 per minute. For prepaid (debit and calling card) services, AOS companies may not charge a rate of more than \$0.21 per minute. For single payment products, which include text collect and credit or debit cards, AOS companies may not charge a rate of more than \$0.25 per minute.

*b.* AOS companies may pass the following ancillary charges through to the end user of the collect inmate service directly with no markup:

- (1) Automated payment fees (includes payments by interactive voice response, web, or kiosk): \$3.
- (2) Live agent fee (phone payment or account set up with the option use of a live operator): \$5.95.
- (3) Paper bill/statement fees: \$2.
- (4) Electronic bill/statement fees: No charge.
- (5) Prepaid account funding minimums and maximums: There shall be no prepaid account funding minimum, and any prepaid account funding maximum shall be no less than \$50.

(6) Third-party financial transaction fees, including credit card processing fees and transfers from third-party commissary accounts: The provider shall pass the charge through to the end user directly with no markup.

*c.* The end user shall not be billed by an AOS company for any ancillary fees other than those set forth above, excluding applicable government taxes and fees.

UTILITIES DIVISION[199](cont'd)

*d.* Any AOS company providing inmate local or intrastate telephone services that wishes to increase rates in excess of the above per-minute or ancillary rate caps shall file an application for rate increase with the board pursuant to Iowa Code section 476.6 and 199—Chapter 26, along with a cost justification for the request. No rate increases in excess of the rates contained in this subrule may be implemented without board approval.

**ARC 3672C**

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

**Notice of Intended Action**

**Proposing rule making related to claims and benefits and benefit payment control and providing an opportunity for public comment**

The Director of the Department of Workforce Development hereby proposes to amend Chapter 24, “Claims and Benefits,” and Chapter 25, “Benefit Payment Control,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 96.11.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 96.

*Purpose and Summary*

These amendments will give Iowa Workforce Development a clearer framework from which to operate with regard to technology and modern efficiencies. The amendments will also help eliminate inefficiencies that remain as a result of outdated rules.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 3, 2018. Comments should be directed to:

David Steen  
Iowa Department of Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Email: [david.steen@iwd.iowa.gov](mailto:david.steen@iwd.iowa.gov)

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend subparagraph **24.2(1)“b”(1)** as follows:

(1) The name and complete mailing address of such individual’s last employing unit or employer including work history for all employers within the individual’s base period.

ITEM 2. Amend subparagraph **24.2(1)“b”(8)** as follows:

(8) Number, full name, social security number, date of birth, and relationship of any dependents claimed. The identity of an individual identified as a dependent shall be verified by the department before the individual is added to the claim as a dependent. As used in this subparagraph, “dependent” is defined as: spouse, son or daughter of the claimant, or a dependent of either; stepson or stepdaughter; foster child or child for whom claimant is a legal guardian; brother, sister, stepbrother, stepsister; father or mother of claimant; or stepfather or stepmother of the claimant; son or daughter of a brother or sister of the claimant (nephew or niece); brother or sister of the father or mother of the claimant (uncle or aunt); son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the claimant; an individual who lived in the claimant’s home as a member of the household for the whole year; cousin.

A “spouse” is defined as an individual who does not earn more than \$120 in gross wages in one week. The reference week for this monetary determination shall be the gross wages earned by the spouse in the calendar week immediately preceding the effective date of the claim.

A “dependent” means an individual who has been ~~or could have been~~ claimed for the preceding tax year on the claimant’s income tax return ~~or will be claimed for the current income tax year.~~ The same dependent shall not be claimed on two separate monetarily eligible concurrent established benefit years. An individual cannot claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

ITEM 3. Amend rule 871—24.6(96) as follows:

**871—24.6(96) ~~Profiling for reemployment services~~ Reemployment services and eligibility assessment procedure.**

**24.6(1)** The department of workforce development ~~and the department of economic development~~ will ~~jointly~~ provide a program which consists of profiling claimants and providing reemployment services.

**24.6(2) Purpose.**

a. Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

b. The eligibility assessment program is used to accelerate the individual’s return to work and systematically review the individual’s efforts towards the same goal.

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

**24.6(3)** Reemployment services and eligibility assessment may include, but are not limited to, the following:

- a. An assessment of the claimant's aptitude, work history, and interest.
- b. Employment counseling regarding reemployment approaches and plans.
- c. Job search assistance and job placement services.
- d. Labor market information.
- e. Job search workshops or job clubs and referrals to employers.
- f. Résumé preparation.
- g. Other similar services.

**24.6(4)** As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

**24.6(5)** The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

**24.6(6)** A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services or eligibility assessment. The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause.

a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service.

b. Reserved.

**24.6(7)** Eligibility assessment procedure.

a. Before an individual has claimed five weeks of intrastate benefits, the workforce development center shall receive a computer-selected list of individuals claiming benefits within the target population for review.

b. No eligibility assessment will be performed on an individual unless monetary eligibility and nonmonetary eligibility are established.

c. Once selected for an initial or subsequent eligibility assessment, claimants are required to participate in all components of the assessment as determined by the department.

d. A Notice to Report shall be sent by the workforce development center to an individual who is in an active status at the time of its printing. If the individual does not respond, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.

e. Selected claimants must report in person to the designated workforce development center to receive staff-assisted services for the initial assessment.

f. Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

**24.6(8)** Conducting the first eligibility assessment interview.

a. All available evidence must be examined to detect potentially disqualifying issues.

b. The individual's need for advice, assistance or instructions must be determined and conveyed to the individual.

c. The interview must convey to the individual the requirements that must be satisfied to maintain eligibility.

d. This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment which otherwise would result in referral for adjudication.

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

*e.* The individual shall be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy, with consideration for local labor market information and the individual's occupation.

*f.* The final objective of the interview is to determine whether a subsequent interview is needed. This determination shall be based on expected return to work date, job openings in the area, local labor market conditions, and other relevant factors.

This rule is intended to implement Iowa Code section 96.4(7).

ITEM 4. Rescind and reserve rule **871—24.11(96)**.

ITEM 5. Amend paragraph **24.22(2)“n”** as follows:

*n.* ~~Corporate officers.~~ To be considered available, the corporation corporate officer must meet the same tests of availability as are met by other individuals. The individual must be desirous of other work, be free from serious limitations and be seriously searching for work. The reported efforts of a corporate officer to seek work should be studied to distinguish those directed toward obtaining work for the officer as an individual and those directed to obtaining work or business for the corporation. Any effort to obtain business for the corporation to perform a service to the corporation and is not evidence of the individual's own availability for work.

ITEM 6. Amend subrule 24.23(39) as follows:

**24.23(39)** ~~Where the work search or the Eligibility Review Form has been deliberately falsified for the purpose of obtaining unemployment insurance benefits. The general guide for disqualifications for falsification of work search is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the representative because each case must be decided on its own merits. The administrative penalty recommended for falsification is:~~

- a.* ~~First offense—six weeks weeks' penalty.~~
- b.* ~~Second offense—nine weeks weeks' penalty.~~
- c.* ~~Third offense—total disqualification for the remainder of the benefit year plus consideration of the possibility of filing fraud charges depending on the circumstances.~~

ITEM 7. Amend subrule 24.60(2) as follows:

**24.60(2)** ~~It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.~~

*a.* ~~If the response is “yes,” no further proof is necessary and the claimant's records are to be marked accordingly.~~

*b.* ~~If the answer is “no,” the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94<sub>2</sub> “Arrival and Departure Record<sub>2</sub>” and the Forms I-151 and I-551<sub>2</sub> “Alien Registration Receipt Card.<sub>22</sub> These forms are issued by the ~~Immigration and Naturalization Service~~ U.S. Citizenship and Immigration Service and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual's alien registration number at the time of claim filing.~~

*c.* ~~Any or all documents presented to the department by an alien shall be subject to verification with the ~~immigration and naturalization service~~ U.S. Citizenship and Immigration Service. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of ~~rule 871—24.56(96), administrative penalties, and rule 871—25.10(96),~~ prosecution on overpayments.~~

*d.* ~~Rescinded IAB 8/6/03, effective 9/10/03.~~

ITEM 8. Amend subparagraph **24.60(3)“b”(6)** as follows:

(6) ~~An alien who has been formally granted deferred action or nonpriority status by the ~~immigration and naturalization service~~ U.S. Citizenship and Immigration Service.~~



## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

ITEM 9. Amend rule 871—25.2(96) as follows:

**871—25.2(96) Policy of the investigation and recovery ~~section~~ unit.**

**25.2(1)** The policy of the investigation and recovery ~~section~~ unit is to take aggressive action to prevent, detect, and deter benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others and investigate and penalize fraudulent actions on the part of claimants and employing units.

**25.2(2)** It shall be the policy of the investigation and recovery ~~section~~ unit to maximize the recoupment of overpayments from those claimants who have received benefits to which they were not entitled. It shall also be the policy of the ~~section~~ unit to seek prosecution of persons whom the ~~section~~ unit believes have committed serious violations of the employment security law of Iowa.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

ITEM 10. Amend rule 871—25.3(96), introductory paragraph, as follows:

**871—25.3(96) Functions of the investigation and recovery ~~section~~ unit.** The function of the investigation and recovery ~~section~~ unit is to:

ITEM 11. Amend subrule 25.3(1), introductory paragraph, as follows:

**25.3(1)** Investigate and make determinations on issues within the scope of the investigation and recovery ~~bureau~~ unit which are referred by the general public, employing units, agency personnel, other agencies, and anonymous sources. The ~~bureau~~ unit shall examine allegations of the following type:

ITEM 12. Amend rule 871—25.4(96) as follows:

**871—25.4(96) Allegation of claimant fraud.** The procedure to be followed where an allegation of claimant fraud has been made is:

**25.4(1)** Upon receipt of an allegation of claimant fraud, if the alleging party supplies sufficient information to proceed with an investigation, the alleging party shall be advised that the investigation and recovery ~~bureau~~ unit will make a full investigation of the allegation. The alleging party will be advised of the ~~bureau's~~ unit's findings, if such investigation could affect the employer account of the alleging party or affect a claim for benefits of the alleging party.

**25.4(2)** The allegations will be promptly forwarded to the investigation and recovery ~~section~~ unit for investigation.

**25.4(3)** If the findings revealed through the investigation by the investigation and recovery ~~bureau~~ unit indicate that a disqualification would have resulted for the period benefits were paid, an informal fact-finding interview shall be scheduled to allow the party making the allegation and the claimant an opportunity to give testimony. The investigation and recovery ~~bureau~~ unit will determine if separate fact-finding interviews are necessary for the claimant and party making the allegations and any other party with pertinent information.

**25.4(4)** If the claimant or any other party with pertinent information wishes to invoke the fifth amendment right to remain silent, the investigator can require the claimant or any other party with pertinent information to answer all questions or produce any pertinent documents. However, the claimant or any other party with pertinent information cannot be prosecuted on the basis of any transaction, matter, or thing concerning which the claimant or any other party with pertinent information is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence.

**25.4(5)** In the event a local office receives an allegation by anonymous communication, the office will forward such information to the investigation and recovery ~~bureau~~ unit.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

ITEM 13. Amend rule 871—25.5(96) as follows:

**871—25.5(96) Allegation of employing unit fraud.** The following is the general procedure to be followed by the investigation and recovery ~~bureau~~ unit in an employing unit fraud investigation:

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

**25.5(1)** Upon receipt of an allegation of employing unit fraud the party making the allegation will provide sufficient information to proceed with an investigation. Information such as the identification and location of the employing unit, the individual or group of individuals suspected of fraudulent action, and what fraudulent action is occurring will be provided, if possible.

**25.5(2)** The allegation will be promptly forwarded to the investigation and recovery bureau unit for investigation.

**25.5(3)** The investigations investigation and recovery unit may seek the assistance and expertise of the tax bureau unit staff.

**25.5(4)** If the findings, revealed through the investigation by the investigation and recovery bureau unit, indicate that misrepresentation occurred on the part of the employer, an informal fact-finding interview will be scheduled for the party or parties to allow them an opportunity to present testimony either refuting or affirming the allegation of employer fraud.

**25.5(5)** If the employer wishes to invoke the fifth amendment, the investigator can require the employer to answer all questions. However, the employer cannot be prosecuted on the basis of any transaction, matter, or issue concerning which such employer is compelled, after having invoked the privilege against self-incrimination, to testify or produce evidence.

**25.5(6)** In the event a workforce development office receives an allegation, the office will forward such information to the investigation and recovery bureau unit, provided the communication identifies and supplies sufficient information to proceed with an investigation.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

ITEM 14. Amend subrule 25.6(4) as follows:

**25.6(4)** An investigator shall have the authority to request all pertinent books, papers, correspondence, memoranda, and other records necessary in the investigation of any error or potential fraudulent activity committed by a claimant, employing unit, or other party. Likewise, testimony may be taken from any person who has relevant information or records concerning the matter or events under investigation. Any person, when requested by an investigator to produce records or give testimony, must be available personally to give testimony to or to produce records within a reasonable time for the investigator. If any person does not comply with the investigator's request to give testimony to the department or produce records, a subpoena may be issued summoning the individual to appear before the investigator to give testimony or present the records.

If the investigator determines that any request for the voluntary production of pertinent records might endanger the existence of such records, the investigation and recovery bureau unit may immediately issue a subpoena duces tecum which orders an individual to produce some document or paper that is pertinent to a pending investigation by the investigation and recovery bureau unit, in order to secure the production of such records.

ITEM 15. Amend subrule 25.6(5) as follows:

**25.6(5)** The investigation and recovery bureau unit may seek the assistance and expertise of the field auditors.

ITEM 16. Amend subrule 25.6(7) as follows:

**25.6(7)** Upon completion of the investigation, a determination shall be made as to whether or not fraudulent activity has occurred. If there is fraudulent activity, appropriate corrective action shall be initiated and the alleging party shall be advised of the investigation and recovery bureau's unit's findings, if such investigation could affect the employer account of the alleging party. The case may be prepared for prosecution if prosecution is warranted.

ITEM 17. Amend subrule 25.7(1) as follows:

**25.7(1)** Determination by reason of the claimant's own fault, employer's fault, agency fault, or fraud as provided in Iowa Code section 96.16, that the claimant has received benefits to which such claimant was not entitled shall be made by the investigations investigation and recovery unit on the basis of such facts as it may obtain.

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

ITEM 18. Amend subrule 25.7(3) as follows:

**25.7(3)** Upon receiving a written request for review, the investigation and recovery ~~bureau~~ unit, based upon such facts as it has or may acquire, may affirm, modify, or reverse the prior decision or refer the matter to an administrative law judge. The claimant shall be promptly notified of such decision or referral. Unless the claimant files an appeal within ten calendar days after the date of mailing, such decision shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

ITEM 19. Amend subrule 25.7(4) as follows:

**25.7(4)** The claimant may directly appeal the decision of the investigation and recovery ~~bureau~~ unit without a request for review, in which case the appeal will be referred directly to the appeals section of the department.

ITEM 20. Amend subrule 25.9(3) as follows:

**25.9(3)** Sources of information concerning the application of an administrative penalty shall be the same as those pertaining to fraud and overpayment, namely:

- a. Employer report of wages, with comparative analysis of them with concurrent benefit payments.
- b. Local office obtaining late reports by claimant of deductible income items or potentially disqualifying circumstances.
- c. Tips and leads from other sources of claimant being employed while claiming benefits or that such claimant did not otherwise meet the eligibility requirements.
- d. Cross-checking of information on death tapes from the vital statistics section, division of administration, department of public health.
- e. Review of claims using social security numbers not issued by the social security administration.
- f. Cross-checking of information from the Iowa centralized employer registry.
- g. Cross-checking of information with the National Directory of New Hires.
- h. Cross-checking of information on incarcerated individuals from the Iowa department of corrections.
- i. Cross-checking of information with fraud detection tools identified by the department.

ITEM 21. Amend subrule 25.9(9) as follows:

**25.9(9)** A criminal conviction of a claimant for fraud or an order of the court requiring restitution for the amount of the overpayment shall not preclude the investigation and recovery ~~bureau~~ unit from also imposing an administrative penalty denying further benefits to the claimant for a period of time not to exceed the remainder of said claimant's benefit year and including the week in which such determination is made by the investigation and recovery ~~bureau~~ unit.

ITEM 22. Amend rule 871—25.10(96) as follows:

**871—25.10(96) Prosecution on overpayments.**

**25.10(1)** When an overpayment occurs due to misrepresentation, the case shall be given a thorough and detailed review of the facts, as obtained by the investigation and recovery ~~bureau~~ unit, to determine if a prosecution for fraud would meet the county attorney's criteria.

a. The claimant shall be afforded an opportunity to give testimony either refuting or affirming the overpayment.

b. The investigation and recovery ~~bureau~~ unit will issue a decision concerning the overpayment.

**25.10(2)** Restitution or the establishment of a repayment plan of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the investigation and recovery ~~bureau~~ unit from instituting criminal proceedings against the claimant.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

ITEM 23. Amend rule 871—25.12(96) as follows:

**871—25.12(96) Wage ~~cross match~~ audit verification procedure.**

**25.12(1)** Each quarter, ~~cross match~~ ~~audit~~ Forms 65-5321 wage verification documents are mailed to selected employers requesting wage information on specific claimants as it concerns benefit payments.

**25.12(2)** The ~~form~~ documents, upon completion by the employer, is ~~are~~ sent to the investigation and recovery bureau unit for ~~entering in the Iowa workforce development database system~~. If the form is not completed properly, it is sent to the employing unit for correct information and then returned for processing. ~~Any potential review~~. Potential cases of conflict generated by the computer program will result in an investigation assignment and investigation packet. Claimants will be notified by means of Form 65-5332<sub>2</sub> (Preliminary Audit Notice)<sub>2</sub> and given an opportunity to respond. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031, Decision Overpayment Worksheet, on which the amount, weeks, type, and reason for the overpayment are identified. Claimants are notified of the determination on Form 65-5323, Unemployment Insurance Decision.

**25.12(3)** An employer may choose to participate in the automated ~~crossmatch~~ wage verification procedure by following the electronic submission guidelines.

**25.12(4)** An employer that fails to respond to a request for wage information pertaining to specific claimant(s) as such request pertains to benefit payments will be charged a fee of \$25 per claimant.

This rule is intended to implement Iowa Code section 96.11(1).

**ARC 3666C**

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

**Notice of Intended Action**

**Proposing rule making related to claims and benefits  
and providing an opportunity for public comment**

The Director of the Department of Workforce Development hereby proposes to amend Chapter 24, “Claims and Benefits,” and Chapter 25, “Benefit Payment Control,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 96.11.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 96.

*Purpose and Summary*

These amendments will give Iowa Workforce Development a clearer framework from which to operate with regard to technology and modern efficiencies. The amendments will also help eliminate inefficiencies that remain as a result of outdated rules.

*Fiscal Impact*

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

*Jobs Impact*

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

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 20, 2018. Comments should be directed to:

David Steen  
Iowa Department of Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Email: [david.steen@iwd.iowa.gov](mailto:david.steen@iwd.iowa.gov)

*Public Hearing*

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

*Review by Administrative Rules Review Committee*

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **24.2(1)“g,”** introductory paragraph, as follows:

*g.* No ~~continued claim for benefits~~ benefit payment shall be allowed until the individual claiming benefits has completed a continued claim online or ~~claimed benefits~~ as otherwise directed by the department.

ITEM 2. Amend paragraph **24.9(1)“a”** as follows:

*a.* When an initial claim for benefits is filed, the department shall send to the individual claiming benefits, ~~including~~ a notification consisting of a statement of the individual’s weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual’s benefit rights.

ITEM 3. Amend paragraph **25.7(6)“c”** as follows:

*c.* If a claimant fails to respond to the first statement of overpayment, a second statement shall be sent 30 days later. The second statement notifies the claimant that full repayment must be made. If the claimant cannot make full repayment, the department will consider a monthly repayment agreement. Monthly amounts based on the minimum repayment agreement schedule below will be printed on the second billing. The first repayment is expected 10 days from the date of the second repayment statement and the additional repayments every 30 days thereafter until the debt is paid in full. The department reserves the right to accept or reject any proposed repayment agreement. The following minimum repayment agreement is acceptable by to the department.

## WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Amount of Original Overpayment	Minimum Monthly Payments	Number of Months Required to Liquidate the Overpayment
Under \$199	\$ 25	1 to 8
\$200 to \$399	\$ <del>40</del> <u>50</u>	<del>5 to 10</del> <u>4 to 8</u>
\$400 to \$599	\$ <del>50</del> <u>75</u>	<del>8 to 12</del> <u>5 to 8</u>
\$600 to \$799	\$ <del>65</del> <u>90</u>	<del>9 to 13</del> <u>6 to 9</u>
\$800 to \$999	\$ <del>80</del> <u>100</u>	<del>10 to 13</del> <u>8 to 10</u>
\$1000 to \$1499	\$ <del>90</del> <u>150</u>	<del>11 to 17</del> <u>6 to 10</u>
\$1500 to \$1999	\$ <del>100</del> <u>200</u>	<del>15 to 20</del> <u>7 to 10</u>
\$2000 to \$2999	\$ <del>110</del> <u>250</u>	<del>18 to 28</del> <u>8 to 12</u>
\$3000 and over	\$ <del>130</del> <u>300</u>	<del>23 to —</del> <u>10 to —</u>

## ARC 3667C

## HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed Emergency After Notice

## Rule making related to appeals to managed care organizations

The Department of Human Services hereby amends Chapter 73, “Managed Care,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4.

*Purpose and Summary*

These amendments update the Iowa Administrative Code to reflect revised federal standards for the resolution of appeals to managed care organizations (MCOs).

1. The revised federal regulations (42 CFR § 438.408(b)(2)) require nonexpedited appeals to be resolved within 30 calendar days of the plan’s receipt of the request (unless an extension is requested), whereas paragraph 73.12(2)“d” currently requires resolution within 45 calendar days.

2. The revised federal regulations (42 CFR § 438.408(b)(3)) require that expedited appeals be resolved within 72 hours, whereas paragraph 73.12(2)“e” currently requires resolution in up to three business days.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 20, 2017, as ARC 3514C. The Department received a comment from one respondent during the public comment period. The comment, in two parts, and the Department’s response are as follows:

**Comment:**

1. The respondent was supportive of the amendment to match Iowa’s rules with 42 CFR § 438.408(b)(2) to require nonexpedited appeals to be resolved within 30 calendar days of the plan’s receipt of the request and stated that resolving patient appeals in a timely manner is important to ensuring adequate patient care and coverage.

2. The respondent was also supportive of the amendment to match Iowa’s rules with 42 CFR § 438.408(b)(3) to require expedited appeals to be resolved within 72 hours. While the respondent was supportive of providing adequate opportunities for patients to appeal managed care organization (MCO) decisions, the respondent also reminded the Department of the importance of allowing providers to appeal. The respondent stated that allowing providers to appeal is essential to ensuring that providers are adequately compensated for their services and can resolve claim disputes in a timely and efficient manner.

**Department response:**

These amendments address the appeal policies and procedures for an enrollee, or an enrollee’s authorized representative, to appeal an MCO action. The Department will not further amend these rules at this time because subrule 7.2(5) addresses the appeal rights of providers.

These amendments are identical to those published under Notice of Intended Action.

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on February 14, 2018, because the amendments confer a benefit on the public by shortening the time frame for resolution of appeals.

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on February 14, 2018.

*Fiscal Impact*

Managed care enrollee nonexpedited appeals will be required to be resolved within 30 days after the MCO receives the appeal. For expedited resolution of an appeal, the time frame for resolution and notice to enrollees is 72 hours after the MCO receives the appeal. There is no additional cost for the change in the time frames that MCOs have to resolve appeals.

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making became effective on February 14, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **73.12(2)“d”** as follows:

*d.* Provide for resolution of nonexpedited appeals to be concluded within 45 30 calendar days of receipt of the request unless an extension is requested.

ITEM 2. Amend paragraph **73.12(2)“e”** as follows:

*e.* Provide for resolution of expedited appeals where the standard time period could seriously jeopardize the member's health or ability to maintain or regain maximum function to be within ~~three business days~~ 72 hours of receipt of the notice pursuant to federal funding requirements, including 42 CFR 438.402 as amended to October 16, 2015.

[Filed Emergency After Notice 2/14/18, effective 2/14/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.



**ARC 3676C****ADMINISTRATIVE SERVICES DEPARTMENT[11]****Adopted and Filed****Rule making related to procurement of standard modular office systems**

The Department of Administrative Services hereby amends Chapter 100, “Capitol Complex Operations,” and Chapter 117, “Procurement of Goods and Services of General Use,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 17A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 8A.311 and 904.808.

*Purpose and Summary*

2017 Iowa Acts, House File 293, provides for the Director to promulgate rules regarding procurement of goods manufactured in Iowa as that relates to bidding and to Iowa Prison Industries. An agency can award a bid to a company if the good being procured is manufactured or formulated in Iowa and represents the lowest bid instead of being required to procure the good from Iowa Prison Industries.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 17, 2018, as **ARC 3574C**. A public hearing was held on February 6, 2018, at 1 p.m. at Conference Room 5, A Level, Hoover State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on February 21, 2018.

*Fiscal Impact*

The fiscal impact of this rule making is indeterminable because the anticipated demand on products, the type of products, and the price of those products cannot be determined.

*Jobs Impact*

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

*Waivers*

The waiver provisions are covered by 11—Chapter 9.

*Review by Administrative Rules Review Committee*

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

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 11—100.1(8A) as follows:

**11—100.1(8A) Definitions.** The definitions contained in Iowa Code sections 8A.101 and 8A.301 shall be applicable to such terms when used in this chapter. In addition, the following definitions apply:

*“Assignment of office space”* means space allocated by the department to a state agency for its use.

*“Capitol complex”* means an area within the city of Des Moines in which the Iowa state capitol building is located. This area includes the state capitol building and all real property and appurtenances thereto owned by the state of Iowa within an area bounded on the north by Interstate Highway 235, on the east by East 14th Street, on the south by the northernmost railroad tracks south of Court Avenue and on the west by East 6th Street.

*“Control of assigned office space”* means the ability of an agency to modify its use of assigned space without consultation with the department as long as changes do not include relocating wiring, replacing, adding or deleting modular office components, or making other modifications that would affect the floor plan.

*“Dangerous weapon”* means any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the person possessing the instrument or device intends to inflict death or serious injury upon the other, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include, but are not limited to, any offensive weapon as defined in Iowa Code section 724.1, pistol, revolver, or other firearm, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length. Pistols and revolvers are exempted from the definition of “dangerous weapons” only as set forth in subrule 100.2(2).

*“Facilities”* means the capitol complex buildings, grounds, and all related property.

*“Memorandum of understanding”* or *“MOU”* means a written agreement that specifies terms, conditions and any related costs.

*“Modular office components”* means parts of a modular office system.

*“Modular office systems”* means standard cubicle furniture; generally, two-foot, three-foot and four-foot sections that have attached work surfaces and file storage space. Modular office systems are available in new, remanufactured and recycled condition.

*“Nonstandard Standard modular office systems”* means modular office systems that do not meet standards set by the department of administrative services, expressed by function and connectivity, for use by state agencies. These standards are for the purpose of facilitating reuse of modular office system components.

*“Office furniture”* means any furnishing that is free standing and does not require installation with component parts. Examples are desks, chairs, file cabinets, tables, lounge seating, and computer desks.

*“Public”* means a person on the capitol complex who is not employed by the state of Iowa.

*“Recycled modular office components”* means used components that have been cleaned and have had broken parts replaced, but have not been disassembled and rebuilt.

*“Remanufactured modular office components”* means used components that have been disassembled, repainted or reupholstered, rebuilt, and have had broken parts replaced. Remanufactured components are intended to be like new.

*“Seat of government”* means office space at the capitol, other state buildings and elsewhere in the city of Des Moines for executive branch agencies, except those areas exempted by law.

*“Waiver”* means a waiver or variance as defined in 11—Chapter 9, Iowa Administrative Code.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 2. Amend subrule 100.6(6) as follows:

**100.6(6)** *Purchase of standard modular office systems and components.* ~~To obtain~~ If Iowa Prison Industries (IPI) manufactures office furniture and standard modular office systems and related components, an agency may shall purchase standard modular office components and other furniture items them from Iowa Prison Industries IPI or obtain a written waiver in accordance with Iowa Code section 904.808 without further competition., except as otherwise permitted in paragraphs "a" and "b."

*a. Purchase from a targeted small business.* ~~To obtain office furniture and modular office components, an~~ An agency may purchase standard modular office systems and related components and other furniture items from a targeted small business (TSB) without further competition when the purchase will not exceed \$5,000 \$10,000, per 2003 as provided in Iowa Code Supplement section 8A.311, without further competition. 8A.311(10)"a."

~~Use of a competitive selection process is required for all purchases, unless the agency chooses to use one of the procedures above. However, competitive selection may be used for any purchase. When an agency elects to obtain standard office modular components and other furniture items through the department of administrative services' competitive procurement process, IPI and TSBs shall be part of the bidding process.~~

*b. Procurement of standard modular office systems and components and other furniture items manufactured in Iowa.* An agency may conduct a competitive procurement for standard modular office systems and related components and other furniture items that IPI manufactures if the competitive procurement requires that the products must be manufactured in Iowa. In such procurements, IPI shall be allowed to submit a bid to provide the products. If a bidder other than IPI is the lowest bidder, the agency shall obtain written verification from the bidder that the bidder's product is manufactured in Iowa before making the award.

~~The portion of the work plan for purchasing modular office systems or office furniture shall allow for the issuance of purchase orders at least 30 days prior to the desired delivery date.~~

~~Regardless of how an agency purchases or obtains modular office components, the department of administrative services shall retain responsibility for management and coordination of office space planning.~~

ITEM 3. Amend subrule 117.5(3) as follows:

**117.5(3)** *Iowa Prison Industries (IPI) procurement.*

*a. Justification for IPI procurement.* ~~Agencies~~ If IPI manufactures or formulates a product, agencies shall purchase products the product from IPI or obtain a written waiver in accordance with Iowa Code section 904.808., except as otherwise permitted in paragraphs "b" and "c." See <http://www.iaprisonind.com> for IPI catalog.

*b. Purchase of standard modular office systems and related components.* Purchase of standard office modular office systems and related components and other furniture items shall be in accordance with 11—subrule 100.6(6).

*c. Procurement of product manufactured in Iowa.* An agency may conduct a competitive procurement for a product that IPI manufactures or formulates if the competitive procurement requires that the product must be manufactured in Iowa. In such procurements, IPI shall be allowed to submit a bid to provide the product. If a vendor other than IPI is the lowest responsible bidder, the agency shall obtain written verification that the vendor's product is manufactured in Iowa before making the award.

~~*b. d. Special procedures for IPI purchases.*~~ An agency may contact IPI directly.

[Filed 2/22/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3677C**

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

**Adopted and Filed**

**Rule making related to farmstands**

The Department of Agriculture and Land Stewardship hereby amends Chapter 50, “Women, Infants, and Children/Farmers’ Market Nutrition Program and Senior Farmers’ Market Nutrition Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 159.5(10) and 175B.5.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 159 and 175B.

*Purpose and Summary*

The amendments will grandfather a farmstand which does not meet the existing criteria for a permanent structure into the program as long as the farmstand has been in business for at least five continuous years, has operated during the majority of the market season, and has a letter of support from a municipality, county or other governmental agency.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 17, 2018, as **ARC 3567C**. No public comments were received. One change from the Notice has been made. The word “and” was added to the first sentence of paragraph 50.8(8)“a” for clarification.

*Adoption of Rule Making*

This rule making was adopted by the Department on February 21, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

*Review by Administrative Rules Review Committee*

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

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 50.8(8) as follows:

**50.8(8)** A farmstand authorized to participate in the FMNP/SFMNP shall be operated from a permanent building that is primarily used for the sale of eligible foods, is not moveable and remains in the same location year-round. The building shall have at least a roof, sidewalls, and solid floor to protect produce and people. Wood post frame, stud frame, rigid-frame metal, and concrete block construction are suitable farmstand construction. The building must be maintained in a manner consistent with standards generally accepted for this type of business. The structural requirements for a permanent building do not apply under either of the following circumstances:

a. The farmstand not meeting the structural requirements is authorized to participate in the FMNP/SFMNP and is primarily used for the sale of eligible food and has operated from a structure at the same location for a minimum of five consecutive years and has also been operating the majority of the market season from June 1 through October 31 for a minimum of 11 consecutive weeks annually. The vendor must submit with the vendor's application a letter of support acknowledging five years or more of operation at that location from a municipality, county or governmental agency.

b. Up to two moveable farmstands that do not meet the requirements of permanent farmstands may be authorized in cities and villages that are not located within ten miles of an authorized farmers' market. If three or more applications for moveable farmstands within the same city or village are received by the department, the applicants shall be required to meet the authorization requirements of a farmers' market. An authorized farmstand must be staffed during all hours of operation. Failure to comply will result in a warning citation from the department. Repeated noncompliance could result in the revocation of the farmstand authorization.

ITEM 2. Adopt the following new subrule 50.8(9):

**50.8(9)** If three or more applications for moveable farmstands within the same city or village are received by the department, the applicants shall be required to meet the authorization requirements of a farmers' market.

ITEM 3. Adopt the following new subrule 50.8(10):

**50.8(10)** An authorized farmstand must be staffed during all hours of operation. Failure to comply will result in a warning citation from the department. Repeated noncompliance could result in the revocation of the farmstand authorization.

[Filed 2/21/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3678C**

**COLLEGE STUDENT AID COMMISSION[283]**

**Adopted and Filed**

**Rule making related to interstate reciprocity agreement**

The College Student Aid Commission hereby amends Chapter 21, "Approval of Postsecondary Schools," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 261B.3.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 261, 261B and 261G.

*Purpose and Summary*

This amendment reflects current policies and practices as they relate to the administration of the State Authorizing Reciprocity Agreement (SARA) and incorporates the requirement of the National Council for SARA that Iowa SARA-approved schools extend certain consumer protection policies to out-of-state residents attending distance education programs.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 3, 2018, as **ARC 3540C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on February 23, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making action is adopted:

Amend rule 283—21.15(261B,261G) as follows:

**283—21.15(261B,261G) Approval criteria for a school seeking to participate or renew participation in a commission-approved interstate reciprocity agreement under Iowa Code chapter 261G.** A school that applies to participate in a commission-approved interstate reciprocity agreement shall meet the following criteria:

**21.15(1)** The applicant school shall be in compliance with Iowa Code chapter 261B as provided in this chapter.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

**21.15(2)** The applicant school shall submit an institutional participation application as required by the commission-approved interstate reciprocity agreement. The application shall be signed by the school's chief executive officer or chief academic officer.

**21.15(3)** A nonpublic applicant school must submit evidence that its most recent, official financial responsibility composite score, as calculated using the method prescribed by the United States Department of Education, is at least 1.5. A school demonstrates that its financial responsibility composite score is official by providing written confirmation of its composite score from the United States Department of Education. In accordance with policies established by the interstate reciprocity agreement administrator, the commission shall determine the official financial responsibility composite score for a school that does not participate in the postsecondary student financial aid programs authorized by the United States Department of Education.

**21.15(4)** The commission will consider the application of a nonpublic school whose most recent, official financial responsibility composite score is between 1.0 and 1.49. The applicant school must submit a copy of the school's most recently audited financial statements accompanied by a written explanation of the circumstances that caused the school's composite score to be below 1.5 and the school's plan to raise its composite score to 1.5 within a time frame determined by the commission. The commission may approve, provisionally approve, or deny the school's application.

**21.15(5)** A for-profit applicant school must demonstrate and maintain compliance with Iowa Code sections 714.18 and 714.23. The school shall apply the policy it adopts under Iowa Code section 714.23 to students who attend its campus(es) in Iowa and to Iowa resident and nonresident students who attend distance education programs the school offers under the commission-approved interstate reciprocity agreement.

**21.15(6)** The applicant school shall demonstrate that the military deployment tuition and fee refund policy required under Iowa Code sections 261.9(1) "g," 262.9(30), and 260C.14(20), subrule 21.3(5) and paragraph 21.14(1) "f" applies to students who attend its campus(es) in Iowa and to Iowa resident and nonresident students who attend distance education programs the school offers under the commission-approved interstate reciprocity agreement.

**21.15(3) 21.15(7)** The commission will provide a link to a page on its Web site for students to use to seek additional information about a school or to file a complaint about a school. An approved school will prominently provide disclose on its Web site the link to the commission's Web page for students website the school's participation in the commission-approved interstate reciprocity agreement and provide the commission's contact information in a format prescribed by the commission for students who wish to inquire about the school or file a complaint. The school will provide the commission with the name of and business contact information for a person whom the school designates to receive student complaints from the commission and coordinate the school's response.

**21.15(4) 21.15(8)** A school that is approved to participate in the commission-approved interstate reciprocity agreement shall remit an annual fee payable and due to the commission on July 15 of each year. If a school's participation in the commission-approved interstate reciprocity agreement terminates during a year, the The school shall pay the annual fee to the commission if the school's registration commission's approval to participate in the interstate reciprocity agreement is valid as of July 15 of that year. The annual fee is nonrefundable and will be assessed based on a school's full-time equivalent (FTE) enrollment as follows:

- Under 2,500 FTE – \$2,000.
- 2,500 to 9,999 FTE – \$4,000.
- 10,000 FTE or more – \$6,000.

**21.15(5) 21.15(9)** A school that is approved to participate in the commission-approved interstate reciprocity agreement shall remit to the interstate reciprocity agreement administrator any required fees.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

~~21.15(6)~~ **21.15(10)** Upon approval by the interstate reciprocity agreement administrator, a school may continue its participation in the reciprocity agreement as long as it meets all requirements of the interstate reciprocity agreement.

[Filed 2/23/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3679C**

## **ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

### **Rule making related to air quality**

The Environmental Protection Commission (Commission) hereby amends Chapter 20, "Scope of Title—Definitions," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," Chapter 25, "Measurement of Emissions," Chapter 30, "Fees," Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," and Chapter 34, "Provisions for Air Quality Emissions Trading Programs," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 455B.133.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 455B.133.

#### *Purpose and Summary*

The purposes of this rule making are to:

1. Rescind unnecessary rules and update other rules to provide regulatory certainty and flexibility. The amendments implement a portion of the Department of Natural Resources' (Department's) five-year review of rules plan to accomplish the requirements of Iowa Code section 17A.7(2).

2. Offer uniform rules by making changes that match federal regulations and eliminate inconsistencies between federal regulations and state rules. By adopting federal updates into state administrative rules, the Commission is ensuring that Iowa's air quality rules are no more stringent than federal regulations. Additionally, the updates allow the Department, rather than the U.S. Environmental Protection Agency (EPA), to be the primary agency to implement the air quality requirements in Iowa, thereby allowing the Department to provide compliance assistance and outreach to affected facilities.

**Item 1** amends rule 567—20.2(455B), definition of "EPA reference method," to adopt the most current EPA methods for measuring air pollutant emissions (stack testing and continuous monitoring). On August 30, 2016, EPA revised the reference methods in 40 Code of Federal Regulations (CFR) Parts 51, 60, 61 and 63 to eliminate outdated procedures, add alternative testing methods, make technical corrections, and correct typographical and grammatical errors. Several of the updated test methods in Parts 51, 60, 61 and 63 are adopted by reference in 40 CFR Part 75 for the Acid Rain Program. Adopting EPA's updates ensures that state reference methods match current federal reference methods and are no more stringent than the federal methods. Further, the alternative test methods offer regulatory flexibility to affected facilities. The amendments in Items 6, 10, 11, 12, 13, 14, 15 and 16 are adopted concurrently with this amendment to similarly reflect updates to EPA testing and monitoring methods as the methods apply to specific air quality programs.



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

Item 1 also updates the definition of “volatile organic compounds” (VOC) to reflect recent changes that EPA made to the federal definition of VOC. On August 1, 2016, a final regulation was published in the Federal Register to exclude the compound 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) Ethane (HFE-347pcf2) from the federal definition because this compound makes a negligible contribution to tropospheric ozone formation. In Item 19, an amendment to subrule 33.3(1) is adopted concurrently with the amendment in Item 1 to similarly update the definition of “volatile organic compounds” for the specific air quality programs.

**Item 2** amends paragraph 22.1(2)“i” to correct a cross reference to a definition. The current cross reference is to paragraph 22.5(1)“f,” which no longer exists. All provisions that were previously included in rule 567—22.5(455B) are now in Chapter 31. The cross reference is revised to refer to the correct definition included in subrule 31.3(1).

**Item 3** amends paragraph 22.1(2)“r” to make updates to the exemption for internal combustion engines with a brake horsepower rating of less than 400. The amendment clarifies that owners and operators of engines that are not required to submit to the Department an engine registration may qualify for this exemption. The revision provides certainty to affected facilities and reduces the regulatory burden of completing an unneeded engine registration to qualify for this exemption.

**Item 4** amends subparagraph 22.1(2)“w”(1) to correct an error in the eligibility criteria for the “small unit” exemption. The small unit exemption is available as an alternative to obtaining a construction permit for owners and operators of emission units that emit less than certain thresholds of specific air pollutants. For an emission unit to qualify for the small unit exemption, the unit must emit less than the emission thresholds for each of the pollutants listed. However, the list of criteria has the word “or” between the last two items in the list, which could lead affected owners and operators to conclude that an emission unit does not need to meet all of the criteria in the list.

The intent of the small unit exemption is that the emission unit must emit less than each of the emission thresholds included in the list. Further, the Department has implemented the exemption in this manner since its adoption. It is therefore appropriate to revise this exemption to include the word “and” rather than “or” between the provision for “PM<sub>2.5</sub>” and the one for “hazardous air pollutants” in the list of air pollutants. This amendment reflects the original intent and ongoing implementation of the small unit exemption and provides clarity to owners and operators that may wish to use this exemption.

**Item 5** amends the provisions for permit by rule for spray booths specified in paragraph 22.8(1)“a.” The amendment allows powder coat material to be used in paint booths without being considered “sprayed material,” provided the powder coating is applied in an indoor-vented spray booth equipped with filters or an overspray powder recovery system. The Department has evaluated the particulate emissions from powder coating and has determined that emissions occurring under the conditions specified in the permit by rule would not contribute to exceedances of the ambient air quality standards for particulate matter. The amendment excludes powder coatings from the definition of “sprayed material” for purposes of the permit by rule.

**Item 6** amends rule 567—22.100(455B) to update the definition of “EPA reference method” for the Title V operating permit (Title V) program to adopt the most current federal reference methods for stack tests and continuous emissions monitoring in the same manner as described above for Item 1. This amendment implements a portion of the Department’s five-year review of rules plan by ensuring that the state rules for the Title V program, specifically the test methods, are consistent with federal requirements and are no more stringent than federal requirements.

**Item 7** amends subparagraph 22.103(2)“b”(6) to revise the criteria for an emergency engine rated at less than 400 horsepower to be considered an insignificant activity for the Title V program. The amendment clarifies that engines subject to federal new source performance standards (NSPS) or national emission standards for hazardous air pollutants (NESHAP) are not considered insignificant activities

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

for purposes of the Title V program because the federal standards impose applicable requirements for emergency engines.

**Item 8** updates the provisions for Title V emissions inventories in subrule 22.106(2) to eliminate the requirement to submit specific forms for the inventory and to state instead that the emissions inventory shall be submitted on forms specified by the Department. The amendment provides needed flexibility for the Department to streamline the emissions inventory forms and submittal methods.

**Item 9** amends subrule 22.107(6) to update the public notice requirements for the Title V program to reflect changes to federal regulations that EPA finalized on October 18, 2016. Previously, EPA required that public notice be given by publication in a newspaper of general circulation where the source being permitted is located or in a state publication. EPA revised the public notice provisions to allow for posting of the public comment period on a website identified by the permitting authority (the Department). EPA's revisions also require that permitting authorities be consistent in the method of providing public notice, although other means to provide adequate notice may be used if necessary. To reflect EPA's changes, this amendment specifies that the Department will provide public notice by posting on a public website identified by the Department, while using other means if necessary to ensure adequate notice to the affected public.

**Item 10** amends rule 567—22.120(455B) to update the test methods specified in 40 CFR Part 75 for the Acid Rain Program in the same manner as described above for Item 1.

**Items 11, 12, 13 and 14** affect new source performance standards, hazardous air pollutant standards, and emission standards for existing sources. The U.S. Clean Air Act (CAA) obligates the EPA to issue standards to control air pollution. Two categories of standards, the NSPS and NESHAP, set standards and deadlines for industrial, commercial or institutional facilities to meet uniform standards for equipment operation and air pollutant emissions.

NESHAP regulations differ depending on whether a facility is a “major source” or an “area source.” Major sources are typically larger facilities and have potential emissions of 10 tons or more per year of any single hazardous air pollutant (also known as “HAP” or “air toxics”) or 25 tons or more of any combination of HAPs. Area sources have potential air toxics emissions at less than the major source thresholds. Although area sources generally emit less air toxics than major sources, area sources are more numerous and may collectively cause adverse impacts to public health.

Because the NSPS and NESHAP adopted by reference are federal regulations, affected sources are subject to the federal requirements regardless of whether the Commission adopts the standards into state rules. However, the CAA allows a state or local agency to implement NSPS and NESHAP as a “delegated authority.” Upon state adoption of the standards, the Department becomes the delegated authority for the specific NSPS or NESHAP and is the primary implementation agency in Iowa. Two local agencies, Polk County and Linn County, implement these standards within their counties. Iowa's rules, including all compliance deadlines, are identical to the federal NSPS and NESHAP as of a specific date. With implementation authority, the state and local agencies have the ability to make applicability determinations for facilities, rather than referring these decisions to EPA.

Emission standards for existing sources (known as Emission Guidelines) are similar to NSPS but direct states to set emission standards by certain deadlines for specific existing sources. EPA's Emission Guidelines provide “model rules” that states may adopt by reference in setting the requirements for existing sources. EPA requires states to establish Emission Guidelines that are at least as rigorous as EPA's model rules. As it does with NSPS and NESHAP, the Commission adopts Emission Guidelines by reference so that the requirements are no more or less stringent than federal requirements. If the Commission does not adopt the Emission Guidelines, EPA will impose a federal plan with emission standards for affected facilities. Because EPA may set standards with compliance deadlines that are

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

earlier than those allowed under state plans, it is generally advantageous for the state to adopt these guidelines.

Stakeholders affected by NSPS, NESHAP and Emission Guidelines typically prefer for the Department, rather than the EPA, to be the primary implementation agency in Iowa. Upon adoption of the new and amended standards, the Department will work with affected facilities to provide compliance assistance, as needed. Additionally, affected area sources that are small businesses are eligible for free assistance from the small business assistance technical program.

**Item 11** amends subrule 23.1(2) to adopt new and revised NSPS, as described below.

The text in parentheses in each section heading below indicates the applicable subpart(s) in 40 CFR Part 60 and the corresponding paragraph(s) in subrule 23.1(2).

Municipal Solid Waste Landfills (Subpart WWW; paragraph 23.1(2)“rrr”)

The Commission is revising the NSPS for municipal solid waste (MSW) landfills to make clear that, because of current litigation filed in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), Iowa is not adopting the recent federal amendments published in the Federal Register on August 29, 2016. Consequently, the adopted revision will specify the publication date for the federal NSPS that is currently adopted into the Iowa Administrative Code in 23.1(2)“rrr” for MSW landfills. (See also Item 14.)

Commercial and Industrial Solid Waste Incineration (Subpart CCCC; paragraph 23.1(2)“vvv”)

In the Notice of Intended Action, the Commission proposed to adopt by reference several amendments that EPA made over a five-year period to the NSPS for commercial and industrial solid waste incinerators (CISWI). However, after publication of the Notice, the Department became aware of a delay in EPA’s finalizing the federal plan for existing CISWI. Further, EPA indicated that changes might be made to the final federal plan from what was proposed. Since the requirements in the NSPS and the federal plan are closely related, it is possible that EPA may propose changes to the NSPS for CISWI while repropounding or finalizing the federal plan for existing CISWI. The Commission is therefore not, at this time, adopting the amendments to the NSPS for CISWI. At such time as EPA chooses whether or not to further amend the NSPS, the Commission will consider whether or not to propose adoption of the federal amendments. Until then, affected facilities are subject to the federal NSPS, regardless of whether Iowa adopts the standards.

Stationary Compression Ignition Internal Combustion Engines (Subpart IIII, paragraph 23.1(2)“yyy”)

On July 7, 2016, EPA finalized amendments to the NSPS to allow manufacturers to design engines so that operators can override performance inducements related to the emission control system for stationary compression ignition internal combustion engines. The amendments apply only to engines operating during emergencies in which the operation of the engine or equipment is needed to protect human life. The amendments also require that the engine comply with federal Tier 1 emission standards during such emergencies. These federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(2).

Test Methods (Amendments throughout Part 60)

The amendment in Item 11 also adopts the changes EPA made to the NSPS test methods, as explained in the description above for Item 1. The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(2).

**Item 12** amends subrule 23.1(3) to adopt revisions to the NESHAP standards in 40 CFR Part 61 for EPA’s updates to test methods, as explained above for Item 1. The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(3).

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

**Item 13** amends subrule 23.1(4) to adopt, and in one case, to rescind adoption of, federal amendments to the NESHAP for source categories, as described below.

The text in parentheses in each section heading below indicates the applicable subpart(s) in 40 CFR Part 63 and the corresponding paragraph(s) in subrule 23.1(4).

Ferroalloys Production (Subpart XXX; paragraph 23.1(4)“bx”) - Rescission

This NESHAP applies to new and existing major sources of ferroalloys production of ferromanganese and silicomanganese. Iowa has no facilities affected by this NESHAP and is unlikely to have any affected facilities in the future. The Commission is therefore rescinding adoption of this NESHAP.

The rescission will accomplish the Department’s goal of eliminating unnecessary rules and will implement a portion of the Department’s five-year review of rules plan to meet the requirements of Iowa Code section 17A.7(2). Removing unnecessary provisions makes the rules more accessible and understandable for regulated entities and for the public. If an affected facility should plan to locate to Iowa in the future, the Department will evaluate at that time whether to request adoption of the standard.

Industrial, Commercial and Institutional Boilers at Area Sources (Subpart JJJJJ; paragraph 23.1(4)“ej”)

The Commission is adopting by reference the original NESHAP and subsequent amendments that EPA finalized over a five-year period that affect new and existing industrial, commercial and institutional (ICI) boilers located at area sources. The Commission is now adopting these federal amendments because EPA’s reconsiderations and the litigation of the amendments have recently been resolved.

**Background:** EPA published the NESHAP for ICI boilers at area sources on March 21, 2011, and subsequently revised the NESHAP on February 1, 2013, and on September 14, 2016. The NESHAP, also known as the Area Source Boiler Rule, exempts from this rule all boilers meeting the definition of natural gas-fired boilers, temporary boilers, and residential boilers. Additionally, new and existing boilers burning solid or liquid fuels that are very small, have limited or seasonal use, or burn only ultra-low-sulfur liquid fuel or burn primarily biomass, are not subject to emission limits and have only work practice standards, such as a one-time energy assessment and a one-time or periodic tune-up (every five years). Other new and existing boilers burning coal, biomass or liquid fuels may need to meet numeric emission limits for some air toxics and have required testing or monitoring, depending on the type of boiler and specific fuel burned. Additionally, EPA’s revised standards provide alternative compliance methods and more flexible monitoring for some boilers.

Prior to issuing the final amendments in September 2016, EPA requested a voluntary remand (without vacatur) of some provisions of the Area Source Boiler Rule. On July 26, 2016, the D.C. Circuit granted EPA’s request and issued a remand without vacatur. The remand requires that EPA provide data to justify certain decisions that resulted in some requirements in the final federal regulations.

**Affected facilities and compliance dates:** Based on required initial notifications submitted to the Department, the Department estimates that 13 facilities in Iowa have boilers affected by the Area Source Boiler Rule. All of these facilities are required to comply only with work practice standards (rather than emission limits) by the NESHAP compliance date of March 21, 2014, or upon start-up of the affected boiler, whichever date occurs later. At this time, the Department is not aware of any new or existing boilers subject to emission limits and associated monitoring specified in the NESHAP.

**Justification for proceeding with adoption despite the current remand:** None of the provisions in the final rules are stayed or delayed. Further, although the remand may impact emission standards and monitoring requirements in the NESHAP, none of the facilities in Iowa currently subject to the NESHAP are affected by emissions limits or monitoring requirements. Lastly, the compliance date for affected

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

existing facilities to comply with work practice standards was March 21, 2014, so facilities have already been required to comply with the NESHAP for over three years.

Upon adoption of the Area Source Boiler Rule, the Department will work with affected facilities to provide compliance assistance as needed. Additionally, affected area sources that are small businesses are eligible for free assistance from the small business technical assistance program.

Test Methods (Amendments throughout Part 63)

The amendment to subrule 23.1(4) also adopts the changes EPA made to the NESHAP test methods, as explained in the description above for Item 1. The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of the subrule.

**Item 14** amends subrule 23.1(5) to revise adoption of the federal Emission Guidelines. As explained in more detail above, EPA's Emission Guidelines are set forth in 40 CFR Part 60 and direct states to set emission standards by certain deadlines for specific existing sources. EPA's Emission Guidelines provide "model rules" that states may adopt by reference in setting the requirements for existing sources. As with the NSPS and NESHAP, the Commission adopts EPA's Emission Guidelines by reference so that the requirements are no more or less stringent than federal requirements.

Municipal Solid Waste Landfills (Subparts Cc and WWW; paragraph 23.1(5)"a")

As with the amendment to the NSPS for MSW landfills as described in Item 11, the Commission is revising the Emission Guidelines for existing MSW landfills to make clear that Iowa is not adopting the recent federal amendments published in the Federal Register on August 29, 2016. As with the NSPS, the recent amendments to the Emission Guidelines for existing MSW landfills are being litigated in the D.C. Circuit. Consequently, the amendment will specify the publication date for the federal Emission Guidelines that are currently adopted into the Iowa Administrative Code in 23.1(5)"a" for existing MSW landfills.

Commercial and Industrial Solid Waste Incineration Units (CISWI) (Subpart DDDD; paragraph 23.1(5)"c")

Similar to its adoption of amendments in Item 11 as described above, the Commission, in the Notice of Intended Action, proposed to adopt by reference several amendments that EPA made over a five-year period to the Emission Guidelines for existing CISWI. However, after publication of the Notice, the Department became aware of a delay in EPA's finalizing the federal plan for existing CISWI. Further, EPA indicated that changes might be made to the final federal plan from what was proposed, including the February 8, 2018, compliance date.

Under the U.S. Clean Air Act, EPA must establish a federal plan for existing CISWI facilities in states that do not have an EPA-approved state plan. Typically, a federal plan will consist of the identical "model rules" included in the Emission Guidelines provided to states to include in their state plans, including the compliance deadlines. However, in this case, the federal "model rules" in Subpart DDDD establish a compliance deadline of February 8, 2018, that will not be included in any final federal plan (because of the delay in EPA's finalizing the federal plan). If the Commission proceeded with adopting Subpart DDDD into state administrative rules, the state rules would be more stringent than EPA's eventual federal plan. Because Iowa Code section 455B.133(4) prohibits state air quality rules from being more stringent than federal regulations, the Commission is not, at this time, adopting the federal amendments for a state plan for existing CISWI. At such time as EPA chooses whether or not to further amend and finalize the federal plan for existing CISWI, the Commission will consider whether or not to propose adoption of the federal amendments.

Test Methods (Amendments throughout Part 60)

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

The amendment in Item 14 adopts the changes EPA made to the Part 60 test methods, as explained in the description above for Item 1, which are applicable to the Emission Guidelines adopted in subrule 23.1(5). The federal amendments are adopted by reference through revision of the adoption date specified in the introductory paragraph of subrule 23.1(5).

**Item 15** amends subrule 25.1(9) to adopt the revised federal methods for emissions testing and monitoring, as described above for Item 1. The updates will make certain that only current federal test methods are used to demonstrate compliance with permit conditions and that required test methods are no more stringent than federal methods.

**Item 16** amends rule 567—25.2(455B) to adopt federal updates for monitoring methods under the Acid Rain Program, as noted above for Item 1. This update ensures that state air quality rules for testing and monitoring are consistent and match federal regulations.

**Item 17** amends paragraph 30.4(2)“b” to update the provisions for Title V emissions fees and documentation to eliminate the requirement that specific forms be submitted with the fees and to instead state that the fees shall be submitted with forms specified by the Department. The revision is consistent with the changes in Item 8 for submitting emissions inventory forms and provides needed flexibility for the Department to streamline the fee and form submittal methods.

**Item 18** amends the introductory paragraph of rule 567—33.1(455B) to reflect recent changes that EPA made to the federal requirements for the PSD program. The specific changes are set forth in Items 19, 20 and 21.

**Item 19** amends subrule 33.3(1) to update the definition of “volatile organic compounds” in the same manner as described above for Item 1.

**Item 20** amends subrule 33.3(17) to revise the public participation requirements for the PSD program. The changes reflect updates to federal regulations that EPA finalized on October 18, 2016, to allow for posting of the public comment period on a website identified by the permitting authority (the Department). EPA’s revisions also require that permitting authorities be consistent in the method of providing public notice, although other means to provide adequate notice may be used if necessary. To reflect EPA’s changes, this amendment specifies that the Department will provide public notice by posting on a public website identified by the Department, while using other means if necessary to ensure adequate notice to the affected public.

**Item 21** amends subrule 33.3(22) to allow for rescission of PSD permits to match changes that EPA made on October 18, 2016, to the public notice requirements in 40 CFR 52.21 as explained above in the description of Item 20.

**Item 22** rescinds rules 567—34.200(455B) to 567—34.229(455B), which include Table 1A, Table 1B, Table 2A and Table 2B, to reflect EPA’s rescission of the Clean Air Interstate Rule (CAIR). EPA replaced the federal CAIR regulations that were adopted by reference in Chapter 34 with the Cross States Air Pollution Rule (CSAPR) promulgated in 40 CFR 52.38 through 52.39 and 40 CFR Part 97. (The rescission of the CAIR provisions is explained in 40 CFR 51.123(ff) and 51.124(s).) Because CSAPR is primarily implemented by EPA, CSAPR in Iowa will be implemented through a federal implementation plan (FIP) rather than through a state-developed SIP.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 20, 2017, as **ARC 3520C**. A public hearing was held on January 22, 2018, at 1 p.m. at Conference Room 4 East, Wallace State Office Building, Des Moines, Iowa. The Department received no comments at the public hearing. The Department received no written comments prior to the January 22, 2018, deadline for public comments. However, after the Notice of Intended Action

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

was published, the Department became aware of planned EPA changes to federal regulations affecting the amendments proposed in Item 11 and Item 14. Consequently, the Commission made changes to the adopted amendments for Item 11 and Item 14 from what was published in the Notice, as explained above. The Commission did not make any other changes from the amendments published under Notice of Intended Action.

*Adoption of Rule Making*

This rule making was adopted by the Commission on February 20, 2018.

*Fiscal Impact*

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

*Jobs Impact*

The following is a summary of the jobs impact statement. The complete jobs impact statement is available from the Department upon request.

After analysis and review of this rule making, the Commission has determined that the amendments specified in Items 1 through 10 and 15 through 22 will have either a positive or neutral impact on private sector jobs. These amendments rescind unnecessary rules, update other rules, and streamline the rules to provide regulatory certainty and, in some cases, regulatory relief. These amendments also implement a portion of the Department's five-year review of rules plan as required under Iowa Code section 17A.7(2). Additionally, most of these amendments make changes that match federal regulations and eliminate inconsistencies between federal regulations and state rules. By adopting federal updates into state rules, the Commission is ensuring that Iowa's air quality rules are no more stringent than federal regulations.

For the amendments specified in Items 11, 12, 13 and 14, the Commission has determined that there may be fiscal impacts to Iowa businesses. However, the amendments are only implementing federally mandated regulations. The amendments are identical to the federal regulations and would not impose any regulations on Iowa businesses not already required by federal law. In some cases, the revised federal standards being adopted provide more flexibility and potential cost savings for affected businesses, offering a positive impact on private sector jobs. Further, the amendments allow the Department, rather than EPA, to be the primary agency to implement the standards in Iowa, thereby allowing the Department to provide compliance assistance to affected facilities.

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

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

ITEM 1. Amend rule **567—20.2(455B)**, definitions of “EPA reference method” and “Volatile organic compounds,” as follows:

“EPA reference method” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through ~~April 2, 2014~~ August 30, 2016); 40 CFR 60, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 61, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); and 40 CFR 63, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 60, Appendix F (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 75, Appendix A (as amended through ~~January 18, 2012~~ August 30, 2016); 40 CFR 75, Appendix B (as amended through ~~March 28, 2011~~ August 30, 2016); and 40 CFR 75, Appendix F (as amended through ~~January 18, 2012~~ August 30, 2016).

“Volatile organic compounds” or “VOC” means any compound included in the definition of “volatile organic compounds” found at 40 CFR Section 51.100(s) as amended through ~~March 27, 2014~~ August 1, 2016.

ITEM 2. Amend paragraph **22.1(2)“i,”** introductory paragraph, as follows:

*i.* Initiation of construction, installation, reconstruction, or alteration (modification) to equipment (as defined in rule 567—20.2(455B)) on or before October 23, 2013, which will not result in a net emissions increase (as defined in ~~paragraph 22.5(1)“f”~~ 567—subrule 31.3(1)) of more than 1.0 lb/hr of any regulated air pollutant (as defined in rule 567—22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

ITEM 3. Amend paragraph **22.1(2)“r”** as follows:

*r.* An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft, provided that the owner or operator meets all of the conditions in this paragraph. For the purposes of this exemption, the manufacturer’s nameplate rated capacity at full load shall be defined as the brake horsepower output at the shaft. The owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a completed registration, on forms provided by the department (unless the engine is exempted from registration, as specified in this paragraph or on the registration form), certifying that the engine is in compliance with the following federal regulations:

(1) New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII); or

(2) New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); and

(3) National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

Use of this exemption does not relieve an owner or operator from any obligation to comply with NSPS or NESHAP requirements. An engine that meets the definition of a nonroad engine as specified in 40 CFR 1068.30 is exempt from the registration requirements of this paragraph (22.1(2)“r”).

ITEM 4. Amend subparagraph **22.1(2)“w”(1)** as follows:

(1) “Small unit” means any emission unit and associated control (if applicable) that emits less than the following:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013);

2. 5 tons per year of sulfur dioxide;



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

3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 2.5 tons per year of PM<sub>10</sub>;
8. 0.52 tons per year of PM<sub>2.5</sub> (does not apply to equipment for which ~~initiation~~ initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); ~~or~~ and
9. 5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)).

For the purposes of this exemption, “emission unit” means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified “small units.”

An emission unit that emits hazardous air pollutants (as defined in rule 567—22.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 567—22.100(455B) shall not be eligible to use this exemption.

ITEM 5. Amend paragraph **22.8(1)“a”** as follows:

*a.* Definition. “Sprayed material” is material ~~sprayed from~~ applied by spray equipment when used in the a surface coating process in the a spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents. Powder coatings applied in an indoor-vented spray booth equipped with filters or overspray powder recovery systems are not considered sprayed material for purposes of this rule (567—22.8(455B)).

ITEM 6. Amend rule **567—22.100(455B)**, definition of “EPA reference method,” as follows:

“*EPA reference method*” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through ~~April 2, 2014~~ August 30, 2016); 40 CFR 60, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 61, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); and 40 CFR 63, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 60, Appendix F (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 75, Appendix A (as amended through ~~January 18, 2012~~ August 30, 2016); 40 CFR 75, Appendix B (as amended through ~~March 28, 2011~~ August 30, 2016); and 40 CFR 75, Appendix F (as amended through ~~January 18, 2012~~ August 30, 2016).

ITEM 7. Amend subparagraph **22.103(2)“b”(6)** as follows:

(6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer’s nameplate rating at full load shall be defined as the brake horsepower output at the shaft. Emergency engines that are subject to any of the following federal regulations are not considered to be insignificant activities for purposes of this rule (567—22.103(455B)):

1. New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII);

2. New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 50, Subpart JJJJ); or

3. National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

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

ITEM 8. Amend subrule 22.106(2) as follows:

**22.106(2) Emissions inventory and documentation due dates.** The emissions inventory shall be submitted with forms specified by the department. For emissions located in Polk County or Linn County, three copies of the following forms documenting actual emissions for the previous calendar year shall be submitted annually by March 31 documenting actual emissions for the previous calendar year. For emissions in all other counties, two copies of the following forms documenting actual emissions for the previous calendar year shall be submitted annually by March 31, documenting actual emissions for the previous calendar year.

- ~~a. Form 1.0, "Facility Identification";~~
- ~~b. Form 4.0, "Emission Unit—Actual Operations and Emissions" for each emission unit;~~
- ~~c. Form 5.0, "Title V Annual Emissions Summary/Fee"; and~~
- ~~d. Part 3, "Application Certification."~~

Alternatively, an owner or operator may submit the required emissions inventory information through the electronic submittal format specified by the department.

If there are any changes to the emission calculation form, the department shall make revised forms available to the public by January 1. If revised forms are not available by January 1, forms from the previous year may be used and the year of emissions documented changed. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

ITEM 9. Amend subrule 22.107(6) as follows:

**22.107(6) Public notice and public participation.**

a. The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial or renewal of a permit; or significant modification or revocation or reissuance of a permit.

b. Notice shall be given by ~~publication in a newspaper of general circulation in the area where the source is located or in a state publication~~ posting of the notice, including the draft permit, for the duration of the public comment period on a public website identified by the permitting authority and designed to give general public notice. Notice also shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

c. to g. No change.

ITEM 10. Amend rule ~~567—22.120(455B)~~, definition of "40 CFR Part 75," as follows:

~~"40 CFR Part 75," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 75, or the cited provision therein, as amended through January 18, 2012~~ August 30, 2016.

ITEM 11. Amend subrule 23.1(2) as follows:

**23.1(2) New source performance standards.** The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~September 11, 2015~~ September 14, 2016, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. to *qqq*. No change.

*rrr. Municipal solid waste landfills, as defined by 40 CFR 60.751.* Each municipal solid waste landfill that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991, must comply. (Subpart WWW as amended through April 10, 2000)

*sss.* to *bbbb*. No change.

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

ITEM 12. Amend subrule 23.1(3), introductory paragraph, as follows:

**23.1(3) *Emission standards for hazardous air pollutants.*** The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through ~~February 27, 2014~~ August 30, 2016, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

ITEM 13. Amend subrule 23.1(4) as follows:

**23.1(4) *Emission standards for hazardous air pollutants for source categories.*** The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~July 25, 2016~~ September 14, 2016, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded ( $F_{bio}$ ) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

a. to bw. No change.

~~bx. *Emission standards for hazardous air pollutants for ferroalloys production: ferromanganese and silicomanganese.* These standards apply to all new and existing major sources of ferroalloys production of ferromanganese and silicomanganese. Affected processes include, but are not limited to, submerged arc furnaces, metal oxygen refining (MOR) processes, crushing and screening operations, and fugitive dust sources. (Subpart XXX) Reserved.~~

by. to ei. No change.

ej. *Emission standards for hazardous air pollutants for area sources: industrial, commercial, and institutional boilers.* This standard applies to new and existing industrial, commercial and institutional boilers that are area sources for hazardous air pollutant emissions. (Part 63, Subpart JJJJJ)

ek. to fd. No change.

ITEM 14. Amend subrule 23.1(5) as follows:

**23.1(5) *Emission guidelines.*** The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through June 9, 2006, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change

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

(Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

*a. Emission guidelines for municipal solid waste landfills (Subpart Cc).* Emission guidelines and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills shall be in accordance with federal standards established in Subparts Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) and WWS (Standards of Performance for Municipal Solid Waste Landfills) of 40 CFR Part 60 as amended through April 10, 2000.

(1) to (6) No change.

*b.* No change.

*c. Emission guidelines and compliance schedules for existing commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999.* Emission guidelines and compliance schedules for the control of designated pollutants from affected commercial and industrial solid waste incinerators that commenced construction on or before November 30, 1999, shall be in accordance with ~~federal plan~~ requirements established in Subpart III of 40 CFR Part 62 and 40 CFR §62.3916 as adopted through August 24, 2004.

*d.* No change.

ITEM 15. Amend subrule 25.1(9) as follows:

**25.1(9) Methods and procedures.** Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

*a. Performance test (stack test).* A stack test shall be conducted according to EPA reference methods as specified in 40 CFR 51, Appendix M (as amended through ~~April 2, 2014~~ August 30, 2016); 40 CFR 60, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 61, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); and 40 CFR 63, Appendix A (as amended through ~~February 27, 2014~~ August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing. Each test shall consist of at least three separate test runs. Unless otherwise specified by the department, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs.

*b. Continuous monitoring systems.* Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 60, Appendix F (as amended through ~~February 27, 2014~~ August 30, 2016); 40 CFR 75, Appendix A (as amended through ~~January 18, 2012~~ August 30, 2016); 40 CFR 75, Appendix B (as amended through ~~March 28, 2011~~ August 30, 2016); and 40 CFR 75, Appendix F (as amended through ~~January 18, 2012~~ August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specification and quality assurance procedure is conducted.

*c.* No change.

ITEM 16. Amend rule 567—25.2(455B) as follows:

**567—25.2(455B) Continuous emission monitoring under the acid rain program.** The continuous emission monitoring requirements for affected units under the acid rain program as provided in 40 CFR Part 75, including Appendices A, B, F and K as amended through ~~January 18, 2012~~ August 30, 2016, are adopted by reference.

ITEM 17. Amend paragraph **30.4(2)“b”** as follows:

*b. Fee and documentation due dates.* The fee shall be submitted annually by July 1 with forms specified by the department. ~~The fee shall be submitted with a copy of the following forms:~~

~~(1) Form 1.0, “Facility Identification”;~~

~~(2) Form 5.0, “Title V Annual Emissions Summary/Fee”;~~ and

~~(3) Part 3, “Application Certification.”~~

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

ITEM 18. Amend rule 567—33.1(455B), introductory paragraph, as follows:

**567—33.1(455B) Purpose.** This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through ~~August 19, 2015~~ October 18, 2016. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment major program applies. The requirements for the nonattainment major NSR program are set forth in 567—22.5(455B), 567—22.6(455B), 567—31.20(455), and 567—31.3(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment major and PSD programs are referred to as the major NSR program. An owner or operator required to apply for a construction permit under 567—Chapter 33 shall submit fees as required in 567—Chapter 30.

ITEM 19. Amend subrule **33.3(1)**, definition of “Volatile organic compounds,” as follows:

“*Volatile organic compounds*” or “*VOC*” means any compound included in the definition of “volatile organic compounds” found at 40 CFR 51.100(s) as amended through ~~March 27, 2014~~ August 1, 2016.

ITEM 20. Amend subrule 33.3(17) as follows:

**33.3(17) Public participation.**

*a.* The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

*b.* Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by ~~advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed,~~ posting on a publicly available website identified by the department, of the application, of the preliminary determination, of the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment. The electronic notice shall be available for the duration of the public comment period and shall include the notice of public comment, the draft permit(s), information on how to access the administrative record for the draft permit(s) and how to request or attend a public hearing on the draft permit(s). The department may use other means if necessary to ensure adequate notice to the affected public. At least 30 days shall be provided for public comment and for notification of any public hearing.

(4) to (8) No change.

*c.* No change.

ITEM 21. Amend subrule 33.3(22) as follows:

**33.3(22) Permit rescission.** Any permit issued under 40 CFR 52.21 or this chapter or any permit issued under rule 567—22.4(455B) shall remain in effect unless and until it is rescinded. The department will consider requests for rescission that meet the conditions specified under paragraphs “*a*” and “*b*” of this subrule. If the department rescinds a permit or a condition in a permit issued under 40 CFR 52.21, this chapter, or rule 567—22.4(455B), the public shall be given adequate notice of the proposed rescission. ~~Publication~~ Posting of an announcement of rescission in a newspaper of general circulation in the affected region on a publicly available website identified by the department 60 days prior to the proposed date for rescission shall be considered adequate notice.

*a.* and *b.* No change.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 22. Rescind and reserve rules **567—34.200(455B)** to **567—34.229(455B)**.

[Filed 2/21/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3680C**

## **HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

### **Rule making related to employee background checks**

The Department of Human Services hereby amends Chapter 119, "Record Check Evaluations for Certain Employers and Educational Training Programs," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 217.6 and 2017 Iowa Acts, House File 547.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 217.6 and 2017 Iowa Acts, House File 547.

#### *Purpose and Summary*

This amendment adds a new element to the definition of "requesting entity." The change is required in relation to federal legislation requiring background checks on any employee with access to federal tax information used for Department purposes.

The Department may conduct background checks and subsequently conduct evaluations on employees who have access to federal tax information pursuant to Iowa Code section 217.45. The record check evaluation unit will complete the evaluations upon an employee's hire and again every ten years. The Department will defer to the employee handbook for requirements related to reporting allegations of an employee's being a perpetrator of abuse or an employee's alleged criminal charges between the initial date of hire and the ten-year background check.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 20, 2017, as **ARC 3515C**. No public comments were received. One change from the Notice has been made to update the cross reference in paragraph "10" of the definition of "requesting entity."

#### *Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on February 14, 2018.

#### *Fiscal Impact*

This rule making has a fiscal impact to the state of Iowa of less than \$100,000 annually or \$500,000 over five years. The Department estimates state costs of \$60,077 in state fiscal year (SFY) 2018 and \$22,806 in SFY 2019. Costs are higher in the first year due to the initial checks for all current employees. These costs include FBI checks, in-state and out-of-state background checks, and fingerprinting for approximately 1,500 employees. Employees will undergo a background investigation at least once every

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

ten years thereafter. The projections do not include administrative needs associated with background investigations as current staff will fulfill those needs.

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making action is adopted:

Amend rule **441—119.1(135B,135C)**, definition of “Requesting entity,” as follows:

“*Requesting entity*” means an entity covered by these rules that is requesting an evaluation to determine if the person being evaluated can be employed by the entity or participate in an educational training program and includes the following:

1. Health care facilities as defined in Iowa Code section 135C.1.
2. Programs in which the provider is regulated by the state or receives any state or federal funding and the employee being evaluated provides direct services to consumers including but not limited to programs that employ homemakers or home health aides, programs that provide adult day services, hospices, federal home- and community-based services waiver providers, elder group homes, and assisted living programs.
3. Substance abuse programs for juveniles as described in Iowa Code section 125.14A.
4. Hospitals as defined in Iowa Code section 135B.1.
5. Psychiatric medical institutions for children as defined in Iowa Code section 135H.1.
6. The department as described in Iowa Code section 217.44.
7. Department institutions as defined in Iowa Code section 218.13.
8. Child foster care facilities as defined in Iowa Code section 237.1.
9. Medicaid home- and community-based services waiver providers as defined in Iowa Code section 249A.29.
10. Certified nurse aide training programs as defined in Iowa Code section ~~135C.33(8)~~ 135C.33(9).
11. Nursing training programs as described in Iowa Code chapter 152.
12. The department as described in Iowa Code section 217.45.

[Filed 2/14/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3681C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to reimbursement procedures for juvenile detention facilities**

The Department of Human Services hereby amends Chapter 167, “Juvenile Detention Reimbursement,” Iowa Administrative Code.

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

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

*Purpose and Summary*

These amendments clarify procedures for juvenile detention homes to follow when seeking annual cost reimbursement. Juvenile detention homes eligible for cost reimbursement will have more clearly defined standards and the changes to dates related to process claim reimbursement.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 3, 2018, as **ARC 3546C**. No public comments were received. Since publication of the Notice, two technical changes have been made to rule 441—167.5(232) to replace the word “facilities” with the words “detention homes.”

*Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on February 14, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on May 1, 2018.



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

The following rule-making actions are adopted:

ITEM 1. Adopt the following new definition of “Detained” in rule **441—167.1(232)**:

“*Detained*” means the period of time a youth is physically occupying a bed in a juvenile detention home (that is, from the time of intake at the juvenile detention home (nothing prior to this) to the time a youth is discharged from the bed at the home (nothing after this)).

ITEM 2. Amend rule 441—167.3(232) as follows:

**441—167.3(232) Eligible facilities detention homes.** County and multicounty juvenile detention homes shall be eligible for reimbursement under this program when:

**167.3(1)** No change.

**167.3(2)** The home submits the ~~following reports in paragraphs 167.3(2)“a” and 167.3(2)“b”~~ by ~~May 15~~ March 15 and the certified audit in ~~paragraph 167.3(2)“c”~~ by March 15 or within ten days of completion if after March 15 of the year following the conclusion of the state fiscal year for which reimbursement will be made:

*a.* A written statement delivered in printed form or via electronic mail identifying the eligible total net cost that will be claimed under rule 441—167.5(232).

*b.* A printed or electronic copy of the ~~following sections of Form 470-0664, Financial and Statistical Report for Purchase of Service Contracts:~~ department-authorized financial and statistical report for juvenile detention homes.

(1) to (4) No change.

*c.* No change.

**167.3(3)** The department has reviewed the information submitted and determined that the costs to be claimed meet eligibility requirements. Eligible costs shall be determined by using a cost allocation methodology that follows generally accepted accounting principles (GAAP). Eligible costs shall be based on the portions of the allowable costs that are directly attributable to the function of detaining youth in the home.

*a.* and *b.* No change.

*c.* Costs of alternatives to detaining youth in the approved detention home are not eligible for reimbursement. Services ineligible for reimbursement include, but are not limited to:

(1) Community tracking and monitoring activities.

(2) Transportation during the time a youth is detained that is not related to ~~detention~~ service or care and keep or that is the responsibility of or funded by another source.

(3) Outreach services.

(4) In-home detention.

*d.* No change.

ITEM 3. Amend rule 441—167.4(232) as follows:

**441—167.4(232) Available reimbursement.** The reimbursement for the participating ~~facilities~~ detention homes shall be ~~the percentage of the allowable costs based on the distribution formula authorized in the appropriation language for the current fiscal year by Iowa law.~~

ITEM 4. Amend rule 441—167.5(232) as follows:

**441—167.5(232) Submission of voucher.** Eligible ~~facilities~~ detention homes shall submit a complete signed and dated Form GAX, General Accounting Expenditure, to the department to claim reimbursement.

**167.5(1)** Form GAX shall be submitted to the Department of Human Services, Division of Fiscal Management, First Floor, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, by August ~~10~~ 1.

**167.5(2)** The ~~form~~ Form GAX shall include the total net eligible costs incurred between July 1 and June 30 of the year covered by the reimbursement. ~~The total net eligible~~ These costs will be used to

HUMAN SERVICES DEPARTMENT[441](cont'd)

calculate the ~~legislatively authorized percentage of the home's allowable costs for the year covered by the reimbursement~~ reimbursement amount based on the distribution formula authorized by Iowa law.

**167.5(3)** Only ~~facilities~~ detention homes that submit Form GAX by August 10 1 shall receive reimbursement.

ITEM 5. Amend rule 441—167.6(232) as follows:

**441—167.6(232) Reimbursement by the department.** Reimbursement shall be made ~~by August 31~~ to those participating ~~facilities which~~ juvenile detention homes that have complied with these rules.

[Filed 2/14/18, effective 5/1/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3682C**

## **INSURANCE DIVISION[191]**

**Adopted and Filed**

### **Rule making related to organized delivery systems**

The Insurance Division hereby amends Chapter 4, "Agency Procedure for Rule Making and Waiver of Rules," Chapter 35, "Accident and Health Insurance," Chapter 37, "Medicare Supplement Insurance," Chapter 41, "Limited Service Organizations," Chapter 71, "Small Group Health Benefit Plans," Chapter 73, "Health Insurance Purchasing Cooperatives," Chapter 74, "Health Care Access," Chapter 75, "Iowa Individual Health Benefit Plans," and Chapter 78, "Uniform Prescription Drug Information Card," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 505.8.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 505, 507B, 509, 509A, 513B, 513C, 514A, 514B, 514C, 514E, 514F, 514I, 514J, 514K, 514L, and 521F as amended by 2017 Iowa Acts, House File 393, sections 29 to 103.

#### *Purpose and Summary*

The purpose of these amendments is to implement 2017 Iowa Acts, House File 393, sections 29 to 103, by removing references to "organized delivery systems" from the Insurance Division's rules.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 17, 2018, as **ARC 3571C**. No public comments were received. Some technical changes from the Notice have been made for clarification.

#### *Adoption of Rule Making*

This rule making was adopted by the Iowa Insurance Commissioner on February 22, 2018.

#### *Fiscal Impact*

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

INSURANCE DIVISION[191](cont'd)

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **4.24(2)“a”** as follows:

*a.* For purposes of Iowa Code chapter 505B and this subrule, the following definitions shall apply: “*Commissioner*” means the Iowa insurance commissioner or insurance division.

“*Intended recipient*” means the person to whom notice is required to be delivered, including but not limited to notices listed in the definition of “notice of cancellation, nonrenewal or termination” in this paragraph and in 191—paragraphs 20.80(1) “*b*,” 30.9(1) “*b*,” 35.9(1) “*b*,” 39.33(1) “*b*,” and 40.26(1) “*b*.”

“*Notice of cancellation, nonrenewal or termination*” means:

1. Notice of an insurance company's termination of an insurance policy at the end of a term or before the termination date;

2. Notice of an insurance company's decision or intention not to renew a policy; and

3. For purposes of notices required by Iowa Code chapters 505B, 508, 509B, 513B, 514, 514B, 514D, 514G, 515, 515D, 518, 518A and 519, “notice of cancellation, nonrenewal or termination” includes but is not limited to the following:

- An insurance company's notice of cancellation, nonrenewal, suspension, exclusion, intention not to renew, failure to renew, termination, replacement, rescission, forfeiture or lapse in an annuity policy, a life insurance policy, a long-term care insurance policy, or an insurance policy other than life;

- An insurance company's rescission or discontinuance of an accident and health insurance policy;

- An insurance company's notice of cancellation of personal lines policies or contracts;

- A health maintenance organization's notice to an enrollee of cancellation or rescission of membership;

- An employer's or group policyholder's notice to an employee or member of the termination or substantial modification of the continuation of an employer group accident or health policy; or

- A carrier's ~~or organized delivery system's~~ advance notice to affected small employers, participants, and beneficiaries of its decision to discontinue offering a particular type of health insurance coverage.

ITEM 2. Amend paragraph **4.24(2)“b”** as follows:

*b.* This subrule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance in Iowa, health maintenance organizations, employers, group policyholders, or carriers ~~and organized delivery systems~~ and to all requirements by statute or rule related to notices of cancellation, nonrenewal or termination. This subrule shall apply when an insurance company, health maintenance organization, employer, group policyholder, or carrier ~~or organized delivery system~~

INSURANCE DIVISION[191](cont'd)

seeks the commissioner's approval of a manner for delivering by electronic means required notices of cancellation, nonrenewal or termination, as described in Iowa Code section 505B.1.

ITEM 3. Amend subrule 35.3(3), introductory paragraph, as follows:

**35.3(3)** For purposes of ~~2005 Iowa Acts, House File 420, section 1,~~ Iowa Code section 514C.22 relating to biologically based mental illness coverage in a group policy, contract or plan providing for third-party payment of health, medical, and surgical coverage benefits issued by a carrier ~~or by an organized delivery system~~, "biologically based mental illness" shall mean the following mental disorders as they are defined under the following diagnostic classes within the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, edition DSM-IV-TR:

ITEM 4. Amend rule 191—35.9(509B,513B,514D) as follows:

**191—35.9(509B,513B,514D) Notice of cancellation, nonrenewal or termination of accident and health insurance.**

**35.9(1) Purpose and definitions.**

*a. Purpose.* The purpose of this rule is to clarify the authorized methods of delivery for notices of cancellation, nonrenewal or termination by an insurer, issuer, employer, group policyholder, or carrier ~~or organized delivery system~~, so as to implement the various policyholder protections intended by Iowa Code sections 509B.5, 513B.5, 514D.3, 515.125 and 515.129A and chapter 505B.

*b. Definitions.* As used in Iowa Code section 505B.1 and this rule:

"Commissioner" means the Iowa insurance commissioner or insurance division.

"Notice of cancellation, nonrenewal or termination" means:

1. and 2. No change.

3. For purposes of notices required by Iowa Code sections 509B.5, 513B.5, 514D.3, 515.125 and 515.129A and chapter 505B, "notice of cancellation, nonrenewal or termination" includes but is not limited to the following:

- An employer's or group policyholder's notification to employees or members of the termination or substantial modification of the continuation of an employer group accident or health policy pursuant to Iowa Code section 509B.5;
- A carrier's ~~or organized delivery system's~~ advance notice to all affected small employers, participants, and beneficiaries of its decision to discontinue offering a particular type of small group health insurance plan pursuant to Iowa Code section 513B.5(1)"e"(2);
- An insurance company's notice of termination of an individual accident and sickness policy, pursuant to rules promulgated pursuant to Iowa Code section 514D.3;
- An insurance company's notice of forfeiture, suspension, cancellation, or intention not to renew, pursuant to Iowa Code section 515.125; or
- An insurance company's notice of cancellation of personal lines policies or contracts pursuant to Iowa Code section 515.129A.

**35.9(2)** No change.

**35.9(3) Delivery.** For any notice of cancellation, nonrenewal or termination by an insurer, employer, group policyholder, or carrier ~~or organized delivery system~~ to be effective, an insurer, employer, group policyholder, or carrier ~~or organized delivery system~~ must, within the time frame established by law, deliver the notice to the person to whom notice is required to be provided either in person or by mail through the U.S. Postal Service to the last-known address of the person to whom notice is required to be provided. The use of U.S. Postal Service Intelligent Mail® fulfills any requirement in the Iowa Code sections cited in this subrule for certified mail or certificate of mailing as proof of mailing.

**35.9(4) Electronic transmissions.** Notwithstanding the requirements of subrule 35.9(3), if an insurer, issuer, employer, group policyholder, or carrier ~~or organized delivery system~~ receives, pursuant to 191—subrule 4.24(2), approval from the commissioner of a manner of electronic delivery of a notice of cancellation, nonrenewal or termination of a policy, the approved manner shall satisfy the notice requirements of Iowa Code sections 509B.5, 513B.5, 514D.3, 515.125 and 515.129A and chapter 505B.

This rule is intended to implement Iowa Code chapters 505B, 509B, 513B, 514D, and 515.

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

ITEM 5. Amend rule **191—35.23(509)**, definition of “Creditable coverage,” as follows:  
 “Creditable coverage” means health benefits or coverage provided to an individual under any of the following:

1. A group health plan.
2. Health insurance coverage.
3. Part A or Part B Medicare pursuant to Title XVIII of the federal Social Security Act.
4. Medicaid pursuant to Title XIX of the federal Social Security Act, other than coverage consisting solely of benefits under Section 1928 of that Act.
5. 10 U.S.C. ch. 55.
6. A health or medical care program provided through the Indian Health Service or a tribal organization.
7. A state health benefits risk pool.
8. A health plan offered under 5 U.S.C. ch. 89.
9. A public health plan as defined under federal regulations.
10. A health benefit plan under Section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e).
- ~~11. An organized delivery system licensed by the director of public health.~~
- ~~12.~~ 11. A short-term limited durational policy.

ITEM 6. Rescind the definition of “Organized delivery system” in rule **191—35.23(509)**.

ITEM 7. Amend rule 191—35.24(509) as follows:

**191—35.24(509) Eligibility to enroll.**

**35.24(1)** A carrier ~~or an organized delivery system~~ offering group health insurance coverage shall not establish rules for eligibility, including continued eligibility, of an individual to enroll under the terms of the coverage based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

*a.* to *h.* No change.

**35.24(2)** and **35.24(3)** No change.

**35.24(4)** A carrier ~~or organized delivery system~~ offering health insurance coverage shall not require an individual, as a condition of enrollment or continued enrollment under the coverage, to pay a premium or contribution which is greater than a premium or contribution for a similarly situated individual enrolled in the coverage on the basis of a health status-related factor in relation to the individual or to a dependent of an individual enrolled under the coverage. This subrule shall not be construed to do either of the following:

*a.* No change.

*b.* Prevent a carrier ~~or organized delivery system~~ offering group health insurance coverage from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

**35.24(5)** A carrier ~~or organized delivery system~~ shall not modify a health insurance coverage with respect to an employer or any eligible employee or dependent through riders, endorsements or other means, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the health insurance coverage.

ITEM 8. Amend subrule 35.25(1) as follows:

**35.25(1)** A carrier ~~or organized delivery system~~ shall permit individuals to enroll for coverage under terms of a health benefit plan, without regard to other enrollment dates permitted under the group health insurance coverage, if an eligible employee requests enrollment or, if the group health insurance coverage makes coverage available to dependents, on behalf of a dependent who is eligible but not enrolled under the group health insurance coverage, during the special enrollment period, which shall be 30 days following an event described in ~~subrules~~ subrule 35.25(2) or 35.25(3) with respect to the individual for whom enrollment is requested. A carrier ~~or organized delivery system~~ may impose enrollment requirements that are otherwise applicable under terms of the group health insurance coverage to individuals requesting immediate enrollment.

INSURANCE DIVISION[191](cont'd)

ITEM 9. Amend rule 191—35.26(509) as follows:

**191—35.26(509) Group health insurance coverage policy requirements.**

**35.26(1)** Group health insurance coverage subject to the rules in this division is renewable with respect to all eligible employees or their dependents at the option of the employer, except for one or more of the following reasons:

- a.* and *b.* No change.
- c.* Noncompliance with the carrier's ~~or organized delivery system's~~ minimum participation requirements or employer contribution requirements.
- d.* No change.
- e.* A carrier ~~or ODS~~ may choose to discontinue offering and cease to renew a particular type of health insurance coverage in the large group market if the carrier does all of the following:
  - (1) and (2) No change.
  - (3) Offers to each plan sponsor of the discontinued coverage the option to purchase any other coverage currently offered by the carrier ~~or ODS~~ to other employers in this state.
  - (4) No change.
- f.* A decision by the carrier ~~or ODS~~ to discontinue offering and cease to renew all of its health insurance delivered or issued for delivery to employers in this state shall do all of the following:
  - (1) to (3) No change.
- g.* No change.
- h.* The commissioner or director finds that the continuation of the coverage is not in the best interests of the policyholders or certificate holders, or would impair the carrier's ~~or ODS's~~ ability to meet its contractual obligations.
- i.* At the time of coverage renewal, a carrier ~~or ODS~~ may modify the health insurance coverage for a product offered under group health insurance coverage in the group market, if such modification is consistent with the laws of this state and is effective on a uniform basis among group health insurance coverage with that product.

**35.26(2)** A carrier ~~or ODS~~ that elects not to renew health insurance coverage under 35.26(1) "*f*" shall not write any new business in the group market in this state for a period of five years after the date of notice to the commissioner or director.

**35.26(3)** This rule applies only to a carrier ~~or ODS~~ doing business in one established geographic service area of the state and the carrier's ~~or ODS's~~ operations in that service area.

**35.26(4) Preexisting condition exclusions.**

*a.* A carrier ~~or ODS~~, with respect to a participant or beneficiary, may impose a preexisting condition exclusion only as follows:

(1) to (3) No change.

*b.* A carrier ~~or ODS~~ offering group health insurance coverage shall not impose any preexisting condition as follows:

(1) to (3) No change.

*c.* A carrier ~~or ODS~~ shall waive any waiting period applicable to a preexisting condition exclusion or limitation period with respect to particular services under health insurance coverage for the period of time an individual was covered by creditable coverage, provided that the creditable coverage was continuous to a date not more than 63 days prior to the effective date of the new coverage. Any period that an individual is in a waiting period for any coverage under group health insurance coverage, or is in an affiliation period, shall not be taken into account in determining the period of continuous coverage. A health maintenance organization that does not use preexisting condition limitations in any of its health insurance coverage may impose an affiliation period. For purposes of this paragraph, "affiliation period" means a period of time not to exceed 60 days for new entrants and not to exceed 90 days for late enrollees during which no premium shall be collected and coverage issued is not effective, so long as the affiliation period is applied uniformly, without regard to any health status-related factors.

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*d.* A group health ~~plan, carrier, or ODS plan or carrier~~ offering group health insurance under the plan may not impose a preexisting condition exclusion with respect to a participant or dependent of the participant before notifying the participant under rule 191—35.29(509).

ITEM 10. Amend rule 191—35.27(509) as follows:

**191—35.27(509) Methods of counting creditable coverage.**

~~35.27(1)~~ For purposes of reducing any preexisting condition exclusion period, a group health ~~plan, carrier, or ODS plan or carrier~~ offering group health insurance coverage shall determine the amount of an individual's creditable coverage by using the standard method described in ~~paragraph 35.27(1) "a,"~~ subrule 35.27(1) except that the ~~plan, carrier or ODS plan or carrier~~ may use the alternative method under ~~paragraph 35.27(1) "b,"~~ subrule 35.27(2) with respect to any or all of the categories of benefits described under ~~paragraph 35.27(1) "d,"~~ subrule 35.27(4).

~~a.~~ **35.27(1)** Under the standard method, a group health ~~plan, plan or health insurance carrier, or an ODS carrier~~ offering group health insurance coverage shall determine the amount of creditable coverage without regard to the specific benefits included in the coverage.

(1) ~~a.~~ For purposes of reducing the preexisting condition exclusion period, a group health ~~plan, plan or health insurance carrier, or an ODS carrier~~ offering group health insurance coverage shall determine the amount of creditable coverage by counting all the days that the individual has under one or more types of creditable coverage. If on a particular day, an individual has creditable coverage from more than one source, all the creditable coverage on that day is counted as one day. Further, any days in a waiting period for a plan or policy are not creditable coverage under the plan or policy.

(2) ~~b.~~ Days of creditable coverage that occur before a significant break in coverage are not required to be counted.

(3) ~~c.~~ Notwithstanding any other provisions of ~~paragraph 35.27(1) "b,"~~ subrule 35.27(2) for purposes of reducing a preexisting condition exclusion period, a group health ~~plan, plan or a health insurance carrier, or an ODS carrier~~ offering group health insurance coverage may determine the amount of creditable coverage in any other manner that is at least as favorable to the individual as the method set forth in ~~paragraph 35.27(1) "b,"~~ subrule 35.27(2).

~~b.~~ **35.27(2)** Under the alternative method, a group health ~~plan, plan or a health insurance carrier, or an ODS carrier~~ offering group health insurance coverage shall determine the amount of creditable coverage based on coverage within any category of benefits described in ~~paragraph 35.27(1) "d,"~~ subrule 35.27(4) and not based on coverage. The plan may apply a different preexisting condition exclusion period with respect to each category and may apply a different preexisting condition exclusion period for benefits that are not within any category. The creditable coverage determined for a category of benefits applies only for purposes of reducing the preexisting condition exclusion period with respect to that category. An individual's creditable coverage for benefits that are not within any category for which the alternative method is being used is determined under the standard method of ~~paragraph 35.27(1) "a,"~~ subrule 35.27(1).

~~e.~~ **35.27(3)** A ~~plan, carrier, or ODS plan or carrier~~ using the alternative method is required to apply it uniformly to all participants and beneficiaries in the plan or policy. The use of the alternative method must be set forth in the plan.

~~d.~~ **35.27(4)** The alternative method for counting creditable coverage may be used for coverage for any of the following categories of benefits:

- (1) ~~a.~~ Mental health.
- (2) ~~b.~~ Substance abuse treatment.
- (3) ~~c.~~ Prescription drugs.
- (4) ~~d.~~ Dental care.
- (5) ~~e.~~ Vision care.

~~e.~~ **35.27(5)** If the alternative method is used, the plan is required to:

(1) ~~a.~~ State prominently that the plan is using the alternative method of counting creditable coverage in disclosure statements concerning the plan, and state this to each enrollee at the time of enrollment under the plan;

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

(2) *b.* Include in these statements a description of the effect of using the alternative method, including an identification of the category's uses; and

(3) *c.* Count creditable coverage within a category if any level of benefits is provided within the category.

ITEM 11. Amend rule 191—35.28(509) as follows:

**191—35.28(509) Certificates of creditable coverage.**

**35.28(1)** Group health ~~plans, carriers, or ODSs~~ plans or carriers shall issue certificates of creditable coverage to persons losing coverage. A group health ~~plan, carrier, or ODS plan or carrier~~ required to provide a certificate under this rule for an individual is deemed to have satisfied the certification requirements for that individual if another party provides the certificate, but only to the extent that information relating to the individual's creditable coverage and waiting or affiliation period is provided by the other party. Certificates shall be issued within a reasonable amount of time following termination to employees and dependents:

*a. to c.* No change.

**35.28(2)** Certificates in writing. Certificates of coverage must be in writing unless all of the following conditions are met:

*a.* No change.

*b.* The individual requests that the certificate be sent to another ~~plan, carrier, or ODS plan or carrier~~ carrier;

*c.* The ~~plan, carrier, or ODS plan or carrier~~ receiving the certificate agrees to accept the information through means other than a written certificate;

*d.* No change.

**35.28(3) and 35.28(4)** No change.

**35.28(5)** Dependent coverage transition rule. A group health ~~plan, carrier, or ODS plan or carrier~~ that does not maintain dependent data is deemed to have satisfied the requirement to issue dependent certificates by naming the employee and specifying that the coverage on the certificate is for dependent coverage.

**35.28(6)** Delivering certificates. The certificate shall be given to the individual, ~~plan, carrier, or ODS plan or carrier~~ requesting the certificate. The certificates may be sent by first-class mail. When a dependent's last-known address differs from the employee's last-known address, a separate certificate shall be provided to the dependent at the dependent's last-known address. Separate certificates may be mailed together to the same location.

**35.28(7)** A group health ~~plan, carrier, or ODS plan or carrier~~ shall establish a procedure for individuals to request and receive certificates.

**35.28(8)** A certificate is not required to be furnished until the group health ~~plan, carrier, or ODS plan or carrier~~ knows or should have known that the dependent's coverage terminated.

**35.28(9)** Demonstrating creditable coverage. An individual has the right to demonstrate creditable coverage, waiting periods, and affiliation periods when the accuracy of the certificate is contested or a certificate is unavailable. A group health ~~plan, carrier, or ODS plan or carrier~~ shall consider information obtained by it or presented on behalf of an individual to determine whether the individual has creditable coverage.

ITEM 12. Amend rule 191—35.29(509) as follows:

**191—35.29(509) Notification requirements.**

**35.29(1)** A group health ~~plan, carrier, or ODS plan or carrier~~ shall provide written notice to the employee and dependents that includes the following:

*a.* No change.

*b.* A determination that the group health ~~plan, carrier, or ODS plan or carrier~~ intends to impose a preexisting condition exclusion and:

(1) to (3) No change.



INSURANCE DIVISION[191](cont'd)

(4) The right of the person to demonstrate creditable coverage including the right of the person to request a certificate from a prior group health ~~plan, carrier, or ODS plan or carrier~~ and a statement that the current group health ~~plan, carrier, or ODS plan or carrier~~ will assist in obtaining the certificate.

*c. and d.* No change.

**35.29(2)** A group health ~~plan, carrier, or ODS plan or carrier~~ shall provide written notice to the employee and dependents of a modification of a prior creditable coverage decision when the group health ~~plan, carrier, or ODS plan or carrier~~ subsequently determines either no or less creditable coverage existed provided that the group health ~~plan, carrier, or ODS plan or carrier~~ acts according to its initial determination until the final determination is made.

ITEM 13. Amend rule 191—35.31(509) as follows:

**191—35.31(509) Disclosure requirements.** All carriers ~~and ODSs~~ shall include in contracts and evidence of coverage forms a statement disclosing the existence of any prescription drug formularies. Upon request, all carriers ~~and ODSs~~ offering health insurance coverage that includes a prescription drug formulary shall inform enrollees of the coverage, and prospective enrollees of the coverage during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

All carriers ~~and ODSs~~ shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

ITEM 14. Amend rule 191—35.35(509) as follows:

**191—35.35(509) Reconstructive surgery.**

**35.35(1)** A carrier ~~or organized delivery system~~ that provides medical and surgical benefits with respect to a mastectomy shall provide the following coverage in the event an enrollee receives benefits in connection with a mastectomy and elects breast reconstruction:

*a. to c.* No change.

**35.35(2)** and **35.35(3)** No change.

**35.35(4)** A carrier ~~or organized delivery system~~ shall not deny an enrollee eligibility or continued eligibility to enroll or renew coverage under the terms of the health insurance solely for the purpose of avoiding the requirements of this rule. A carrier ~~or organized delivery system~~ shall not penalize, reduce or limit the reimbursement of an attending provider or induce the provider to provide care in a manner inconsistent with this rule.

This rule is intended to implement Public Law 105-277.

ITEM 15. Amend rule 191—35.39(514C) as follows:

**191—35.39(514C) Contraceptive coverage.**

**35.39(1)** A carrier ~~or organized delivery system~~ that provides benefits for outpatient prescription drugs or devices shall provide benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and are approved by the United States Food and Drug Administration or generic equivalents approved as substitutable by the United States Food and Drug Administration.

**35.39(2)** A carrier ~~or organized delivery system~~ is not required to provide benefits for over-the-counter contraceptive drugs or contraceptive devices that do not require a prescription for purchase.

**35.39(3)** No change.

**35.39(4)** A carrier ~~or organized delivery system~~ shall be required to provide benefits for services related to outpatient contraceptive services for the purpose of preventing conception if the policy or contract provides benefits for other outpatient services provided by a health care professional.

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**35.39(5)** If a carrier or ~~organized delivery system~~ does not provide benefits for a routine physical examination, the carrier or ~~organized delivery system~~ is not required to provide benefits for a routine physical examination provided in the course of prescribing a contraceptive drug or contraceptive device.

This rule is intended to implement ~~2000 Iowa Acts, Senate File 2126~~ Iowa Code chapter 514C.

ITEM 16. Amend rule **191—37.3(514D)**, definition of “Creditable coverage,” as follows:

“Creditable coverage” means, with respect to an individual, coverage of the individual provided under any of the following:

1. A group health plan;
2. Health insurance coverage;
3. Part A or Part B of Title XVIII of the Social Security Act (Medicare);
4. Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928;
5. Chapter 55 of Title 10, United States Code (CHAMPUS);
6. A medical care program of the Indian Health Service or of a tribal organization;
7. A state health benefits risk pool;
8. A health plan offered under Chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);
9. A public health plan as defined in federal regulation; ~~and~~
10. A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)); ~~and~~
11. ~~A organized delivery system.~~
12. ~~11.~~ Short-term limited durational policy.

“Creditable coverage” shall not include one or more, or any combination of, the following:

1. Coverage only for accident or disability income insurance, or any combination thereof;
2. Coverage issued as a supplement to liability insurance;
3. Liability insurance, including general liability insurance and automobile liability insurance;
4. Workers’ compensation or similar insurance;
5. Automobile medical payment insurance;
6. Credit-only insurance;
7. Coverage for on-site medical clinics; and
8. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

“Creditable coverage” shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

1. Limited scope dental or vision benefits;
2. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and
3. Such other similar, limited benefits as are specified in federal regulations.

“Creditable coverage” shall not include the following benefits if offered as independent, noncoordinated benefits:

1. Coverage only for a specified disease or illness; and
2. Hospital indemnity or other fixed indemnity insurance.

“Creditable coverage” shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

1. Medicare supplemental health insurance as defined under Section 1882(g)(1) of the Social Security Act;
2. Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and
3. Similar supplemental coverage provided to coverage under a group health plan.

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ITEM 17. Amend rule **191—41.1(514B)**, definition of “Limited service organization (LSO),” as follows:

~~“Limited service organization (LSO)”~~ “Limited service organization” or “LSO” means any corporation or limited liability company or other entity which, in return for prepayment, undertakes to provide or arrange for the provision of one or more limited health services to enrollees. Entities authorized to do business pursuant to Iowa Code chapters 508, 512B, 514, 514B (health maintenance organizations), 515, and 520 ~~and organized delivery systems~~ shall not be required to obtain separate licensure as an LSO.

ITEM 18. Amend rule 191—71.1(513B) as follows:

**191—71.1(513B) Purpose.** This chapter is intended to implement the provisions of Iowa Code chapter 513B to provide for the guaranteed issue of all health insurance products in the small group market, regardless of their health status or claims experience; to regulate insurer rating practices and establish limits on differences in rates between health insurance coverages; to ensure renewability of coverage; to establish limitations on underwriting practices, eligibility requirements and the use of preexisting condition exclusions; to provide for development of “basic” and “standard” health insurance plans to be offered to all small employers; to provide for establishment of a reinsurance program; to direct the basis of market competition away from risk selection and toward the efficient management of health care; to improve the overall fairness and efficiency of the small group health insurance market and to promote broader spreading of risk in the small employer marketplace. Carriers ~~and ODSs~~ that provide basic and standard health benefit plans, as herein set forth, to small employers are intended to be subject to all provisions of Iowa Code chapter 513B and this chapter ~~of rules~~.

**71.1(1)** No change.

**71.1(2)** A carrier ~~or organized delivery system~~ subject to this chapter is required to guarantee issue small employer plans except for reasons set forth in Iowa Code chapter 513B.

ITEM 19. Amend rule **191—71.2(513B)**, definition of “Short-term limited duration insurance,” as follows:

“Short-term limited duration insurance” means health insurance coverage provided under a contract with a carrier ~~or ODS~~ that has an expiration date specified in the contract, taking into account any extensions that may be elected by the policyholder without the carrier’s ~~or ODS’s~~ consent, that is, within 12 months of the date the contract becomes effective.

ITEM 20. Rescind the definition of “Organized delivery system” in rule **191—71.2(513B)**.

ITEM 21. Amend rule 191—71.3(513B) as follows:

**191—71.3(513B) Applicability and scope.**

**71.3(1)** *a.* and *b.* No change.

**71.3(2)** *a.* A carrier ~~or ODS~~ that provides individual health insurance policies to one or more of the employees of a small employer shall be considered a small employer carrier ~~or ODS~~ and subject to the provisions of Iowa Code chapter 513B and this chapter with respect to such policies if the small employer contributes, directly or indirectly, to the premiums for the policies and the carrier ~~or ODS~~ is aware, or should have been aware, of such contribution.

*b.* In the case of a carrier ~~or ODS~~ that provides individual health insurance policies to one or more employees of a small employer, the small employer shall be considered an eligible small employer as defined in Iowa Code section 513B.10 and the small employer carrier subject to Iowa Code section 513B.10(1) “b”(2) if:

(1) and (2) No change.

(3) The carrier ~~or ODS~~ is aware, or should have been aware, of the contribution by the employer.

**71.3(3)** No change.

**71.3(4)** An individual health insurance policy shall not be subject to Iowa Code chapter 513B and this chapter solely because the policyholder elects a business expense deduction under Section 162(1) of the Internal Revenue Code, the health insurance coverage is treated as part of a plan or program for purposes

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of Section 125 of the Internal Revenue Code for which the employee makes all the contributions, or the employer provides payroll deduction of health insurance premiums on behalf of an employee if the health insurance coverage covers employees where the employer has applied for group health benefits and has received written notification that the group did not meet the small group carrier's ~~or ODS's~~ minimum participation or contribution standards. The individual health insurance carrier ~~or ODS~~ shall maintain a copy of the employer's notification from the small group carrier for insurance division audit purposes.

**71.3(5) a.** If a small employer is issued health insurance coverage under the terms of Iowa Code chapter 513B, the provisions of Iowa Code chapter 513B and this chapter shall continue to apply to the health insurance coverage in the case that the small employer subsequently employs more than 50 eligible employees. A carrier ~~or ODS~~ providing coverage to such an employer shall, within 60 days of becoming aware that the employer has more than 50 eligible employees but no later than the anniversary date of the employer's health insurance coverage, notify the employer that the protections provided under Iowa Code chapter 513B and this chapter shall cease to apply to the employer if such employer fails to renew its current health insurance coverage or elects to enroll in different health insurance coverage. It is the responsibility of the employer to notify the carrier ~~or ODS~~ of changes in employment levels which could change the employer's status as a small employer for the purposes of this chapter.

*b.* (1) If health insurance coverage is issued to an employer that is not a small employer as defined, but subsequently the employer becomes a small employer (due to the loss or change of work status of one or more employees), the terms of Iowa Code chapter 513B shall not apply to the health insurance coverage. The carrier ~~or ODS~~ providing health insurance coverage to such an employer shall not become a small employer carrier ~~or ODS~~ under the terms of Iowa Code chapter 513B solely because the carrier ~~or ODS~~ continues to provide coverage under the health insurance coverage to the employer.

(2) A carrier ~~or ODS~~ providing coverage to an employer described in subparagraph 71.3(5) "b"(1) shall, within 60 days of becoming aware that the employer has 50 or fewer eligible employees, notify the employer of the options and protections available to the employer under Iowa Code chapter 513B, including the employer's option to purchase a small employer health insurance coverage from any small employer carrier ~~or ODS~~. It is the responsibility of the employer to notify the carrier of changes in employment levels which could change the employer's status as a small employer for the purposes of this chapter.

**71.3(6) a.** (1) and (2) No change.

**71.3(7)** A carrier ~~or ODS~~ that is not operating as a small employer carrier ~~or ODS~~ in this state shall not become subject to the provisions of the Act and this regulation solely because a small employer that was issued health insurance coverage in another state by that carrier ~~or ODS~~ moves to this state.

ITEM 22. Amend rule 191—71.4(513B) as follows:

**191—71.4(513B) Establishment of classes of business.**

**71.4(1)** A small employer carrier ~~or ODS~~ that establishes more than one class of business as defined in Iowa Code section 513B.2 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

*a. to c.* No change.

**71.4(2)** A carrier ~~or ODS~~ may not directly or indirectly use group size as a criterion for establishing eligibility for health insurance coverage or for a class of business.

ITEM 23. Amend rule 191—71.5(513B) as follows:

**191—71.5(513B) Transition for assumptions of business from another carrier.**

**71.5(1) a.** A small employer carrier ~~or ODS~~ shall not transfer or assume the entire insurance obligation or risk of health insurance coverage covering a small employer in this state unless:

(1) The transaction has been approved by the commissioner of the state of domicile of the assuming carrier ~~or ODS~~;

(2) The transaction has been approved by the commissioner of the state of domicile of the ceding carrier ~~or ODS~~; and

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(3) No change.

*b.* A carrier ~~or ODS~~ domiciled in this state that proposes to assume or cede the entire insurance obligation or risk of one or more small employer health benefit plans from another carrier ~~or ODS~~ shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction upon a finding that the transaction is in the best interests of the individuals insured under the health insurance coverages to be transferred and is consistent with the purposes of Iowa Code chapter 513B and this chapter. The commissioner shall not approve the transaction until at least 30 days after the date of the filing except that, if the ceding carrier ~~or ODS~~ is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

*c.* (1) The filing required under paragraph 71.5(1)“*b*” shall:

1. Describe the class of business (including any eligibility requirements) of the ceding carrier ~~or ODS~~ from which the health insurance coverage will be ceded;

2. Describe whether the assuming carrier ~~or ODS~~ will maintain the assumed health insurance coverage as a separate class of business (pursuant to 71.5(3)) or will incorporate them into an existing class of business (pursuant to 71.5(4)). If the assumed health insurance coverage will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier ~~or ODS~~ into which the health insurance coverages will be incorporated;

3. to 7. No change.

(2) A small employer carrier ~~or ODS~~ required to make a filing under 71.5(1)“*b*” shall also make an informational filing with the commissioner of each state in which there are small employer health insurance coverages that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under 71.5(1)“*b*” and shall include at least the information specified in 71.5(1)“*c*”(1) for the small employer health insurance coverages in that state.

*d.* A small employer carrier ~~or ODS~~ shall not transfer or assume the entire insurance obligation or risk of health insurance coverage covering a small employer in this state unless it complies with the following provisions:

(1) The carrier ~~or ODS~~ has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in 71.5(1)“*c*” for the health insurance coverages covering small employers in this state.

(2) If the assumption of a class of business would result in the assuming small employer carrier ~~or ODS~~ carrier's being out of compliance with the limitations related to premium rates contained in Iowa Code section 513B.4(1)“*a*,” the assuming carrier ~~or ODS~~ shall make a filing with the commissioner pursuant to Iowa Code section 513B.17 seeking suspension of the application of Iowa Code section 513B.4(1)“*a*.”

(3) An assuming carrier ~~or ODS~~ seeking suspension of the application of Iowa Code ~~paragraph~~ section 513B.4(1)“*a*” shall not complete the assumption of health insurance coverages covering small employers in this state unless the commissioner grants the suspension requested pursuant to 71.5(1)“*d*”(2).

(4) No change.

**71.5(2) a.** Except as provided in paragraph 71.5(1)“*b*,” a small employer carrier ~~or ODS~~ shall not cede or assume the entire insurance obligation or risk for small employer health insurance coverage unless the transaction includes ceding to the assuming carrier ~~or ODS~~ the entire class of business that includes such health insurance coverage.

*b.* A small employer carrier ~~or ODS~~ may cede less than an entire class of business to an assuming carrier if:

(1) One or more small employers in the class have exercised their right under contract or state law to reject (either directly or by implication) the ceding of their health insurance coverage to another carrier ~~or ODS~~. In that instance, the transaction shall include each health insurance coverage in the class of business except those health insurance coverages for which a small employer has rejected the proposed cession; or

(2) No change.

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**71.5(3)** Except as provided in 71.5(4), a small employer carrier ~~or ODS~~ that assumes one or more health insurance coverages from another carrier ~~or ODS~~ shall maintain such health insurance coverages as a separate class of business.

**71.5(4)** A small employer carrier ~~or ODS~~ that assumes one or more health insurance coverages from another carrier ~~or ODS~~ may exceed the limitation contained in Iowa Code section 513B.2 (relating to the maximum number of classes of business a carrier ~~or ODS~~ may establish) due solely to such assumption for a period of up to 15 months after the date of the assumption, provided that the carrier ~~or ODS~~ complies with the following provisions:

*a.* Upon assumption of the health insurance coverages, such health insurance coverages shall be maintained as a separate class of business. During the 15-month period following the assumption, each of the assumed small employer health insurance coverages shall be transferred by the assuming small employer carrier ~~or ODS~~ into a single class of business operated by the assuming small employer carrier ~~or ODS~~. The assuming small employer carrier ~~or ODS~~ shall select the class of business into which the assumed health insurance coverages will be transferred in a manner that results in the least possible change to the coverages and rating method of the assumed health insurance coverages.

*b.* No change.

*c.* A small employer carrier ~~or ODS~~ making a transfer pursuant to paragraph “a” may alter the benefits of the assumed health insurance coverages to conform to the benefits currently offered by the carrier in the class of business into which the health insurance coverages have been transferred.

*d.* The premium rate for an assumed small employer health insurance coverage shall not be modified by the assuming small employer carrier ~~or ODS~~ until the health insurance coverage is transferred pursuant to paragraph “a.” Upon transfer, the assuming small employer carrier ~~or ODS~~ shall calculate a new premium rate for the health insurance coverage from the rate manual established for the class of business into which the health insurance coverage is transferred. In making such calculation, the risk load applied to the health insurance coverage shall be no higher than the risk load applicable to such health insurance coverage prior to the assumption.

*e.* No change.

**71.5(5)** An assuming carrier ~~or ODS~~ may not apply eligibility requirements (including minimum participation and contribution requirements) with respect to an assumed health insurance coverage (or with respect to any health insurance coverage subsequently offered to a small employer covered by such an assumed health insurance coverage) that are more stringent than the requirements applicable to such health insurance coverage prior to the assumption.

**71.5(6)** The commissioner may approve a longer period of transition upon application of a small employer carrier ~~or ODS~~. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

**71.5(7)** Nothing in this rule or in Iowa Code chapter 513B is intended to:

*a.* Reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in Iowa Code chapters 521 and 521B, of the ceding or assuming carrier ~~or ODS~~ related to the transaction;

*b.* Authorize a carrier ~~or ODS~~ that is not admitted to transact the business of insurance in this state to offer health insurance coverages in this state; or

*c.* No change.

ITEM 24. Amend rule 191—71.6(513B) as follows:

**191—71.6(513B) Restrictions relating to premium rates.**

**71.6(1)** *a.* A small employer carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to small employers by the small employer carrier shall be computed solely from the applicable rate manual developed pursuant to this rule. To the extent that a portion of the premium rates charged by a small employer carrier is based on the carrier’s discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

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

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(3) For the purpose of this rule, a change in rating method shall mean:

1. A change in the number of case characteristics used by a small employer carrier ~~or ODS~~ to determine premium rates for health insurance coverages in a class of business;
2. to 4. No change.

For the purpose of ~~subparagraph (3), paragraph "1" above,~~ 71.6(1) "b"(3)"1," a change in a rating factor shall mean the cumulative change, with respect to such factor, considered over a 12-month period. If a small employer carrier changes rating factors with respect to more than one case characteristic in a 12-month period, the carrier shall consider the cumulative effect of all such changes in applying the 10 percent test under ~~paragraph "1."~~ 71.6(1) "b"(3)"1." A filing which has not previously been approved, denied, or questioned is deemed approved on or after 30 days from receipt by the division.

**71.6(2) a.** The rate manual developed pursuant to 71.6(1) shall specify the case characteristics and rate factors to be applied by the small employer carrier in establishing premium rates for the class of business.

*b.* No change.

*c.* A small employer carrier ~~or ODS~~ shall use the same case characteristics in establishing premium rates for each health insurance coverage in a class of business and shall apply them in the same manner in establishing premium rates for each health insurance coverage. Case characteristics shall be applied without regard to the risk characteristics of a small employer.

*d.* No change.

*e.* Differences among base premium rates for health insurance coverages shall be based solely on the reasonable and objective differences in the design and benefits of the health insurance coverages and shall not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose, or are expected to choose, a particular health insurance coverage. A small employer carrier ~~or ODS~~ shall apply case characteristics and rate factors within a class of business in a manner that ensures that premium differences among health insurance coverages for identical small employer groups vary only due to reasonable and objective differences in the design and benefits of the health insurance coverages and are not due to the actual or expected health status or claims experience of the small employer groups that choose, or are expected to choose, a particular health insurance coverage.

*f.* No change.

*g.* (1) No change.

(2) A carrier ~~or ODS~~ may charge a separate fee with respect to a health insurance coverage (but only one fee with respect to such plan) provided the fee is no more than \$5 per month per employee and is applied in a uniform manner to each health insurance coverage in a class of business.

*h.* A small employer carrier ~~or ODS~~ shall allocate administrative expenses to the basic and standard health benefit plans on no less favorable a basis than expenses are allocated to other health insurance coverages in the class of business. The rate manual developed pursuant to 71.6(1) shall describe the method of allocating administrative expenses to the health insurance coverages in the class of business for which the manual was developed.

*i.* and *j.* No change.

**71.6(3)** No change.

**71.6(4)** The restrictions related to changes in premium rates in Iowa Code sections 513B.4(1) "c" and 513B.4(1) "d" shall be applied as follows:

*a.* No change.

*b.* (1) No change.

(2) If, for any health insurance coverages with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health insurance coverage shall be considered health insurance coverage into which the small employer carrier ~~or ODS~~ is no longer enrolling new small employers for the purposes of Iowa Code sections 513B.4(1) "c" and 513B.4(1) "d."

*c.* If, for any rating period, the change in the new business premium rate for health insurance coverage differs from the change in the new business premium rate for any other health insurance coverage in the same class of business by more than 20 percent, the carrier ~~or ODS~~ shall make a

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filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made within 30 days of the beginning of the rating period.

*d.* A small employer carrier ~~or ODS~~ shall keep on file, for a period of at least six years, the calculations used to determine the change in base premium rates and new business premium rates for each health insurance coverage for each rating period.

**71.6(5) a.** Except as provided in paragraphs “*b*” through “*d*,” a change in premium rate for a small employer shall produce a revised premium rate that is no more than the following:

(1) and (2) No change.

*b.* In the case of health insurance coverage into which a small employer carrier ~~or ODS~~ is no longer enrolling new small employers, a change in a premium rate for a small employer shall produce a revised premium rate that is no more than the following:

(1) No change.

(2) One plus the lesser of:

1. No change.

2. The percentage change in the new business premium for the most similar health insurance coverage into which the small employer carrier ~~or ODS~~ is enrolling new small employers, multiplied by

(3) No change.

*c.* and *d.* No change.

**71.6(6) a.** A representative of a Taft Hartley trust (including a carrier upon the written request of such a trust) may file in writing with the commissioner a request for the waiver of application of the provisions of Iowa Code section 513B.4 with respect to such trust.

*b.* A request made under paragraph “*a*” shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provisions would:

(1) Adversely affect the participants and beneficiaries of the trust; and

(2) Require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

*c.* A waiver granted under Iowa Code section 513B.4A shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

ITEM 25. Amend rule 191—71.7(513B) as follows:

**191—71.7(513B) Requirement to insure entire groups.**

**71.7(1) a.** A small employer carrier ~~or ODS~~ that offers coverage to a small employer shall offer to provide coverage to each eligible employee and to each dependent of an eligible employee. The small employer carrier ~~or ODS~~ shall provide the same health insurance coverage to each employee and dependent.

*b.* No change.

**71.7(2) a.** Except as provided in this subrule, a small employer carrier ~~or ODS~~ may not issue health insurance coverage to a small employer unless the health insurance coverage covers all eligible employees and all dependents of eligible employees.

*b.* A small employer carrier ~~or ODS~~ may issue health insurance coverage to a small employer that excludes an eligible employee or the dependent of an eligible employee only if:

(1) to (3) No change.

*c.* A small employer carrier ~~or ODS~~ shall require each small employer that applies for coverage, as part of the application process, to provide a complete list of eligible employees and dependents of eligible employees. The small employer carrier ~~or ODS~~ shall require the small employer to provide appropriate supporting documentation in the form of a W-2 Summary Wage and Tax Form and federal or state quarterly withholding statements for the current year and the year immediately preceding the year of application for coverage.



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(1) A small employer carrier ~~or ODS~~ shall secure a waiver, with respect to each eligible employee and each dependent of an eligible employee, declining an offer of coverage under health insurance coverage provided to a small employer. The waiver shall be signed by the eligible employee (on behalf of such employee or the dependent of such employee) and shall certify that the individual who declined coverage was informed of the availability of coverage under the health insurance coverage. The waiver form shall require that the reason for declining coverage is be stated on the form and shall include a written warning of the penalties imposed on late enrollees. Waivers shall be maintained by the small employer carrier ~~or ODS~~ for a period of six years.

(2) A small employer carrier ~~or ODS~~ shall obtain, with respect to each individual who submits a waiver under 71.7(2) "c"(1), information sufficient to establish that the waiver is permitted under 71.7(2) "b."

*d.* (1) A small employer carrier ~~or ODS~~ shall not issue coverage to a small employer if the carrier is unable to obtain the list required under 71.7(2) "c," a waiver required under 71.7(2) "c"(1) or the information required under 71.7(2) "c"(2) in circumstances set forth in this subrule.

(2) 1. A small employer carrier ~~or ODS~~ shall not offer coverage to a small employer if the carrier ~~or ODS~~, or a producer for such carrier ~~or ODS~~, has reason to believe that the small employer has induced or pressured an eligible employee (or dependent of an eligible employee) to decline coverage due to the individual's risk characteristics.

2. A producer shall notify a small employer carrier ~~or ODS~~, prior to submitting an application for coverage with the carrier ~~or ODS~~ on behalf of a small employer, of any circumstances that would indicate that the small employer has induced or pressured an eligible employee (or dependent of an eligible employee) to decline coverage due to the individual's risk characteristics.

**71.7(3) a.** New entrants to a small employer group shall be offered an opportunity to enroll in the health insurance coverage currently held by such group. A new entrant ~~that~~ who does not exercise the opportunity to enroll in the health insurance coverage within the period provided by the small employer carrier ~~or ODS~~ may be treated as a late enrollee by the carrier ~~or ODS~~, provided that the period provided to enroll in the health insurance coverage extends at least 30 days after the date the new entrant is notified of the opportunity to enroll. If a small employer carrier ~~or ODS~~ has offered more than one health insurance coverage to a small employer group pursuant to 71.7(1) "b," the new entrant shall be offered the same choice of health insurance coverages as the other members of the group.

*b.* A small employer carrier ~~or ODS~~ shall not apply a waiting period, elimination period or other similar limitation of coverage (other than an exclusion for preexisting medical conditions consistent with Iowa Code section 513B.10(4)), with respect to a new entrant that is longer than 60 days. This subrule does not affect an employer's ability to determine an employee's probationary period of work prior to the commencement of benefits.

*c.* New entrants to a group shall be accepted for coverage by the small employer carrier ~~or ODS~~ without any restrictions or limitations on coverage related to the risk characteristics of the employees or their dependents except that a carrier may exclude coverage for preexisting medical conditions consistent with the provisions provided in Iowa Code section 513B.10.

*d.* A small employer carrier ~~or ODS~~ may assess a risk load to the premium rate associated with a new entrant consistent with the requirements of Iowa Code section 513B.4. The risk load shall be the same risk load charged to the small employer group immediately prior to acceptance of the new entrant into the group.

**71.7(4) a.** Opportunity to enroll.

(1) In the case of an eligible employee (or dependent of an eligible employee) who, prior to July 1, 1993, was excluded from coverage or denied coverage by a small employer carrier ~~or ODS~~ in the process of providing health insurance coverage to an eligible small employer (as defined in Iowa Code section 513B.2(16)), the small employer carrier ~~or ODS~~ shall provide an opportunity for the eligible employee (or dependent of such eligible employee) to enroll in health insurance coverage currently held by the small employer.

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(2) A small employer carrier ~~or ODS~~ may require an individual who requests enrollment under this subrule to sign a statement indicating that such individual sought coverage under the group contract (other than as a late enrollee) and that the coverage was not offered to the individual.

*b.* The opportunity to enroll shall meet the following requirements:

~~b.~~ (1) The opportunity to enroll shall begin October 1, 1993, and extend for a period of at least three months.

(2) and (3) No change.

(4) A small employer carrier ~~or ODS~~ shall provide written notice at least 45 days prior to the opportunity to enroll provided in 71.7(4) "a"(1) to each small employer insured under health insurance coverage offered by such carrier ~~or ODS~~. The notice shall clearly describe the rights granted under this subrule to employees and dependents previously excluded or denied coverage and the process for enrollment of such individuals in the employer's health insurance coverage.

ITEM 26. Amend rule 191—71.9(513B) as follows:

**191—71.9(513B) Application to reenter state.**

**71.9(1)** A carrier ~~or ODS~~ prohibited from writing coverage for small employers in this state pursuant to Iowa Code section 513B.5(2) may not resume offering health insurance coverage to small employers in this state until the carrier ~~or ODS~~ has made a petition to the commissioner or director to be reinstated as a small employer carrier ~~or ODS~~ and the petition has been approved by the commissioner or director. In reviewing a petition, the commissioner or director may ask for such information and assurances as the commissioner or director finds reasonable and appropriate.

**71.9(2)** In the case of a small employer carrier ~~or ODS~~ doing business in only one established geographic service area of the state, if the small employer carrier ~~or ODS~~ elects to nonrenew health insurance coverage under Iowa Code section 513B.5, the small employer carrier ~~or ODS~~ shall be prohibited from offering health insurance coverages to small employers in any other geographic area of the state without the prior approval of the commissioner or director. In considering whether to grant approval, the commissioner or director may ask for such information and assurances as the commissioner or director finds reasonable and appropriate.

ITEM 27. Amend rule 191—71.11(513B) as follows:

**191—71.11(513B) Rules related to fair marketing.**

**71.11(1) a.** A small employer carrier ~~or ODS~~ shall actively market health insurance coverages including one basic and one standard health benefit plan to small employers in this state. A small employer carrier ~~or ODS~~ may not suspend the marketing or issuance of the basic and standard health benefit plans unless the carrier ~~or ODS~~ has good cause and has received the prior approval of the commissioner or director.

*b.* In marketing the basic and standard health benefit plans to small employers, a small employer carrier ~~or ODS~~ shall use at least the same sources and methods of distribution that it uses to market other health insurance coverages to small employers.

**71.11(2) a.** A small employer carrier ~~or ODS~~, in accordance with the provisions of Iowa Code section 513B.10, shall accept every small employer that applies for health insurance coverage from the small employer carrier ~~or ODS~~ and shall accept every eligible individual who applies for enrollment. The offer shall be in writing and shall include at least the following information:

(1) and (2) No change.

*b.* (1) A small employer carrier ~~or ODS~~ shall provide a price quote to a small employer (directly or through an authorized producer) within ten working days of receiving a request for a quote and other information as necessary to provide the quote. A small employer carrier ~~or ODS~~ shall notify a small employer (directly or through an authorized producer) of any additional information needed by the small employer carrier ~~or ODS~~ to provide the quote within five working days of receiving a request for a price quote.

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(2) A small employer carrier ~~or ODS~~ shall not apply more stringent or detailed requirements related to the application process for the basic and standard health benefit plans than applied for other health insurance coverage offered by the carrier ~~or ODS~~.

~~e. Rescinded IAB 7/16/97, effective 7/1/97.~~

**71.11(3)** A small employer carrier ~~or ODS~~ shall establish and maintain a toll-free telephone service to provide information to small employers regarding the availability of health insurance coverages in this state. The service shall provide information to callers regarding application for coverage from the carrier ~~or ODS~~. The information may include the names and telephone numbers of producers located in geographic proximity to the caller or such other information reasonably designed to assist the caller to locate an authorized producer or to otherwise apply for coverage.

**71.11(4)** The small group carrier ~~or ODS~~ shall not require a small employer to join or contribute to any association or group as a condition of being accepted for coverage by the small employer carrier ~~or ODS~~ except, if membership in an association or other group is a requirement for accepting a small employer into health insurance coverage, a small employer carrier ~~or ODS~~ may apply such requirement.

**71.11(5)** A small employer carrier ~~or ODS~~ may not require, as a condition to the offer or sale of health insurance coverage to a small employer, that the small employer purchase or qualify for any other insurance product or service.

**71.11(6) a.** Carriers offering individual and group health insurance coverages in this state shall be responsible for determining whether the plans are subject to the requirements of Iowa Code chapter 513B and this chapter. Carriers ~~or ODSs~~ shall elicit the following information from applicants for such plans at the time of application:

(1) and (2) No change.

*b.* If a small employer carrier ~~or ODS~~ fails to comply with paragraph “a,” the small employer carrier ~~or ODS~~ shall be deemed on notice regarding any information that could reasonably have been attained if the small employer carrier had complied with paragraph “a.”

**71.11(7) a.** A small employer carrier ~~or ODS~~ shall annually file the following information with the commissioner related to health insurance coverages issued by the small employer carrier ~~or ODS~~ to small employers in this state:

(1) to (6) No change.

*b.* No change.

**71.11(8) and 71.11(9)** No change.

ITEM 28. Amend rule 191—71.12(513B) as follows:

**191—71.12(513B) Status of carriers as small employer carriers.**

**71.12(1)** Subject to 71.12(2), a carrier ~~or ODS~~ shall not offer health insurance coverages to small employers or continue to provide coverage under health insurance coverages previously issued to small employers in this state unless the carrier ~~or ODS~~ has made a filing with the commissioner or director that the carrier ~~or ODS~~ intends to operate as a small employer carrier ~~or ODS~~ in this state under the terms of this chapter.

**71.12(2) a.** If a carrier ~~or ODS~~ does not intend to operate as a small employer carrier ~~or ODS~~ in this state, the carrier ~~or ODS~~ may continue to provide coverage under health insurance coverages previously issued to small employers in this state only if the carrier ~~or ODS~~ complies with the following provisions:

(1) The carrier ~~or ODS~~ complies with the requirements of Iowa Code chapter 513B (other than Iowa Code sections 513B.11 to 513B.13) with respect to each of the health insurance coverages previously issued to small employers by the carrier ~~or ODS~~.

(2) The carrier ~~or ODS~~ provides coverage to each new entrant to health insurance coverage previously issued to a small employer by the carrier ~~or ODS~~. The provisions of Iowa Code chapter 513B (other than Iowa Code sections 513B.11 to 513B.13) and this chapter shall apply to the coverage issued new entrants.

(3) The carrier ~~or ODS~~ complies with the requirements of Iowa Code section 513B.17A, and rule 191—71.13(513B), as they apply to small employers whose coverage has been terminated by the carrier

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~~or ODS~~, and to individuals and small employers whose coverage has been limited or restricted by the carrier ~~or ODS~~.

*b.* A carrier ~~or ODS~~ that continues to provide coverage pursuant to this subrule shall not be eligible to participate in the reinsurance program established under Iowa Code section 513B.11.

**71.12(3)** No change.

ITEM 29. Amend rule 191—71.13(513B) as follows:

**191—71.13(513B) Restoration of coverage.**

**71.13(1)** *a.* Except as provided in 71.13(1) “*b.*,” a small employer carrier ~~or ODS~~ shall, as a condition of continuing to transact business in this state with small employers, offer to provide health insurance coverage as described in 71.13(3) to any small employer carrier ~~or ODS~~ after January 1, 1993, unless the carrier’s ~~or ODS’s~~ termination is pursuant to Iowa Code section 513B.5.

*b.* No change.

**71.13(2)** No change.

**71.13(3)** A health insurance coverage provided to a terminated small employer pursuant to 71.13(1) shall meet the following conditions:

*a. to c.* No change.

*d.* The health insurance coverage shall provide coverage to all employees who are eligible employees as of the date the plan is restored. The carrier ~~or ODS~~ shall offer coverage to each dependent of such eligible employees.

*e.* The premium rate for the health insurance coverage shall be no more than the premium rate charged to the small employer on the date the health insurance coverage was terminated or nonrenewed provided that, if the number or case characteristics of the eligible employees (or their dependents) of the small employer has changed between the date the health insurance coverage was terminated or nonrenewed and the date that it is restored, the carrier ~~or ODS~~ may adjust the premium rates to reflect any changes in case characteristics of the small employer. If the carrier ~~or ODS~~ has increased premium rates for other similar groups with similar coverage to reflect general increases in health care costs and utilization, the premium rate may be further adjusted to reflect the lowest such increase given to a similar group. The premium rate for the health insurance coverage may not be increased to reflect any changes in risk characteristics of the small employer group until one year after the date the health insurance coverage is restored. Any such increase shall be subject to the provisions of Iowa Code section 513B.4.

*f.* The health insurance coverage shall not be eligible to be reinsured under the provisions of Iowa Code section 513B.12, except that the carrier ~~or ODS~~ may reinsure new entrants to the health insurance coverage who enroll after the restoration of coverage.

ITEM 30. Amend rule 191—71.15(513B) as follows:

**191—71.15(513B) Methods of counting creditable coverage.**

**71.15(1)** For purposes of reducing any preexisting condition exclusion period, a group health ~~plan, a carrier, or ODS plan~~ plan or a carrier offering group health insurance coverage shall determine the amount of an individual’s creditable coverage by using the standard method described in subrule 71.15(2), except that the ~~plan, carrier, or ODS plan or carrier~~ plan or carrier may use the alternative method under subrule 71.15(3) with respect to any or all of the categories of benefits described under paragraph 71.15(3) “*b.*”

**71.15(2)** Under the standard method, a group health ~~plan, plan and a health insurance carrier, and an ODS carrier~~ plan, plan and a health insurance carrier offering group health insurance coverage shall determine the amount of creditable coverage without regard to the specific benefits included in the coverage.

*a.* For purposes of reducing the preexisting condition exclusion period, a group health ~~plan, plan or a health insurance carrier, or ODS carrier~~ plan, plan or a health insurance carrier offering group health insurance coverage shall determine the amount of creditable coverage by counting all the days that the individual has under one or more types of creditable coverage. If on a particular day, an individual has creditable coverage from more than one source, all the creditable coverage on that day is counted as one day. Further, any days in a waiting period for a plan or policy are not creditable coverage under the plan or policy.

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b. No change.

c. Notwithstanding any other provision of paragraph 71.15(2)“b,” for purposes of reducing a preexisting condition exclusion period, a group health ~~plan, plan and a health insurance carrier, and an ODS carrier~~ offering group health insurance coverage may determine the amount of creditable coverage in any other manner that is at least as favorable to the individual as the method set forth in paragraph 71.15(2)“b.”

**71.15(3)** Under the alternative method, a group health ~~plan, plan or a health insurance carrier, or an ODS carrier~~ offering group health insurance coverage shall determine the amount of creditable coverage based on coverage within any category of benefits described in subparagraph 71.15(3)“b”(2) and not based on coverage. The plan may apply a different preexisting condition exclusion period with respect to each category and may apply a different preexisting condition exclusion period for benefits that are not within any category. The creditable coverage determined for a category of benefits applies only for purposes of reducing the preexisting condition exclusion period with respect to that category. An individual’s creditable coverage for benefits that are not within any category for which the alternative method is being used is determined under the standard method of paragraph 71.15(3)“a.”

a. A ~~plan, carrier, or ODS plan or carrier~~ using the alternative method is required to apply it uniformly to all participants and beneficiaries in the plan or policy. The use of the alternative method must be set forth in the plan.

b. No change.

c. If the alternative method is used, the plan is required to:

(1) and (2) No change.

(3) Under the alternative method, the group health ~~plan, carrier, or ODS plan or carrier~~ counts creditable coverage within a category if any level of benefits is provided within the category.

ITEM 31. Amend rule 191—71.16(513B) as follows:

**191—71.16(513B) Certificates of creditable coverage.**

**71.16(1)** Group health ~~plans, carriers, and ODSs plans or carriers~~ shall issue certificates of creditable coverage to persons losing coverage. A group health ~~plan, carrier, or ODS plan or carrier~~ required to provide a certificate under this rule for an individual is deemed to have satisfied the certification requirements for that individual if another party provides the certificate, but only to the extent that information relating to the individual’s creditable coverage and waiting or affiliation period is provided by the other party. Certificates shall be issued within a reasonable amount of time following termination to employees and dependents:

a. to c. No change.

**71.16(2)** Certificates in writing. Certificates of coverage must be in writing unless all of the following conditions are met:

a. No change.

b. The individual requests that the certificate be sent to another plan or carrier ~~or ODS~~;

c. The ~~plan, carrier, or ODS plan or carrier~~ receiving the certificate agrees to accept the information through means other than a written certificate;

d. The ~~plan, carrier, or ODS plan or carrier~~ receiving the certificate receives the certificate within a reasonable amount of time.

**71.16(3)** and **71.16(4)** No change.

**71.16(5)** Dependent coverage transition rule. A group health plan or carrier ~~or ODS~~ that does not maintain dependent data is deemed to have satisfied the requirement to issue dependent certificates by naming the employee and specifying that the coverage on the certificate is for dependent coverage.

**71.16(6)** Delivering certificates. The certificate shall be given to the individual, plan or carrier ~~or ODS~~ requesting the certificate. The certificates may be sent by first-class mail. When a dependent’s last-known address differs from the employee’s last-known address, a separate certificate shall be provided to the dependent at the dependent’s last-known address. Separate certificates may be mailed together to the same location.

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**71.16(7)** A group health ~~plan, carrier, or ODS~~ plan or carrier shall establish a procedure for individuals to request and receive certificates.

**71.16(8)** A certificate is not required to be furnished until the group health ~~plan, carrier, or ODS~~ plan or carrier knows or should have known that dependent's coverage terminated.

**71.16(9)** Demonstrating creditable coverage. An individual has the right to demonstrate creditable coverage, waiting periods, and affiliation periods when the accuracy of the certificate is contested or a certificate is unavailable. A group health ~~plan, carrier, or ODS~~ plan or carrier shall consider information obtained by it or presented on behalf of an individual to determine whether the individual has creditable coverage.

ITEM 32. Amend rule 191—71.17(513B) as follows:

**191—71.17(513B) Notification requirements.**

**71.17(1)** A group health ~~plan, carrier, or ODS~~ plan or carrier shall provide written notice to the employee and dependents of:

- a. The existence of any preexisting condition exclusions.
- b. The length of time to which the exclusions will apply.
- c. The right of the employee or dependent to appeal a decision to impose a preexisting condition exclusion.
- d. The right of the person to demonstrate creditable coverage including:
  - (1) The right of the person to request a certificate from a prior group health ~~plan, carrier, or ODS~~ plan or carrier;
  - (2) A statement that the current group health ~~plan, carrier, or ODS~~ plan or carrier will assist in obtaining the certificate;
  - (3) That the group health ~~plan, carrier, or ODS~~ plan or carrier will use the alternative method of counting creditable coverage; and
  - (4) No change.

**71.17(2)** A group health ~~plan, carrier, or ODS~~ plan or carrier shall provide written notice to the employee and dependents of the modification of a prior creditable coverage decision when the group health ~~plan, carrier, or ODS~~ plan or carrier subsequently determines either no or less creditable coverage existed provided that the group health ~~plan, carrier, or ODS~~ plan or carrier acts according to its initial determination until the final determination is made.

ITEM 33. Amend rule 191—71.18(513B) as follows:

**191—71.18(513B) Special enrollments.**

**71.18(1)** A carrier ~~or organized delivery system~~ shall permit individuals to enroll for coverage under terms of a health benefit plan, without regard to other enrollment dates permitted under the group health plan, if an eligible employee requests enrollment or, if the group health plan makes coverage available to dependents, on behalf of a dependent who is eligible but not enrolled under the group health plan, during the special enrollment period, which shall be 30 days following an event described in subrules 71.18(2) and 71.18(3) with respect to the individual for whom enrollment is requested. A carrier ~~or organized delivery system~~ may impose enrollment requirements that are otherwise applicable under terms of the group health plan to individuals requesting immediate enrollment.

**71.18(2) to 71.18(4)** No change.

ITEM 34. Amend rule 191—71.19(513B) as follows:

**191—71.19(513B) Disclosure requirements.** All carriers ~~and ODSs~~ shall include in contracts and evidence of coverage forms a statement disclosing the existence of any drug formularies. Upon request, a carrier ~~or ODS~~ offering health insurance coverage that includes a prescription drug formulary shall inform enrollees of the coverage, and prospective enrollees of the coverage during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

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All carriers ~~and ODSs~~ shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

ITEM 35. Amend rule 191—71.21(514C) as follows:

**191—71.21(514C) Emergency services.** Benefits shall be available by the carrier for inpatient and outpatient emergency services. A physician and sufficient other licensed and ancillary personnel shall be readily available at all times to render such services. Since carriers may not contract with every emergency care provider in an area, carriers shall make every effort to inform members of participating providers.

**71.21(1) and 71.21(2)** No change.

**71.21(3)** Reimbursement to a provider of “emergency services” shall not be denied by any carrier ~~or ODS~~ without that organization’s review of the patient’s medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint. Upon denial of reimbursement for emergency services, the carrier shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

ITEM 36. Amend rule 191—71.23(513B) as follows:

**191—71.23(513B) Reconstructive surgery.**

**71.23(1)** A carrier ~~or organized delivery system~~ that provides medical and surgical benefits with respect to a mastectomy shall provide the following coverage in the event an enrollee receives benefits in connection with a mastectomy and elects breast reconstruction:

*a. to c.* No change.

**71.23(2) and 71.23(3)** No change.

**71.23(4)** A carrier ~~or organized delivery system~~ shall not deny an enrollee eligibility or continued eligibility to enroll or renew coverage under the terms of the health insurance solely for the purpose of avoiding the requirements of this rule. A carrier ~~or organized delivery system~~ shall not penalize, reduce or limit the reimbursement of an attending provider or induce the provider to provide care in a manner inconsistent with this rule.

This rule is intended to implement Public Law 105-277.

ITEM 37. Amend rule 191—71.24(514C) as follows:

**191—71.24(514C) Contraceptive coverage.**

**71.24(1)** A carrier ~~or organized delivery system~~ that provides benefits for outpatient prescription drugs or devices shall provide benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and are approved by the United States Food and Drug Administration or generic equivalents approved as substitutable by the United States Food and Drug Administration.

**71.24(2)** A carrier ~~or organized delivery system~~ is not required to provide benefits for over-the-counter contraceptive drugs or contraceptive devices that do not require a prescription for purchase.

**71.24(3)** No change.

**71.24(4)** A carrier ~~or organized delivery system~~ shall be required to provide benefits for services related to outpatient contraceptive services for the purpose of preventing conception if the policy or contract provides benefits for other outpatient services provided by a health care professional.

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**71.24(5)** If a carrier ~~or organized delivery system~~ does not provide benefits for a routine physical examination, the carrier ~~or organized delivery system~~ is not required to provide benefits for a routine physical examination provided in the course of prescribing a contraceptive drug or contraceptive device.

This rule is intended to implement 2000 Iowa Acts, Senate File 2126 Iowa Code section 514C.19.

ITEM 38. Amend rule **191—73.3(75GA,ch158)**, definition of “Carrier,” as follows:

“*Carrier*” means any entity that provides health benefit plans in this state. For purposes of this chapter, carrier includes an insurance company, a hospital or medical service corporation, a fraternal benefit society, a health maintenance organization, ~~an organized delivery system~~, and any other entity providing a plan of health insurance or health benefits subject to state regulation.

ITEM 39. Rescind the definition of “Organized delivery system” in rule **191—73.3(75GA,ch158)**.

ITEM 40. Amend rule 191—73.22(75GA,ch158) as follows:

**191—73.22(75GA,ch158) Grounds for denial, nonrenewal, suspension or revocation of certificate.** The following constitute grounds for denial, nonrenewal, suspension or revocation of the HIPC’s certificate following notice and an opportunity for hearing:

1. to 4. No change.

5. Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a person or health care carrier ~~or any organized delivery system~~ otherwise not entitled to the HIPC and that have been entrusted to the HIPC in its fiduciary capacity;

6. and 7. No change.

In addition, the application for certification to be a HIPC may be denied upon a finding by the commissioner that a sufficient number of HIPCs are licensed within a geographic service area and an additional HIPC would adversely affect existing HIPCs.

ITEM 41. Rescind paragraph **74.4(2)“d.”**

ITEM 42. Amend rule **191—75.2(513C)**, definition of “Risk load,” as follows:

“*Risk load*” means the percentage above the applicable base premium rate that is charged by a carrier ~~or ODS~~ to an individual to reflect the risk characteristics of such individual.

ITEM 43. Rescind the definition of “Organized delivery system” in rule **191—75.2(513C)**.

ITEM 44. Amend rule 191—75.3(513C) as follows:

**191—75.3(513C) Applicability and scope.**

**75.3(1)** and **75.3(2)** No change.

**75.3(3)** An entity that is not operating as an individual health benefit plan carrier ~~or ODS~~ in this state shall not become subject to the provisions of the Act and this rule solely because an individual that was issued a health benefit plan in another state by that entity becomes a resident of this state.

**75.3(4)** and **75.3(5)** No change.

ITEM 45. Amend rule 191—75.4(513C) as follows:

**191—75.4(513C) Establishment of blocks of business.** A carrier ~~or ODS~~ shall file with the commissioner the following information with respect to each established block of business, as defined in Iowa Code section 513C.3.

1. A description of each criterion employed by the carrier ~~or ODS~~ for determining membership in the block of business;

2. and 3. No change.

ITEM 46. Amend rule 191—75.5(513C) as follows:

**191—75.5(513C) Transition for assumptions of business from another carrier ~~or ODS~~.**

**75.5(1)** Transfer or assumption of insurance obligation.



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a. A carrier ~~or ODS~~ shall not transfer or assume the entire insurance obligation or risk of a health benefit plan covering a block of business in this state unless the transaction has been approved by the commissioner of the state of domicile of the ceding carrier ~~or ODS~~.

b. A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation or risk or one or more blocks of business from another carrier ~~or ODS~~ shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction upon a finding that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of Iowa Code chapter 513C and this chapter.

c. The filing required under paragraph 75.5(1) "b" shall:

(1) Describe the block of business, including any eligibility requirements, of the ceding carrier ~~or ODS~~ from which the health benefit plans will be ceded;

(2) Describe whether the assuming carrier ~~or ODS~~ will maintain the assumed health benefit plans as a separate block of business, pursuant to subrule 75.5(3), or will incorporate them into an existing block of business, pursuant to subrule 75.5(4). If the assumed health benefit plans will be incorporated into an existing block of business, the filing shall describe the block of business of the assuming carrier into which the health benefit plans will be incorporated;

(3) to (7) No change.

d. A carrier ~~or ODS~~ required to make a filing under paragraph 75.5(1) "b" shall also make an informational filing with the commissioner of each state in which there are individual health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under paragraph 75.5(1) "b" and shall include at least the information specified in subparagraph 75.5(1) "c"(1) for the individual health benefit plans in that state.

e. A carrier ~~or ODS~~ shall not transfer or assume the entire insurance obligation or risk of a health benefit plan covering an individual in this state unless it complies with the following provisions:

(1) The carrier ~~or ODS~~ has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in paragraph 75.5(1) "c" for the health benefit plans covering individuals in this state.

(2) If the assumption of a block of business would result in the assuming carrier ~~or ODS~~ carrier's being out of compliance with the limitations related to premium rates contained in Iowa Code section 513C.5, the assuming carrier shall make a filing with the commissioner pursuant to Iowa Code section 513C.5 seeking suspension of the application of Iowa Code section 513C.5.

(3) An assuming carrier ~~or ODS~~ seeking suspension of the application of Iowa Code section 513C.5 shall not complete the assumption of health benefit plans covering individuals unless the commissioner grants the suspension requested pursuant to subparagraph 75.5(1) "e"(2).

(4) No change.

**75.5(2)** Except as provided in subrule 75.5(1), a carrier ~~or ODS~~ shall not cede or assume the entire insurance obligation or risk for a health benefit plan, other than reinsurance, unless the carrier cedes to the assuming carrier the entire block of business that includes such health benefit plan, unless otherwise approved by the commissioner.

**75.5(3)** The commissioner may approve a longer period of transition upon application of a carrier ~~or ODS~~. The application shall be made within 60 days after the date of assumption of the block of business and shall clearly state the justification for a longer transition period.

**75.5(4)** Nothing in this rule or in Iowa Code chapter 513C is intended to:

a. Reduce or diminish any legal or contractual obligation or requirements, including any obligation provided in Iowa Code chapters 521 and 521B, of the ceding or assuming carrier ~~or ODS~~ related to the transaction;

b. Authorize a carrier ~~or ODS~~ that is not admitted to transact the business of insurance in this state to offer health benefit plans in this state; or

c. No change.

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ITEM 47. Amend rule 191—75.8(513C) as follows:

**191—75.8(513C) Disclosure of information.**

**75.8(1)** General rules. In connection with the offering for sale of a health benefit plan to individuals, each carrier ~~and ODS~~ shall make a reasonable disclosure, as part of its solicitation and sales materials, of the following:

- a. No change.
- b. The provisions of such plan concerning the carrier's ~~and ODS's~~ ability to change premium rates and the factors, other than claim experience, which affect changes in premium rates.
- c. and d. No change.
- e. The availability, upon request, of descriptive information about the benefits and premiums available under individual health benefit plans offered by the carrier ~~and ODS~~ for which the individual is qualified. For purposes of Iowa Code section 513C.7, carriers ~~and ODSs~~ will be permitted to exclude from disclosure of plans those plans within the following categories:

(1) to (4) No change.

**75.8(2)** Information shall be provided under this rule in a manner determined to be understandable by the average individual and shall be accurate and sufficiently comprehensive to reasonably inform individuals of their rights and obligations under the plan.

Nothing in this rule supersedes the requirements for outlines of coverage for individual health insurance policies under ~~IAC rule~~ 191—36.7(514D).

ITEM 48. Amend rule 191—75.9(513C) as follows:

**191—75.9(513C) Standards to ensure fair marketing.**

**75.9(1)** A carrier ~~or ODS~~ shall make available at least one basic and one standard health benefit plan to eligible individuals in this state.

**75.9(2)** The written information described in this subrule may be provided directly to the individual or delivered through an authorized producer:

a. A carrier ~~or ODS~~ shall not apply more stringent requirements related to the application process for the basic and standard health benefit plans than applied for other health benefit plans offered by the carrier ~~or ODS~~.

b. A carrier ~~or ODS~~ shall supply a price quote for basic or standard plans to an eligible individual upon request.

c. If a carrier ~~or ODS~~ denies coverage under a health benefit plan to an individual on the basis of a risk characteristic, the denial shall be in writing and state with specificity the reasons for the denial subject to any restrictions related to confidentiality of medical information. The denial shall be accompanied by a written explanation of the availability of the basic and standard health benefit plans from the carrier ~~or ODS~~ and may be combined with the notification requirements of Iowa Code chapter 514E. The explanation shall include the following information about the basic and standard benefit plans:

(1) to (3) No change.

**75.9(3)** The carrier ~~or ODS~~ shall not require an individual to join or contribute to any association or group as a condition of being accepted for coverage except, if membership in an association or other group is a requirement for accepting an individual into a particular health benefit plan, a carrier ~~or ODS~~ may apply such requirement.

**75.9(4)** A carrier ~~or ODS~~ may not require as a condition to the offer or sale of a health benefit plan to an individual that the individual purchase or qualify for any other insurance product or service.

**75.9(5)** Carriers ~~and ODSs~~ offering individual or group health benefit plans in this state shall be responsible for determining whether the plans are subject to the requirements of Iowa Code chapter 513C.

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ITEM 49. Amend subrule 75.10(5), Iowa Individual Products tables, as follows:

**Iowa Individual Products**

Hospital Services	MANDATED INDEMNITY/ØDS				MANDATED HMO	
	BASIC	STANDARD	PPO		BASIC	STANDARD
			In	Out		
Inpatient	60%	80%	80%	60%	60%	80%
Outpatient					\$400/admit	\$200/admit
Prostheses	60%	80%	80%	60%	60%	80%
DME—including medical supplies	60%	80%	80%	60%	60%	80%
Ambulance—Emergency	60%	80%	80%	60%	60%	80%
Hospice	60%	80%	80%	60%	60%	80%
Home Health and Physician House Calls	60%	80%	80%	60%	60%	80%

Alcoholism Substance Abuse	MANDATED INDEMNITY/ØDS				MANDATED HMO	
	BASIC	STANDARD	PPO		BASIC	STANDARD
			In	Out		
Inpatient	—	80% <sup>(1)</sup>	80% <sup>(1)</sup>	60% <sup>(1)</sup>	—	80%
Outpatient	—	80% <sup>(1)</sup> (\$50 max. eligible fee)	80% <sup>(1)</sup>	60% <sup>(1)</sup>	—	80% (\$50 max. eligible fee)

Mental Health	MANDATED INDEMNITY/ØDS				MANDATED HMO	
	BASIC	STANDARD	PPO		BASIC	STANDARD
			In	Out		
Inpatient	—	80% <sup>(1)</sup>	80% <sup>(1)</sup>	60% <sup>(1)</sup>	—	80%
Outpatient	—	80% <sup>(1)</sup> (\$50 max. eligible fee)	80% <sup>(1)</sup> (\$50 max. eligible fee)	60% <sup>(1)</sup> (\$50 max. eligible fee)	—	80% (\$50 max. eligible fee)

<sup>(1)</sup>\$50,000 Lifetime Max.

**Iowa Individual Products**

General	MANDATED INDEMNITY/ODS				MANDATED HMO	
	BASIC	STANDARD	PPO		BASIC	STANDARD
			In	Out		
Calendar year deductibles (S/F)	\$1,500 x 3	\$1,000 x 3	\$1,000 x 3	\$1,000 x 3	—	—
E.R. Copayment	—	—	—	—	\$50 (waived if admitted)	\$50 (waived if admitted)
Coinsurance	60%	80%	80%	60%	60%	80%
Annual out-of-pocket max. <sup>(1)</sup>	\$4,800/ \$14,400	\$2,000/ \$4,000	\$2,000/ \$4,000	\$3,000/ \$6,000	\$4,000/ \$8,000	\$2,000/ \$4,000
Lifetime Maximum	\$250,000	\$1,000,000	\$1,000,000	\$1,000,000	\$250,000	\$1,000,000
Pre-existing	513C.7(4) (a)&(b)	513C.7(4) (a)&(b)	513C.7(4) (a)&(b)	513C.7(4) (a)&(b)	513C.7(4) (a)&(b)	513C.7(4) (a)&(b)
Rx	60%	80%	80%	60%	Copayment of > \$30 or 25%	Copayment of > \$20 or 25%
Transplants	None	80%	80%	80%	None	80%

<sup>(1)</sup>Excludes deductibles and copays

Physician Services	MANDATED INDEMNITY/ODS				MANDATED HMO	
	BASIC	STANDARD	PPO		BASIC	STANDARD
			In	Out		
Office visits including wellness	60%	80%	\$20 copay 100%	\$40 copay 60%	\$20 copay per office visit	\$15 copay per office visit
Urgent Care	60%	80%	80%	60%	60%	80%
Inpatient	60%	80%	80%	60%	60%	80%
Outpatient	60%	80%	80%	60%	60%	80%

ITEM 50. Amend rule 191—75.11(513C) as follows:

**191—75.11(513C) Maternity benefit rider.** Every individual insurance carrier ~~and ODS~~ shall offer an optional maternity benefit rider for the basic and standard health benefit plans providing benefits, as any other illness, for a pregnancy and delivery without complications with a 12-month waiting period. Credit toward meeting the waiting period shall be given for prior coverage of a pregnancy without complications provided there was no more than a 63-day break in coverage. A maternity rider offered under this rule shall only be offered when the basic or standard plan is initially purchased. Premiums for the rider shall be calculated based upon generally accepted actuarial principles and shall not be subject to the premium restrictions in Iowa Code subsection 513C.10(6). The earned premiums and paid losses associated with the rider shall not be considered by the Iowa Individual Health Benefit Reinsurance Association for purposes of Iowa Code section 513C.10.

ITEM 51. Amend rule 191—75.12(513C) as follows:

**191—75.12(513C) Disclosure requirements.** All carriers ~~and ODSs~~ shall include in contracts and evidence of coverage forms a statement disclosing the existence of any drug formularies. Upon request, a carrier ~~or ODS~~ offering health insurance coverage that includes a prescription drug formulary shall inform enrollees of the coverage, and prospective enrollees of the coverage during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

INSURANCE DIVISION[191](cont'd)

All carriers ~~and ODSs~~ shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

ITEM 52. Amend rule 191—75.17(513C) as follows:

**191—75.17(513C) Reconstructive surgery.**

**75.17(1)** A carrier ~~or organized delivery system~~ that provides medical and surgical benefits with respect to a mastectomy shall provide the following coverage in the event an enrollee receives benefits in connection with a mastectomy and elects breast reconstruction:

*a. to c.* No change.

**75.17(2)** and **75.17(3)** No change.

**75.17(4)** A carrier ~~or organized delivery system~~ shall not deny an enrollee eligibility or continued eligibility to enroll or renew coverage under the terms of the health insurance solely for the purpose of avoiding the requirements of this rule. A carrier ~~or organized delivery system~~ shall not penalize, reduce or limit the reimbursement of an attending provider or induce the provider to provide care in a manner inconsistent with this rule.

This rule is intended to implement Public Law 105-277.

ITEM 53. Amend rule 191—75.18(514C) as follows:

**191—75.18(514C) Contraceptive coverage.**

**75.18(1)** A carrier ~~or organized delivery system~~ that provides benefits for outpatient prescription drugs or devices shall provide benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and are approved by the United States Food and Drug Administration or generic equivalents approved as substitutable by the United States Food and Drug Administration.

**75.18(2)** A carrier ~~or organized delivery system~~ is not required to offer benefits for over-the-counter contraceptive drugs or contraceptive devices that do not require a prescription for purchase.

**75.18(3)** No change.

**75.18(4)** A carrier ~~or organized delivery system~~ shall make available benefits for services related to outpatient contraceptive services for the purpose of preventing conception if the policy or contract provides benefits for other outpatient services provided by a health care professional.

**75.18(5)** If a carrier ~~or organized delivery system~~ does not provide benefits for a routine physical examination, the carrier ~~or organized delivery system~~ is not required to provide benefits for a routine physical examination provided in the course of prescribing a contraceptive drug or contraceptive device.

This rule is intended to implement 2000 Iowa Acts, Senate File 2126 Iowa Code chapter 514C.

ITEM 54. Amend rule **191—78.2(514L)**, definition of “Provider of third-party payment or prepayment of prescription drug expenses,” as follows:

*“Provider of third-party payment or prepayment of prescription drug expenses”* or *“provider”* means a provider of an individual or group policy of accident or health insurance or an individual or group hospital or health care service contract issued pursuant to Iowa Code chapter 509, 514 or 514A, a provider of a plan established pursuant to Iowa Code chapter 509A for public employees, a provider of an individual or group health maintenance organization contract issued and regulated under Iowa Code chapter 514B, ~~a provider of an organized delivery system contract regulated under rules adopted by the director of public health~~, a provider of a preferred provider contract issued pursuant to Iowa Code chapter 514F, a provider of a self-insured multiple employer welfare

INSURANCE DIVISION[191](cont'd)

arrangement, and any other entity providing health insurance or health benefits which provide for payment or prepayment of prescription drug expenses coverage subject to state insurance regulation.

[Filed 2/22/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3683C**

## **INSURANCE DIVISION[191]**

### **Adopted and Filed**

#### **Rule making related to long-term care insurance**

The Insurance Division hereby amends Chapter 39, "Long-Term Care Insurance," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 514G.11.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 514G as amended by 2017 Iowa Acts, House File 626.

#### *Purpose and Summary*

Chapter 39 establishes standards for creating, promoting, educating, and selling long-term care insurance in a way that promotes innovation while identifying ways to protect the public from unfair and deceptive trade practices. These amendments implement 2017 Iowa Acts, House File 626, which rescinded the consumer filing fee for an insured's request for an independent review of a benefit trigger determination related to long-term care insurance.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 17, 2018, as **ARC 3570C**. No public comments were received. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Insurance Commissioner on February 21, 2018.

#### *Fiscal Impact*

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

#### *Jobs Impact*

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

#### *Waivers*

The amendments are subject to the Division's general waiver provisions of rules 191—4.21(17A) through 191—4.36(17A).

INSURANCE DIVISION[191](cont'd)

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 191—39.45(514G) as follows:

**191—39.45(514G) Notice of internal appeal decision and right to independent review.** Upon the conclusion of the internal appeal mechanism specified in ~~2008 Iowa Acts, House File 2694, section 10~~ Iowa Code section 514G.109(2), the notice required in ~~2008 Iowa Acts, House File 2694, section 10,~~ Iowa Code section 514G.110(2) “b” and “c” shall contain the following information:

**39.45(1)** No change.

**39.45(2)** A description of how the insured can request independent review of the benefit trigger determination. Such description must specify the following:

a. No change.

b. The request must be made to the Iowa Insurance Division, ~~330 Maple Street~~ Two Ruan Center, Fourth Floor, 601 Locust Street, Des Moines, Iowa 50319 50309-3738;

c. A copy of the insurer's benefit trigger determination letter must accompany the written request for an independent review;

~~d. A \$25 filing fee is required unless the insured is requesting that the fee be waived. The check should be made payable to the Iowa Insurance Division. If a waiver is requested, the request shall include an explanation for the insured's request that the fee be waived.~~

ITEM 2. Amend rule 191—39.46(514G) as follows:

**191—39.46(514G) Independent review request.**

~~**39.46(1)** The insured shall send a copy of the insurer's notice explaining why the benefit trigger has not been met, with the insured's request for an independent review, to the insurance commissioner within 60 days of receipt of the benefit trigger determination. The notice shall be sent to the commissioner at the Iowa Insurance Division, 330 Maple Street Two Ruan Center, Fourth Floor, 601 Locust Street, Des Moines, Iowa 50319 50309-3738.~~

~~**39.46(2)** A \$25 filing fee shall be enclosed with the independent review request. The commissioner may waive the fee for good cause.~~

[Filed 2/22/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3684C**

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

**Adopted and Filed**

**Rule making related to benefits, contribution rates, and investments**

The Iowa Public Employees' Retirement System hereby amends Chapter 1, "Organization," Chapter 2, "Investment Board," Chapter 3, "Benefits Advisory Committee," Chapter 4, "Employers," Chapter 5, "Employees," Chapter 11, "Application for, Modification of, and Termination of Benefits," and Chapter 31, "Agency Procedure for Rule Making," Iowa Administrative Code.

*Legal Authority for Rule Making*

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

*State or Federal Law Implemented*

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

*Purpose and Summary*

IPERS adopts the following amendments: to conform rules to other rules and statutes or to rescind rules that are outdated, redundant or inconsistent, or no longer in effect to meet the requirements of the statutory five-year rules review for Chapters 1 to 5; to implement contribution rates for regular and special service members beginning July 1, 2018; to amend language to comply with open meeting laws; to require employers to obtain an IRS determination if they disagree with IPERS' employee coverage determination; to provide consistency with social security determinations of employee versus independent contractor coverage; to add a definition of emergency medical care provider consistent with the coverage afforded in Iowa Code chapter 97B; to match language in the bona fide refund rules with that in the bona fide retirement rules; to clarify that, effective July 1, 2018, a member will not have a bona fide retirement if the member enters into an agreement to return to work with the member's former employer, prior to or during the member's first month of entitlement and before receiving four months of payments from IPERS; to update the interest rate for fraud to match IPERS' lowered investment return assumption to 7 percent; to stress that there are only 60 days to make an alternative election; and to clarify that dual coverage is not allowed for the same position.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 3, 2018, as **ARC 3537C**. A public hearing was held on January 23, 2018, at 10 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by IPERS on February 13, 2018.

*Fiscal Impact*

Increased contribution rates for fiscal year 2019 are expected for employers and members.

*Jobs Impact*

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



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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 495—1.1(97B) as follows:

**495—1.1(97B) Organization.** The agency shall administer the retirement system created by Iowa Code chapter 97B. Specific powers and duties of the agency, CEO, board, committee, and agency staff are set forth in Iowa Code chapter 97B and these administrative rules.

Operational units within the agency shall develop and administer policies and procedures governing retirement system programs, including accounting functions for the collection of funds from employers and employee members; disbursement of retirement benefits, death benefits, lump sum payments, and disability retirement benefits; training to employers and subsequent review of employer records for compliance with Iowa Code chapter 97B, rules and policies; preparation and release of informational newsletters and the annual report; and investment of funds contributed to the retirement system by employers and employee members. The retirement system is also the state administrator to the federal Social Security Administration pursuant to Iowa Code chapter 97C.

ITEM 2. Amend rule 495—2.1(97B) as follows:

**495—2.1(97B) Investment board.** The principal place of business of the board is IPERS' headquarters, 7401 Register Drive, Des Moines, Iowa.

1. Effective July 1, 2002, the board shall be the trustee of the retirement fund. The board shall meet annually, and may meet more often, to review its investment policies.

2. At the first meeting in each fiscal year, the voting members shall elect a chair and vice chair. Future meeting dates for the year shall also be decided at the first meeting. Advance notice of time, date, tentative agenda, and place of each meeting shall be given in compliance with Iowa Code chapter 21. All meetings of the board are open to the public and shall be held in accordance with Robert's Rules of Order, Newly Revised.

3. Parties wishing to present items for the agenda of the next meeting shall file a written request with the board chair at least five business days prior to the meeting. ~~The board may take up matters not included on its agenda.~~

4. Four members eligible to vote shall constitute a quorum. A simple majority vote of the full voting membership shall be the vote of the board.

5. Members of the board shall file financial statements pursuant to Iowa Code section 68B.35(2) "e."

6. In the event that it should become necessary to fill the chief investment officer position, the board may consult with, and make hiring recommendations to, the chief executive officer that are consistent with the requirements of Iowa Code chapter 8A, subchapter IV.

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

7. The board shall set the salary of the CEO pursuant to Iowa Code section 97B.3.
8. The board shall participate in the annual performance evaluation of the chief investment officer.

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

**3.3(3) *Citizen representative.*** The citizen representative shall be elected by the eight voting representatives who serve under subrules 3.3(1) and 3.3(2).

ITEM 4. Amend subrule 4.1(6) as follows:

**4.1(6) *Patient advocates.*** For patient advocates employed under Iowa Code section 229.19, the county or counties for which services are performed shall be treated as the covered employer(s) of such individuals, and each such employer is responsible for forwarding reports and for withholding and forwarding the applicable IPERS contributions on wages paid by each employer.

ITEM 5. Amend subrule 4.3(6) as follows:

**4.3(6) *Fees for noncompliance.*** IPERS is authorized to impose reasonable fees on employers that do not file wage reports through the IPERS' employer self-service Internet application as described in subrule 4.3(2), that fail to timely file accurate wage reports, or that fail to pay contributions when due pursuant to subrule 4.3(3).

For submissions filed on or after August 1, 2008, IPERS shall charge employers a processing fee of \$20 plus 25 cents per employee for late submissions and manual processing of wage reports by IPERS. Employers that are late or that do not use IPERS' employer self-service Internet application may be charged both fees. In addition, if a fee for noncompliance is not paid by the fifteenth day of the month after the fee is assessed, the fee will accrue interest daily at the interest rate provided in Iowa Code ~~section~~ sections 97B.9 and 97B.70. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full.

If the due date for a fee falls on a weekend or state-observed holiday, the due date shall be the next regularly scheduled business day.

ITEM 6. Amend paragraph **4.6(1)“b”** as follows:

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

	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018
Combined rate	14.88%	14.88%	14.88%	14.88%	14.88%	15.73%
Employer	8.93%	8.93%	8.93%	8.93%	8.93%	9.44%
Employee	5.95%	5.95%	5.95%	5.95%	5.95%	6.29%

ITEM 7. Amend subrule 4.6(2) as follows:

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

	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018
Combined rate	19.76%	19.76%	19.76%	19.26%	18.76%	19.52%
Employer	9.88%	9.88%	9.88%	9.63%	9.38%	9.76%
Employee	9.88%	9.88%	9.88%	9.63%	9.38%	9.76%

ITEM 8. Amend subrule 4.6(3) as follows:

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

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

	Effective July 1, 2013	Effective July 1, 2014	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018
Combined rate	<del>16.90%</del>	16.90%	16.40%	16.40%	16.40%	<u>17.02%</u>
Employer	<del>10.14%</del>	10.14%	9.84%	9.84%	9.84%	<u>10.21%</u>
Employee	<del>6.76%</del>	6.76%	6.56%	6.56%	6.56%	<u>6.81%</u>

ITEM 9. Amend subrule 5.1(1) as follows:

**5.1(1) Definition of employee—generally.** A person is in employment as defined by Iowa Code chapter 97B if the person and the covered employer enter into a relationship which both recognize to be that of employer/employee. An employee is an individual who is subject to control by the agency for whom the individual performs services for wages. The term “control” refers only to employment and includes control over the way the employee works, where the employee works and the hours the employee works. The control need not be actually exercised for an employer/employee relationship to exist; the right to exercise control is sufficient. A public official may be an “employee” as defined in the agreement between the state of Iowa and the Secretary of Health and Human Services, without the element of direction and control.

A person is not in employment if the person volunteers services to a covered employer for which the person receives no remuneration.

IPERS makes employment determinations based on a common law test, which factors in behavior control, financial control and relationship of the parties. Once this decision is made, if any party disagrees with the decision, the party in disagreement will be required to submit an SS-8 Determination of Workers Status form directly to the Internal Revenue Service (IRS). Upon receipt of the determination by the IRS, IPERS will review this hiring arrangement a second time. A Final Agency Determination will be made at that time.

Further, if a person is performing essential governmental functions that can only be performed by a governmental employee, that person shall be IPERS-covered.

ITEM 10. Amend subrule 5.2(6) as follows:

**5.2(6) Police, firefighters, emergency personnel, and certain peace officers.**

*a.* Effective July 1, 1994, police officers and firefighters of a city not participating in the retirement systems established under Iowa Code chapter 410 or 411 shall be covered.

*b.* Emergency personnel, such as ambulance drivers, who are deemed to be firefighters by the employer shall be covered as firefighters.

*c.* Effective January 1, 1995, part-time police officers shall be covered in the same manner as full-time police officers.

*d.* Reserve peace officers employed under Iowa Code chapter 80D shall not be covered in accordance with Iowa Code section 80D.14.

*e.* A police chief or fire chief who has submitted a written request to the board of trustees created by Iowa Code section 411.36 to be exempt from coverage under Iowa Code chapter 411 shall not be covered under IPERS in accordance with Iowa Code sections 384.6(1) and 411.3. The city shall make on behalf of such person the contributions required under Iowa Code section 384.6(1) to the International City Management Association/Retirement Corporation.

*f.* Peace officer candidates of the department of public safety shall not be covered.

*g.* An emergency medical care provider who provides emergency medical services, as defined in Iowa Code section 147A.1, and who is not a member of the retirement systems established in Iowa Code chapter 401 or 411 shall be covered.

ITEM 11. Amend subrule 5.2(32) as follows:

**5.2(32)** Employees appointed by the state board of regents shall be covered unless, ~~at the discretion of the state board of regents,~~ they elect coverage in an alternate alternative retirement system qualified by the state board of regents. An employee must make an election in the alternative retirement system within 60 days of the employee's first day of employment.

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

ITEM 12. Amend subrule 5.2(40) as follows:

**5.2(40)** Employees of area community colleges shall be covered unless they elect coverage under an alternative system pursuant to a one-time irrevocable election. An employee must make an election in the alternative retirement system within 60 days of the employee's first day of employment.

ITEM 13. Amend subrule 5.2(41) as follows:

**5.2(41)** Volunteer emergency personnel, such as ambulance drivers and emergency medical technicians, shall be considered temporary employees and shall be covered if they meet the requirements of subrule 5.2(13). Persons who meet such requirements shall be covered under the protection occupation requirements of Iowa Code section 97B.49B if they are considered firefighters by their employers; otherwise they shall be covered under Iowa Code section ~~97B.11~~ 97B.1A.

ITEM 14. Amend rule 495—5.3(97B) as follows:

**495—5.3(97B) Participation in IPERS and another retirement system.** Effective July 1, 1996, an employee may actively participate in IPERS and another retirement system supported by public funds if the person does not receive credit under both IPERS and such other retirement system for ~~any~~ the same position held.

ITEM 15. Amend **495—Chapter 5**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 97B.1A, 97B.4, ~~97B.11~~, 97B.42, 97B.42A, 97B.49B, 97B.49C, and 97B.49G.

ITEM 16. Amend subrule 11.5(1) as follows:

**11.5(1) Bona fide retirement—general.** To receive retirement benefits, a member under the age of 70 must officially leave employment with all IPERS-covered employers, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments. The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits. Notwithstanding the foregoing, the continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services by that individual shall not cause that person to be in violation of IPERS' bona fide retirement requirements.

A member will not be considered to have a bona fide retirement if the member is a school or university employee and returns to work with the employer after the normal summer vacation. In other positions, temporary or seasonal interruption of service which does not terminate the period of employment does not constitute a bona fide retirement. A member also will not be considered to have a bona fide retirement if the member has, prior to or during the member's first month of entitlement, entered into ~~contractual~~ verbal or written arrangements with the employer to return to employment after the expiration of the four-month bona fide retirement period.

Effective July 1, 1990, a school employee will not be considered terminated if, while performing the normal duties, the employee performs for the same employer additional duties which take the employee beyond the expected termination date for the normal duties. Only when all the employee's compensated duties cease for that employer will that employee be considered terminated.

~~The bona fide retirement period will be waived, however, if the member is elected to public office which term begins during the normal four-month bona fide retirement period. This waiver does not apply if the member was an elected official who was reelected to the same position for another term. The bona fide retirement period will also be waived for state legislators who terminate their nonlegislative employment and the IPERS coverage for their legislative employment and begin retirement but wish to continue with their legislative duties.~~

The bona fide retirement period shall be waived for an elected official covered under Iowa Code section 97B.1A(8) "a"(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8) "a"(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS-covered employment

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

prior to the issuance of the retirement benefit. Such an elected official or legislator may remain in the elective office and receive an IPERS retirement without violating IPERS' bona fide retirement rules. If such elected official or legislator terminates coverage for the elective office and also terminates all other IPERS-covered employment but is then reemployed in covered employment, and has not received a retirement as of the date of hire, the retirement shall not be made. Furthermore, if such elected official or legislator is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the elected official or legislator shall not be eligible for new IPERS coverage for such elected position. The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official or legislator is reelected to the same position without an intervening term out of office.

~~A member will have a bona fide retirement if the member returns to work as an independent contractor with a public employer during the four-month qualifying period. Independent contractors are not covered under IPERS.~~

~~Effective July 1, 1998, through June 30, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered by 495—Chapter 4, is terminated and the member receives at least four monthly benefit payments. In order to receive retirement benefits, the member must file a completed application for benefits with IPERS before returning to any employment with the same employer.~~

Effective July 1, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered under this chapter, is terminated for at least one month, and the member does not return to covered employment for an additional three months. In order to receive retirement benefits, the member must file a completed application for benefits before returning to any employment with a covered employer.

Effective July 1, 2018, a member will not have a bona fide retirement if the member enters into a verbal or written arrangement to perform duties for the member's former employer(s) as an independent contractor prior to or during the member's first month of entitlement or performs any duties for the member's former employer(s) as an independent contractor prior to receiving four months of retirement benefits.

ITEM 17. Amend paragraph **11.7(5)“b”** as follows:

*b. Overpayments in violation of Iowa Code section 97B.40 or 715A.8.* If the overpayment of benefits, other than an overpayment that results from a violation described in subrule 11.7(4), was the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of ~~7.5~~ 7 percent on the outstanding balance, beginning on the date of the overpayment(s).

ITEM 18. Amend subrule 31.2(1) as follows:

**31.2(1)** IPERS shall designate the benefits advisory committee (BAC), and investment board as applicable, as the stakeholder rule-making group, pursuant to the rules for creation, public notice, procedures, public input, and results as outlined in Executive Order Number 80. The stakeholder group shall review and comment on any proposed ~~rules~~ rule changes before the rules are considered to be pending, as defined in subrule 31.3(2).

[Filed 2/14/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3685C****LABOR SERVICES DIVISION[875]****Adopted and Filed****Rule making related to amusement rides and devices**

The Labor Commissioner hereby amends Chapter 61, “Administration of Iowa Code Chapter 88A,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 88A.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 88A.

*Purpose and Summary*

Item 1 clearly requires that a fatality related to an amusement ride or device must be reported to the Labor Commissioner. Item 2 makes two changes to the rule that allows selected owners of air-supported structures to perform inspections as a designee of the Labor Commissioner. Generators are added to the list of devices that designated owners may inspect, and an end date for the inspection designation is established. Item 3 rescinds language that prevents electronic payments in preparation for a new, electronic permitting system and more clearly states the Labor Commissioner’s policy on payments of fees.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 3, 2018, as **ARC 3539C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Labor Commissioner on February 13, 2018.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. The changes are primarily administrative.

*Jobs Impact*

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

*Waivers*

Waiver procedures are set forth in 875—Chapter 1.

*Review by Administrative Rules Review Committee*

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

LABOR SERVICES DIVISION[875](cont'd)

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **61.3(4)“a”** as follows:

a. The operator shall immediately report by telephone any accident that results in death or medical care beyond first aid.

ITEM 2. Amend paragraph **61.4(1)“a”** as follows:

a. *Annual inspection by owner*: At the discretion of the commissioner, the owner of an air-supported structure may be designated by the commissioner to perform the annual inspection of the owner's air-supported structure, ~~and~~ blower, and related electrical equipment. An owner designated pursuant to this paragraph shall perform the inspection according to applicable standards. The owner shall submit in the format required by the commissioner an affidavit attesting to the performance of the inspection, correction of code violations, and other required information. A designation pursuant to this paragraph shall terminate on December 31 of the year of issuance.

ITEM 3. Rescind rule 875—61.8(88A) and adopt the following **new** rule in lieu thereof:

**875—61.8(88A) Payments.** All fees are nonrefundable. Cash is not accepted. Based on reasonable justification, the commissioner may notify an individual operator that the operator's check will not be accepted.

[Filed 2/14/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3686C**

**LABOR SERVICES DIVISION[875]**

**Adopted and Filed**

**Rule making related to contractor registration**

The Labor Commissioner hereby amends Chapter 150, “Construction Contractor Registration,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 91C.6.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 91C.

*Purpose and Summary*

The first item amends the definition of “contractor” to reduce confusion over the scope of coverage. The second item causes the rules to conform to Iowa Code chapter 91C as amended by 2017 Iowa Acts, Senate File 411.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 17, 2018, as **ARC 3565C**. No public comments were received. No changes from the Notice have been made.

LABOR SERVICES DIVISION[875](cont'd)

*Adoption of Rule Making*

This rule making was adopted by the Labor Commissioner on February 21, 2018.

*Fiscal Impact*

This rule making will reduce the funds received by the contractor registration fund by a small amount.

*Jobs Impact*

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

*Waivers*

Applicable waiver procedures are set forth in 875—Chapter 1.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule **875—150.2(91C)**, definition of “Contractor,” as follows:

“*Contractor*” means a person who engages in the business of construction as the term is defined in 871—23.82(96), for purposes of the Iowa employment security law, including subcontractors and special trade contractors. ~~Also included are persons who conduct or perform construction on an incidental or occasional basis, regardless of whether the person is classified as being engaged in construction by the unemployment insurance services division of the workforce development department.~~

ITEM 2. Amend paragraph **150.4(11)“a”** as follows:

a. File a \$25,000 surety bond ~~in the amount of \$25,000 for a one-year period~~ that is prepared using the bond form provided by the division, or

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**ARC 3687C**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

**Rule making related to motor vehicle and travel trailer dealers, manufacturers, distributors and wholesalers**

The Department of Transportation hereby amends Chapter 425, “Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers,” Iowa Administrative Code.



TRANSPORTATION DEPARTMENT[761](cont'd)

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 307A.2 and 322.13.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 321.57, 321.60, 322.2, 322.4 and 322.5.

*Purpose and Summary*

The Department is adopting amendments to Chapter 425 to align the chapter with the following Iowa Code changes:

- 2014 Iowa Acts, chapter 1123, sections 27 and 28, amended Iowa Code sections 321.57 and 321.60, which allow a motor vehicle dealer to operate or move upon the highways a vehicle owned by the dealer for either private or business purposes without registering the vehicle if the vehicle is in the dealer's inventory and is continuously offered for sale at retail, provided the vehicle is equipped with a special dealer plate issued by the Department. These changes allow the dealer to use an unregistered vehicle in the dealer's inventory to carry a load or tow a trailer, provided the dealer obtains a special dealer plate specifically issued for hauling a load or towing a trailer. Iowa Code section 321.60 sets the fee for a special haul or tow dealer plate at \$750, valid for a two-year period.

- 2015 Iowa Acts, chapter 123, section 38, amended Iowa Code section 322.5(2), which specifies additional places at which a motor vehicle dealer may display, offer for sale, or negotiate sales for new motor vehicles. Before this amendment, Iowa Code section 322.5(2) provided that, in addition to selling motor vehicles at the dealer's principal place of business and permanent car lots, the dealer could, under a temporary permit from the Department, display only (but not offer to sell or negotiate the sale of) motor vehicles at fairs, vehicle shows and vehicle exhibitions anywhere in the state (even if not in the dealer's community), and could display, offer for sale, and negotiate the sale of motor vehicles at fair events, vehicle shows and vehicle exhibitions that were held within the dealer's community. ("Community" is defined in Iowa Code section 322A.1 and means the dealer's area of responsibility as defined in its franchise agreement with the manufacturer.) "Fair events" only included county and district fairs provided for in Iowa Code chapter 174 and did not include the state fair, which is separately identified in Iowa Code chapter 173. The amendment to Iowa Code section 322.5(2) expanded sales opportunities to also allow motor vehicle dealers to display, offer for sale, and negotiate the sale of new motor vehicles at the state fair under a temporary permit issued by the Department, again provided the fair is within the motor vehicle dealer's community.

- 2016 Iowa Acts, chapter 1083, section 3, amended Iowa Code section 322.2, which defined "engaged in the business" of selling motor vehicles as "doing any of the following acts for the purpose of the sale of motor vehicles at retail: acquiring, selling, exchanging, holding, offering, displaying, brokering, accepting on consignment, conducting a retail auction, or acting as an agent for the purpose of doing any of those acts." This change expanded the definition to also include "advertising as being engaged in any of those acts." The definition of being engaged in the business of selling motor vehicles is significant because only persons who are engaged in the business of selling motor vehicles are required to obtain and maintain a motor vehicle dealer's license to do so.

- 2016 Iowa Acts, chapter 1083, section 7, amended Iowa Code section 322.4. This change increased the minimum bond amount which must be carried by a motor vehicle dealer from \$50,000 to \$75,000.

The following further explains the amendments in this rule making:

Item 1 updates the responsible office name from the office of vehicle services to the office of vehicle and motor carrier services to reflect the consolidation of these two offices into one office. This change is also reflected in Items 4, 5, 6, 7, 10 and 12. This item also updates the Department's website address.

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

Item 2 updates the definition of “engage in this state in the business” to match the definition set forth in Iowa Code section 322.2 described above.

Item 3 changes the word “forms” to “form” to clarify that a single application form is needed to apply for a license as a motor vehicle dealer or travel trailer dealer.

Item 4 increases the minimum bond amount a motor vehicle dealer must carry from \$50,000 to \$75,000 to match the amount required in amended Iowa Code section 322.4, as described above. This item also makes a minor clarification in the notifications the Department must give the bond company, by changing the requirement from notifying the bond company of any conviction of the dealer for a violation of dealer laws to notifying the bond company of any conviction of the dealer related to the operations of the dealership. This change reflects that convictions that affect a dealer’s license and bond may be under laws that are outside Iowa Code chapter 322.

Items 8 and 11 make changes to the rules concerning permits for motor vehicle dealers to display, offer to sell, and negotiate the sale of new motor vehicles at fairs, vehicle shows and vehicle exhibitions by adding a permit option for the state fair. These changes comply with Iowa Code section 322.5(2) as described above. Other amendments include the addition of the definition of “community” to mean as defined under Iowa Code section 322A.1; addition of the definition of “state fair” to mean the state fair as discussed in Iowa Code chapter 173; and insertion of the term “state fair” in conjunction with fairs, vehicle shows and vehicle exhibitions wherever applicable. The terms “show” and “exhibition” are also changed to “vehicle show” and “vehicle exhibition” consistently throughout to improve clarity and consistency within the rule and with Iowa Code section 322.5.

Item 9 adds the word “vehicle” before “exhibition” for the same reasons as described in the paragraph above.

Items 13 and 14 make changes to comply with Iowa Code sections 321.57 and 321.60, which provide for issuance of a dealer license plate to be displayed on inventory vehicles used to haul a load and tow a trailer as described above. Item 14 also clarifies that a dealer who obtains a “HAUL & TOW” plate and uses it to demonstrate the load capabilities of motor trucks and truck tractors to prospective purchasers does not also need to obtain a demonstration permit from the Department to do so.

The amendments made throughout this chapter are intended to align the rules with the Iowa Code and conform the rules to Departmental practices.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 20, 2017, as **ARC 3513C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on February 13, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

TRANSPORTATION DEPARTMENT[761](cont'd)

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 425.1(2) as follows:

**425.1(2)** The office of vehicle and motor carrier services administers this chapter. The mailing address is: Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

*a.* Applications required by the chapter shall be submitted to the office of vehicle and motor carrier services.

*b.* Information about dealer plates and the licensing of motor vehicles and travel trailer dealers, manufacturers, distributors and wholesalers is available from the office of vehicle and motor carrier services or on the department's Web site website at <http://www.iowadot.gov/mvd> [www.iowadot.gov](http://www.iowadot.gov).

ITEM 2. Amend rule 761—425.3(322), definition of “Engage in this state in the business,” as follows:

“Engage in this state in the business” or similar wording means doing any of the following acts for the purpose of selling motor vehicles or travel trailers at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment or conduct a retail auction, advertise as being engaged in any of those acts, or to act as an agent for the purpose of doing any of ~~these~~ those acts. A person selling at retail more than six motor vehicles or six travel trailers during a 12-month period may be presumed to be engaged in the business. See rule 761—425.20(322) for provisions regarding fleet sales and retail auction sales.

ITEM 3. Amend subrule 425.10(1) as follows:

**425.10(1)** *Application ~~forms~~ form.* To apply for a license as a motor vehicle or travel trailer dealer, the applicant shall complete an application on ~~forms~~ a form prescribed by the department.

ITEM 4. Amend subrule 425.10(2) as follows:

**425.10(2)** *Surety bond.*

*a.* The applicant shall obtain a surety bond in the following amounts and file the original with the office of vehicle and motor carrier services:

(1) For a motor vehicle dealer's license, ~~\$50,000~~ \$75,000.

(2) No change.

*b.* The surety bond shall provide for notice to the office of vehicle and motor carrier services at least 30 days before cancellation.

*c.* The office of vehicle and motor carrier services shall notify the bonding company of any conviction of the dealer for a violation of ~~dealer~~ dealer laws related to the operations of the dealership.

*d.* If the bond is canceled, the office of vehicle and motor carrier services shall notify the dealer by first-class mail that the dealer's license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

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

*e.* If an applicant whose dealer's license was revoked pursuant to paragraph "d" establishes that the applicant obtained a reinstated or new bond meeting the requirements of subrule 425.10(2) that was effective on or before the date of cancellation, but due to mistake or inadvertence failed to file the original bond with the office of vehicle and motor carrier services, the applicant may file the original of the reinstated or new bond. Upon filing, the department will rescind the revocation of the dealer's license.

ITEM 5. Amend paragraph **425.10(3)"a"** as follows:

*a.* An applicant who intends to sell new motor vehicles or travel trailers shall submit to the office of vehicle and motor carrier services a copy of a signed franchise agreement with the manufacturer or distributor of each make the applicant intends to sell.

ITEM 6. Amend subrule 425.10(6) as follows:

**425.10(6) Zoning.** The applicant shall provide to the office of vehicle and motor carrier services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

ITEM 7. Amend rule 761—425.18(322) as follows:

**761—425.18(322) Supplemental statement of changes.** A motor vehicle dealer shall file a written statement with the office of vehicle and motor carrier services at least ten days before any change of name, location, hours, or method or plan of doing business. A license is not valid until the changes listed in the statement have been approved by the office of vehicle and motor carrier services.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

ITEM 8. Amend rule 761—425.26(322) as follows:

**761—425.26(322) Fairs State fair, fairs, shows and exhibitions.**

**425.26(1) Definitions.** As used in this rule:

*"Community"* means an area of responsibility as defined in Iowa Code section 322A.1.

*"Display"* means having new motor vehicles or new travel trailers available for public viewing at fairs, vehicle shows or vehicle exhibitions. The dealer may also post, display or provide product information through literature or other descriptive media. However, the product information shall not include prices, except for the manufacturer's sticker price. "Display" does not mean offering new vehicles for sale or negotiating sales of new vehicles.

*"Fair"* means a county fair or a scheduled gathering for a predetermined period of time at a specific location for the exhibition, display or sale of various wares, products, equipment, produce or livestock, but not solely new vehicles, and sponsored by a person other than a single dealer.

*"Offer"* new vehicles *"for sale," "negotiate sales"* of new vehicles, or similar wording, means doing any of the following at the state fair or a fair, vehicle show or vehicle exhibition: posting prices in addition to the manufacturer's sticker price, discussing prices or trade-ins, arranging for payments or financing, and initiating contracts.

*"State fair"* means the fair as discussed in Iowa Code chapter 173.

*"Vehicle exhibition"* means a scheduled event conducted at a specific location where various types, makes or models of new vehicles are displayed either at the same time or consecutively in time, and sponsored by a person other than a single dealer.

*"Vehicle show"* means a scheduled event conducted for a predetermined period of time at a specific location for the purpose of displaying at the same time various types, makes or models of new vehicles, which may be in conjunction with other events or displays, and sponsored by a person other than a single dealer.

**425.26(2) Permits for ~~motor vehicle~~ dealers of new motor vehicles.**

*a.* A "display only" fair, vehicle show or vehicle exhibition permit allows a motor vehicle dealer to display new motor vehicles at a specified fair, vehicle show or vehicle exhibition in any Iowa county. The permit is valid on Sundays.

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

*b.* A “full” fair, state fair, vehicle show or vehicle exhibition permit allows a motor vehicle dealer to display and offer new motor vehicles for sale and negotiate sales of new motor vehicles at the state fair, or a specified fair, vehicle show or vehicle exhibition that is held ~~in the same county as~~ within the motor vehicle dealer’s principal place of business community. EXCEPTION: A motor vehicle dealer who is licensed to sell motor homes may be issued a permit to offer for sale Class “A” and Class “C” motor homes at a specified fair, vehicle show or vehicle exhibition in any Iowa county. A “full” fair, show or exhibition permit is not valid on Sundays.

*c.* The following restrictions are applicable to both types of permits:

(1) Permits will be issued to motor vehicle dealers only for the state fair, fairs, vehicle shows or vehicle exhibitions where more than one motor vehicle dealer may participate.

(2) No change.

**425.26(3)** Reserved.

**425.26(4)** *Permits for ~~travel trailer~~ dealers of new travel trailers.* A fair, vehicle show or vehicle exhibition permit allows a travel trailer dealer to display and offer new travel trailers for sale and negotiate sales of new travel trailers at a specified fair, vehicle show, or vehicle exhibition in any Iowa county.

*a. to c.* No change.

**425.26(5)** *Permit application.* A motor vehicle or travel trailer dealer shall apply for a ~~fair, show or exhibition~~ permit on an application form prescribed by the department. The application shall include the dealer’s name, address and license number and the following information about the ~~fair, show or exhibition~~ event: name, location, sponsor(s) and duration, including the opening and closing dates.

**425.26(6)** *Display of permit.* The motor vehicle or travel trailer dealer shall display the permit ~~at the fair, show or exhibition~~ in close proximity to the vehicles being exhibited.

~~**425.26(7)** *Variance.* Rescinded IAB 11/7/07, effective 12/12/07.~~

~~**425.26(8)** *Display without permit.* Rescinded IAB 7/10/02, effective 8/14/02.~~

This rule is intended to implement Iowa Code ~~subsections~~ sections 322.5(2) and 322C.3(9).

ITEM 9. Amend rule 761—425.31(322) as follows:

**761—425.31(322) Firefighting and rescue show permit.**

**425.31(1)** Application for a firefighting and rescue show permit shall be made on a form prescribed by the department. The application shall include the name, address and license number of the applicant, the type of vehicles being displayed, and the following information about the vehicle show or vehicle exhibition: name, location, sponsor(s), and duration, including the opening and closing dates.

**425.31(2)** No change.

**425.31(3)** The permit holder shall display the permit in a prominent place at the location of the vehicle show or vehicle exhibition.

This rule is intended to implement Iowa Code ~~subsection~~ section 322.5(5).

ITEM 10. Amend subrule 425.50(2) as follows:

**425.50(2)** *Licensing requirements.*

~~*a.* Rescinded IAB 11/3/99, effective 12/8/99.~~

~~*b. a.*~~ New motor homes delivered to Iowa dealers must contain the systems and meet the standards specified in Iowa Code ~~paragraph~~ section 321.1(36C) “*d.*”

~~*e. b.*~~ A licensee shall ensure that any new retail outlet is properly licensed as a dealer before any vehicles are delivered to the outlet.

~~*d. c.*~~ A licensee shall notify the office of vehicle and motor carrier services in writing at least ten days prior to any:

(1) and (2) No change.

~~(3) Rescinded IAB 11/3/99, effective 12/8/99.~~

(4) (3) Change in the trade name of a travel trailer manufactured for delivery in this state.

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

*e. d.* A licensee shall notify the office of vehicle and motor carrier services in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

ITEM 11. Amend subrule 425.62(2) as follows:

**425.62(2)** The department may deny a dealer's application for the state fair or a fair, vehicle show or vehicle exhibition permit for a period not to exceed six months if the dealer fails to comply with the applicable provisions of rule 761—425.26(322) or Iowa Code ~~subsection~~ section 322.5(2) or 322C.3(9).

ITEM 12. Amend subrule 425.62(4) as follows:

**425.62(4)** The department shall send notice by certified mail to a person whose certificate, license or permit is to be revoked, suspended, canceled or denied. The notice shall be mailed to the person's mailing address as shown on departmental records or, if the person is currently licensed, to the principal place of business, and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle and motor carrier services at the address in subrule 425.1(2). The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation or denial.

ITEM 13. Amend subrule 425.70(3) as follows:

**425.70(3)** *Use of dealer plates.*

*a.* No change.

~~*b.* Motor vehicles used by dealers, manufacturers or distributors to transport other vehicles shall be registered, except when being transported from the place of manufacturing, assembling or distribution to a dealer's place of business.~~

~~*e. b.* Saddle-mounted vehicles being transported shall display dealer plates.~~

~~*d. c.* Dealer plates may be displayed on a trailer carrying a load, provided the ~~truck or truck tractor~~ motor vehicle towing the trailer is properly registered under Iowa Code section 321.109, 321.120, or 321.122, ~~except as provided~~ or is displaying a dealer plate described in paragraph 425.70(3) "e," or a demonstration permit has been issued as described in rule 761—425.72(321).~~

~~*e. d.* Dealer plates may be used by a dealer licensed as a wholesaler for a new motor vehicle model when operating a new motor vehicle of that model if the motor vehicle is owned by the wholesaler and is operated solely for the purpose of demonstration, show or exhibition.~~

~~*e.* A dealer plate issued under Iowa Code section 321.60 for the purpose of hauling a load or towing a trailer shall be marked "HAUL & TOW." Dealer "HAUL & TOW" plates may only be displayed on vehicles in the dealer's inventory that are continuously offered for sale at retail.~~

ITEM 14. Adopt the following **new** subrule 425.72(6):

**425.72(6)** A dealer plate issued under Iowa Code section 321.60 for the purpose of hauling a load or towing a trailer may be used in lieu of a demonstration permit.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3688C**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

**Rule making related to transportation network companies**

The Department of Transportation hereby amends Chapter 540, "Transportation Network Companies," Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 307A.2 and 321N.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 321N.

*Purpose and Summary*

The Department is amending paragraph 540.4(3)“a” to strike the reference to Iowa Code chapter 518. An applicant for a permit to operate as a transportation network company, defined in Iowa Code chapter 321N, must submit several documents, including proof that the applicant has obtained the necessary insurance. Due to the recent change in Iowa Code section 321N.4(6), insurers that are governed by Iowa Code chapter 518 are no longer approved insurers for purposes of applying for a permit to operate a transportation network company. This amendment conforms the rules with 2017 Iowa Acts, Senate File 516, section 25, which amended Iowa Code section 321N.4(6) and implemented a technical correction regarding insurance carriers governed by Iowa Code chapter 518 by removing them from the list of carriers authorized to provide insurance pursuant to Iowa Code chapter 321N.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 17, 2018, as **ARC 3572C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on February 21, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making action is adopted:

TRANSPORTATION DEPARTMENT[761](cont'd)

Amend paragraph **540.4(3)“a”** as follows:

*a.* Proof of compliance with the financial responsibility requirements of Iowa Code section 321N.4. Proof of compliance shall be submitted by providing a valid certificate of coverage from an insurer governed by Iowa Code chapter 515 ~~or 518~~, or by a surplus lines insurer governed by Iowa Code chapter 515I. The certificate of coverage shall demonstrate coverage in the amounts and circumstances required by Iowa Code section 321N.4, and shall certify that if insurance maintained by a transportation network company driver under Iowa Code chapter 321N lapses or does not provide coverage in the amounts or types required by Iowa Code section 321N.4, subsection 2 or 3, the insurance certified in the certificate of coverage shall provide coverage in the amounts and types required by Iowa Code section 321N.4, subsection 2 or 3, beginning with the first dollar of the claim, and the insurer providing such coverage shall defend the claim. The certificate of coverage shall also certify that the coverage therein is not dependent on the insurer of a transportation network company driver’s personal vehicle first denying a claim, and does not require the insurer of a personal automobile insurance policy to first deny a claim to trigger coverage and defense under the coverage certified.

[Filed 2/21/18, effective 4/18/18]

[Published 3/14/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3689C**

## **TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

### **Rule making related to commercial driver licensing**

The Department of Transportation hereby amends Chapter 607, “Commercial Driver Licensing,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 307A.2 and 321.180.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 321.180(2).

#### *Purpose and Summary*

The Department is adopting amendments to Chapter 607 to comply with 2017 Iowa Acts, House File 463, section 1, which amended Iowa Code section 321.180(2). The amendments to Chapter 607 change the validity period of a commercial learner’s permit (CLP) from 180 days to one year, update the affected implementation sentences and make corrections to the Department’s contact information. The following list explains each item in this rule making:

Item 1 amends subrule 607.2(1) to correct the name of the office responsible for administering this chapter and to strike an outdated telephone number.

Item 2 amends paragraph 607.20(1)“b” to change the validity period of a CLP from 180 days to one year. Previously, a CLP could be issued for a duration of 180 days, with an option to renew it for an additional 180 days. However, the Federal Motor Carrier Safety Administration issued an exemption that allowed states to forego renewal after 180 days and instead to make the CLP valid for one year; this exemption was first issued April 5, 2016, and was revised on November 29, 2016, to correct an oversight in its initial articulation. The Iowa General Assembly chose to amend the statute, Iowa Code



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

section 321.180(2), and utilize the exemption to change the CLP period of validity to one year, which reduces costs and expense for the Department and eliminates renewals and unnecessary trips to licensing locations for CLP holders. This amendment updates the rule to conform with the statutory change.

Item 3 amends subrule 607.28(3) to conform with the statutory change. Since there will no longer be a CLP renewal, the provisions of this subrule which require that the skills test be retaken before issuance of a renewal no longer apply.

Item 4 amends subrule 607.31(1) to reflect the statutory change that the skills test results are valid for one year since the CLP period of validity is now one year rather than 180 days.

Item 5 amends the implementation sentence for rule 761—607.31(321) to reflect the aforementioned statutory change made to Iowa Code section 321.180(2).

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 3, 2018, as **ARC 3532C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on February 13, 2018.

*Fiscal Impact*

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

*Jobs Impact*

After analysis and review of this rule making, these amendments are expected to have a positive impact on private sector jobs and employment opportunities in Iowa since the CLP renewal process was eliminated in favor of a one-year period of validity.

*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.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 607.2(1) as follows:

**607.2(1) Information and location.** Applications, forms and information about the commercial driver's license (CDL) are available at any driver's license examination station. Assistance is also available by mail from ~~the Office of Driver and Identification Services~~, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience

TRANSPORTATION DEPARTMENT[761](cont'd)

Blvd., Ankeny, Iowa; by telephone at ~~(800)532-1121~~ or (515)244-8725; by facsimile at (515)239-1837; or on the department's ~~Web site~~ website at www.iowadot.gov.

ITEM 2. Amend paragraph **607.20(1)“b”** as follows:

*b.* A commercial learner's permit is valid for ~~180 days and may be renewed for an additional 180 days~~ one year without retaking the general and endorsement knowledge tests required by Iowa Code section 321.188.

ITEM 3. Amend subrule 607.28(3) as follows:

**607.28(3) Order.** The skills test must be administered and successfully completed in the following order: pre-trip inspection, basic vehicle control skills, on-road skills. If an applicant fails one segment of the skills test, the applicant cannot continue to the next segment of the test, and scores for the passed segments of the test are only valid during initial issuance of the commercial learner's permit. ~~If the commercial learner's permit is renewed, all three segments of the skills test must be retaken. However:~~

*a.* ~~If the applicant wants to remove an air brake restriction, full air brake restriction, or manual transmission restriction, the applicant does not have to retake the complete skills test, and may complete a modified skills test that demonstrates the applicant can safely and effectively operate the vehicle's full air brakes, air over hydraulic brakes, or manual transmission. In addition, to remove the air brake or full air brake restriction, the applicant must successfully perform the air brake pre-trip inspection and pass the air brake knowledge test.~~

*b.* ~~If the applicant wants to remove the tractor-trailer restriction, the applicant must retake all three skills tests in a representative tractor-trailer.~~

ITEM 4. Amend subrule 607.31(1) as follows:

**607.31(1) Period of validity.** Passing knowledge and skills test results shall remain valid for a period of ~~180 days~~ one year.

ITEM 5. Amend rule ~~761~~—**607.31(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.180, 321.186, 321.187 and 321.188.

[Filed 2/14/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3690C**

## **TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

### **Rule making related to coordination of public transit services**

The Department of Transportation hereby amends Chapter 910, “Coordination of Public Transit Services,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 307A.2 and 324A.5.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 324A.4 and 324A.5.

#### *Purpose and Summary*

The amendments to this chapter:

- Amend the definition of “department” to remove an obsolete division name.

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

- Amend the definition of “incidental transportation” to reflect Federal Transit Administration terminology.
- Amend the definition of “public transit service” to:
  - o Add the word “exclusive” before “public school transportation” to indicate school transportation provided during open-to-the-public service is allowable while closed “exclusive” school transportation is not.
  - o Update the list of state institutions which provide their own on-campus transportation, which is not considered a public transit service.
- Rescind the definition of “public transit system” since this definition is already included in Iowa Code section 324A.1. Rule 761—910.1(324A) already states that the definitions in Iowa Code section 324A.1 apply to these rules.
- Update the contact information to correct an office name and add the Department’s website address.
- Update language throughout the chapter to remove obsolete office and division names.
- Change how often the Statewide Transportation Coordination Advisory Council must meet from monthly to quarterly to give the Council greater flexibility to meet when needed, rather than meeting monthly without a full agenda.
- Make editorial corrections for readability.
- Correct references to Iowa Code section 324A.5(3) since this section was renumbered.
- Remove a reference to Iowa Code section 17A.18 since this section concerns licenses and is not pertinent to this chapter.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 3, 2018, as **ARC 3533C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on February 13, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

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

The following rule-making actions are adopted:

ITEM 1. Amend rule **761—910.1(324A)**, definitions of “Department,” “Incidental transportation” and “Public transit service,” as follows:

“*Department*” means the state department of transportation. The department’s office of public transportation of the air and transit division of the department transit administers Iowa Code chapter 324A.

“*Incidental transportation*” means ~~transportation provided by an agency or entity when the driver must provide supervision, educational assistance or other support enroute and at the origin or destination. Transportation used merely to access other services is not incidental~~ the provision of transit rides when existing public transportation services cannot meet demand. Allowable charter service and meal deliveries are examples of incidental transportation.

“*Public transit service*” means any publicly funded passenger transportation for the general public or for specific client groups not including exclusive public school transportation, emergency transportation or incidental transportation or transportation provided by the state department of human services or state department of corrections on the grounds of the following institutions:

~~State juvenile home, Toledo;~~  
 State training school, Eldora;  
 Cherokee mental health institute;  
~~Clarinda mental health institute;~~  
 Independence mental health institute;  
~~Mount Pleasant mental health institute;~~  
 Glenwood state hospital-school;  
 Woodward state hospital-school;  
 Iowa veterans home, Marshalltown;  
 Iowa state penitentiary, Fort Madison;  
~~Iowa state men’s reformatory, Anamosa~~ state penitentiary, Anamosa;  
 Iowa correctional institution for women, Mitchellville;  
~~Medium security unit, Mount Pleasant~~ correctional facility, Mount Pleasant;  
~~Riverview release center, Newton~~ correctional facility, Newton;  
 Iowa medical and classification center, ~~Oakdale~~ Coralville;  
 North central correctional facility, Rockwell City;  
 Fort Dodge correctional facility, Fort Dodge;  
~~Correctional treatment unit, Clarinda~~ correctional facility, Clarinda.

ITEM 2. Rescind the definition of “Public transit system” in rule **761—910.1(324A)**.

ITEM 3. Amend rule 761—910.2(17A) as follows:

**761—910.2(17A) Information and location.** ~~Requests for forms~~ Forms or information about the coordination of public transit services ~~shall be addressed to:~~ are available from the Office of Public Transportation, Air and Transit Division Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870 or on the department’s website at [www.iowadot.gov](http://www.iowadot.gov).

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

ITEM 4. Amend paragraph **910.3(2)“c”** as follows:

*c. Staff.* Staff support for council activities shall be provided by the ~~department’s office of public transportation~~ department.

ITEM 5. Amend paragraph **910.3(2)“d”** as follows:

*d. Meetings.* Meetings shall be held at least once each ~~month~~ quarter and may be held more frequently if necessary to enable the council to expeditiously discharge its duties.

ITEM 6. Amend paragraph **910.3(3)“d”** as follows:

*d.* Advise and make recommendations to the ~~department’s office of public transportation~~ department concerning public transportation policy.

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

ITEM 7. Amend paragraph **910.4(4)“b”** as follows:

*b.* Forms submitted directly to the department by its recipients or by providers not receiving state or state-administered funds shall be reviewed for completeness by the office of public ~~transportation~~ transit within 10 working days.

ITEM 8. Amend paragraph **910.5(2)“b”** as follows:

*b.* Operates all services open to the public under contract with and under control of a designated transit system, or

ITEM 9. Amend subrule 910.7(1) as follows:

**910.7(1)** If the department of human services purchases services from the noncompliant provider, the ~~department’s office of public transportation~~ transit shall notify the department of human services of the noncompliant finding.

ITEM 10. Amend subrule 910.7(2) as follows:

**910.7(2)** If the noncompliant provider is a recipient of public funds from other than the department of human services, the ~~department’s office of public transportation~~ department shall notify the proper authority as required in Iowa Code ~~subsection 324A.5(3)~~ section 324A.5.

ITEM 11. Amend rule 761—910.8(17A,324A) as follows:

**761—910.8(17A,324A) Revocation.**

**910.8(1)** If certification is revoked, the ~~air and transit division~~ department shall send a written notice of revocation to the provider.

**910.8(2)** The affected public transit system, the provider and the ~~air and transit division~~ department shall meet within 10 days after the date of the revocation notice to determine an acceptable amendment of the transportation services. The amendments which are agreed upon shall become effective within 60 days. The contract between the provider and the affected public transit system shall be amended, if necessary, to agree with the service changes.

**910.8(3)** If the transportation services are not ~~timely~~ amended in a timely manner, the ~~air and transit division~~ department shall initiate actions as required in Iowa Code ~~subsection 324A.5(3)~~ section 324A.5(2).

This rule is intended to implement Iowa Code ~~sections 17A.18 and~~ section 324A.5.

[Filed 2/14/18, effective 4/18/18]

[Published 3/14/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3691C**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

**Rule making related to school transportation services provided by regional transit systems**

The Department of Transportation hereby amends Chapter 911, “School Transportation Services Provided by Regional Transit Systems,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12, 307A.2 and 321.377.

TRANSPORTATION DEPARTMENT[761](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 321.1, 321.189, 321.343, 321.375, 321.377 and 324A.1.

*Purpose and Summary*

The Department is adopting amendments to Chapter 911 to update the chapter. The following list explains each amendment:

- Item 1 updates the office contact information, corrects a telephone number and adds the Department's website.
- Item 2 makes changes to the definitions of "automobile" and "multipurpose vehicle" so the terms refer to the definitions used in Iowa Code section 321.1. This item also amends the definition of "regional transit system" so the term refers to the definition used in Iowa Code section 324A.1. These three terms will only refer to the definitions in the Iowa Code, rather than repeat the definitions so the rules will not need to be modified if the Iowa Code definition changes. Item 2 also updates the definition of "student" to include Head Start participants.
- Item 3 adds a new definition of "public transit system" which refers to the definition used in Iowa Code section 324A.1.
- Item 4 adopts the current parts of the Code of Federal Regulations (CFR) referenced in Chapter 911 as follows: 49 CFR 38, Americans with Disabilities Act; 49 CFR 571, Federal Motor Vehicle Safety Standards; and 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations. While the CFR date in subrule 911.5(1) has not been updated since 2006, no changes to the federal regulations adopted within this chapter have occurred during that time and the Department has adopted the October 1, 2017, CFR. This item also provides the website of the U.S. Government Publishing Office where the public may review the federal regulations.
- Item 5 provides that each driver is subject to certain testing for drug and alcohol usage as detailed by the Federal Transit Administration (FTA). This item changes the word "required" to "detailed" since the FTA does not require preemployment alcohol testing. All other tests listed in subrule 911.6(1) are required by the FTA. Preemployment alcohol testing is optional for employees of public transit systems.
- Item 6 requires that each new driver complete a course of instruction approved by the Iowa Department of Education in the time period required by Iowa Code section 321.376. The amendments comply with the changes made in Iowa Code section 321.376.
- Item 7 allows a driver who is in training to be licensed with a commercial learner's permit as long as the driver abides by the restrictions in rule 761—607.20(321).
- Item 8 adds new subrule 911.6(7), which requires each driver who transports students to undergo a physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners in accordance with Iowa Code section 321.375(1)"d" and with Iowa Department of Education rules. This item also requires the driver to annually submit the signed medical examiner's certificate to the driver's employer.
- Item 9 removes outdated language and requires that buses used for school transportation incorporate a rear emergency exit door.
- Item 10 concerns passenger restraint/protection devices and corrects the wording of Standard No. 225 to read: Child Restraint Anchorage Systems.
- Item 11 adds new subrule 911.7(6), which requires that, when a public transit system purchases a used vehicle from another public transit system, the previous owner's Iowa Department of Education's

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

bus inspection stickers be removed. This item also states that if the purchasing public transit system plans to use the vehicle for school transportation service, a new inspection must be performed on the vehicle.

- Item 12 removes unnecessary language.
- Item 13 eliminates the required use of a prescribed form created by the Department when maintenance personnel annually inspect a vehicle. Each mechanic or dealership where inspections are completed likely has its own form and therefore the need for a specific form was removed.
- Item 14 adds the option of a mobile data terminal tablet as an item of equipment used to communicate between the vehicle and the regional transit system's base of operations. Many regional transit agencies utilize this technology, connected by cellular service, to communicate with the driver. This item also requires fire extinguishers to be inspected and maintained in accordance with standards set by the National Fire Protection Association. These standards mirror those required of Iowa school buses as detailed in 281—Chapter 44 of the Iowa Department of Education's rules. The National Fire Protection Association's standard for portable fire extinguishers may be accessed with a free login to the Association's website. Item 14 also requires that the following additional equipment be on board public transit vehicles transporting school children: a seatbelt web cutter, roadside reflective triangles, an operable flashlight and a reflective vest. These items are required of all public transit vehicles, regardless of whether the vehicle is transporting school children or not, but the Iowa Department of Education is in agreement with listing these items in this chapter to define expectations. Flashlights must be on board vehicles when the vehicle is in use, whether assigned to the vehicle or to the driver. Often, during compliance review checks, flashlights have been found to contain nonworking batteries; therefore the word "operable" was included to ensure that the flashlights are in working condition at all times.
- Item 15 states that every driver must make a complete stop before driving across the tracks of any railroad crossing, in accordance with Iowa Code section 321.343. Iowa Code section 321.343 was amended, and the Department made changes to the rule to refer to these requirements.
- Item 16 requires the driver to perform posttrip inspections that include a walk-through to the back of the vehicle to ensure no sleeping or hiding children are left behind. Children, especially younger students, are small and can be difficult to see in a rearview mirror of a vehicle.
- Item 17 amends the chapter's implementation sentence to add a reference to Iowa Code section 321.375, which concerns school bus drivers' qualifications and grounds for suspension.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 3, 2018, as **ARC 3534C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on February 13, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

TRANSPORTATION DEPARTMENT[761](cont'd)

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 911.1(2) as follows:

**911.1(2) Information.** Information and forms may be obtained from the Office of Public Transit, Iowa Department of Transportation, Office of Public Transit, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1875 (515)233-7870; or the department's website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 2. Amend rule ~~761—911.2(321,324A)~~, definitions of “Automobile,” “Multipurpose vehicle,” “Regional transit system” and “Student,” as follows:

~~“Automobile” means a motor vehicle, except a motorcycle or motorized bicycle, designed primarily to carry nine persons or less, the same as defined in Iowa Code section 321.1.~~

~~“Multipurpose vehicle” means a motor vehicle designed to carry not more than ten persons, and constructed either on a truck chassis or with special features for occasional off-road operation, the same as defined in Iowa Code section 321.1.~~

~~“Regional transit system” means a regional transit system designated under the same as defined in Iowa Code section 324A.1 and all subcontracted providers to the designated regional transit system. It does not mean an urban transit system designated under that section.~~

~~“Student” means a person attending a public or nonpublic school, grades prekindergarten through high school, including a Head Start participant.~~

ITEM 3. Adopt the following **new** definition of “Public transit system” in rule ~~761—911.2(321,324A)~~:

~~“Public transit system” means the same as defined in Iowa Code section 324A.1.~~

ITEM 4. Amend rule 761—911.5(321) as follows:

**761—911.5(321) Adoption of federal regulations.**

**911.5(1) Code of Federal Regulations.** The department of transportation adopts the following portions of the October 1, ~~2006~~ 2017, Code of Federal Regulations, which are referenced throughout this chapter:

*a.* 49 CFR Part 38, Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.

*b.* 49 CFR Part 571, Federal Motor Vehicle Safety Standards.

*c.* 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.

**911.5(2) Obtaining copies of regulations.** Copies of these regulations are available from the state law library or ~~through the Internet at <http://www.dot.gov>~~ online through the U.S. Government Publishing Office at [www.ecfr.gov](http://www.ecfr.gov).



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

ITEM 5. Amend subrule 911.6(1) as follows:

**911.6(1)** *FTA drug and alcohol testing.* Each driver is subject to the following testing for drug and alcohol usage as ~~required~~ detailed by the Federal Transit Administration in 49 CFR Part 655, including:

- a. Preemployment testing.
- b. Reasonable suspicion testing.
- c. Postaccident testing.
- d. Random testing.
- e. Return to duty testing.
- f. Follow-up testing.

ITEM 6. Amend subrule 911.6(2) as follows:

**911.6(2)** *Training.* Each new driver must, before or within the first six months of assignment and at least every ~~±~~ 24 months thereafter, complete a course of instruction approved by the department of education, in accordance with Iowa Code section 321.376.

ITEM 7. Amend subrule 911.6(5) as follows:

**911.6(5)** *Driver licensing.* Each driver must be licensed appropriately for the size and type of vehicle used as provided in Iowa Code section 321.189. A Class A, B or C commercial driver's license with passenger endorsement may be required. A driver may operate the vehicle for purposes of training if the driver has the appropriate commercial learner's permit as defined in 761—Chapter 607, and the restrictions in rule 761—607.20(321) shall apply. If a commercial driver's license is not required, a Class D (chauffeur) license with passenger endorsement is required.

ITEM 8. Adopt the following new subrule 911.6(7):

**911.6(7)** *Physical fitness.* Each driver who transports students must undergo a physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners in accordance with Iowa Code section 321.375(1)“d” and with department of education rule 281—43.15(285) or 281—43.17(285). Annually, the driver must submit the signed medical examiner's certificate to the driver's employer.

ITEM 9. Amend subparagraph **911.7(1)“b”(1)** as follows:

(1) Standard No. 217, Bus Emergency Exits and Window Retention and Release. Buses ~~purchased after January 1, 2000,~~ utilized for school transportation shall incorporate a rear emergency exit door in meeting this standard.

ITEM 10. Amend paragraph **911.7(2)“f”** as follows:

f. Standard No. 225, Child Restraint ~~Anchoring~~ Anchorage Systems.

ITEM 11. Adopt the following new subrule 911.7(6):

**911.7(6)** *Transfer to another public transit system.* When a public transit system purchases a used vehicle from another public transit system, the previous owner's department of education's bus inspections stickers must be removed. If the purchasing public transit system plans to use the vehicle for school transportation service, a new inspection must be performed on the vehicle.

ITEM 12. Amend subrule 911.8(2) as follows:

**911.8(2)** *Daily pretrip vehicle inspections.* Drivers of these vehicles must perform daily pretrip vehicle inspections using a form prescribed by the department of ~~transportation~~. Regional transit systems must retain daily pretrip vehicle inspection reports and documentation of follow-up maintenance for one year.

ITEM 13. Amend subrule 911.8(3) as follows:

**911.8(3)** *Annual vehicle inspection.* Maintenance personnel must annually inspect each vehicle ~~using a form prescribed by the department of transportation~~. Regional transit systems must retain annual vehicle inspection forms records for one year.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 14. Amend rule 761—911.9(321) as follows:

**761—911.9(321) Safety equipment.** Regional transit system vehicles assigned to provide school transportation service must carry the following safety equipment:

**911.9(1) Communication equipment.** Each vehicle must be equipped with a two-way radio, ~~or~~ cellular telephone, or mobile data terminal tablet capable of emergency communication between the vehicle and the regional transit system's base of operations.

**911.9(2)** No change.

**911.9(3) Fire extinguisher.** Each bus or school bus must be equipped with a minimum 5-pound capacity, dry chemical fire extinguisher. Each automobile and multipurpose vehicle must be equipped with an extinguisher of at least 2.5-pound capacity. Extinguishers must have a 2A-10BC rating. All fire extinguishers shall be inspected and maintained in accordance with the National Fire Protection Association requirements. The standards for portable extinguishers are available online from the National Fire Protection Association at [www.nfpa.org](http://www.nfpa.org).

**911.9(4) Seatbelt web cutter.** A seatbelt web cutter must be mounted or placed within reach of the driver.

**911.9(5) Roadside reflective triangles.** Each vehicle must be equipped with roadside reflective triangles for use in case of breakdown or emergency.

**911.9(6) Flashlight.** Each vehicle must be equipped with an operable flashlight or each driver must be assigned an operable flashlight to be in the vehicle at all times of operation.

**911.9(7) Reflective vest.** Each vehicle must be equipped with a reflective vest or each driver must be assigned a reflective vest that must be in the vehicle at all times of operation. Individual regional transit systems are to establish a policy for when the reflective vests must be worn.

ITEM 15. Amend subrule 911.10(4) as follows:

**911.10(4) Stops at rail crossings.** Every driver must make a complete stop before ~~crossing driving across~~ the tracks of any railroad crossing, in accordance with Iowa Code section 321.343. ~~In the case of a bus or school bus, the driver must open the service entrance door, look and listen for approaching trains and proceed to cross the tracks only when the driver can do so safely. No stop is needed where the crossing is posted with an exempt sign.~~

ITEM 16. Amend subrule 911.10(8) as follows:

**911.10(8) Posttrip inspection.** After each trip that had students on board, the driver must perform a posttrip inspection of the interior of the vehicle ~~used to transport the students.~~ The posttrip inspection must include a walk-through to the back of the vehicle to ensure that no sleeping or hiding children are left behind.

ITEM 17. Amend **761—Chapter 911**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 321.1, 321.189, 321.343, 321.375, 321.376, 321.377 and 324A.1.

[Filed 2/14/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3692C**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

**Rule making related to federal transit assistance**

The Department of Transportation hereby amends Chapter 922, "Federal Transit Assistance," Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 307A.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 324A.4 and 324A.6.

*Purpose and Summary*

The amendment to this chapter:

- Reflects the current federal transit program names and updates or includes descriptions of these federal transit funding sources that the Department receives for distribution. Program names and United States Code sections for the former Section 16 and Section 18 of the Federal Transit Act have been updated: Section 16 is renamed Section 5310 and Section 18 is renamed Section 5311. A new paragraph to subrule 922.1(1) detailing the transit capital funding source, Section 5339, has also been added.
- Updates who is designated by the Governor to administer these federal programs that are subject to review by the Federal Transit Administration (FTA). The Department is responsible for the administration of these transit programs rather than the Transportation Commission. The Transportation Commission's role is to award funds from these programs when they are not allocated by formula.
- Makes changes to the subrule concerning the state management plan to reflect the current federal transit programs and current name and date of the Iowa state management plan, to correct the relevant FTA circulars, and to update the Department's contact information to include the correct office name and add a telephone number and a website address.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 3, 2018, as **ARC 3536C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on February 13, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Review by Administrative Rules Review Committee*

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

TRANSPORTATION DEPARTMENT[761](cont'd)

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making action is adopted:

Amend rule 761—922.1(324A) as follows:

**761—922.1(324A) Projects for nonurbanized areas and private nonprofit transportation providers.**

**922.1(1) General information.**

~~a. Section 18 of the Federal Transit Act established a program of federal financial assistance for support of public transportation projects in areas outside urbanized areas of 50,000 or more population as defined by the U.S. Census Bureau.~~

~~b. a. Section 16 of the same Act 5310 of Title 49 United States Code established the enhanced mobility of seniors and individuals with disabilities program, a program of federal financial assistance for support of capital acquisitions for private nonprofit providers of specialized transportation services for elderly seniors and handicapped persons with disabilities.~~

~~b. Section 5311 of Title 49 United States Code established the formula grants for rural areas program, a program of federal financial assistance for support of public transportation in rural areas with populations of less than 50,000, as defined by the U.S. Census Bureau.~~

~~c. Section 5339 of Title 49 United States Code established the bus and bus facilities program, a program of federal financial assistance for support of capital acquisitions for public transportation providers.~~

~~e. d. As required by the Federal Transit Act Title 49 United States Code, the Iowa transportation commission department has been designated by the governor to administer both these programs within Iowa, subject to review by the Federal Transit Administration (FTA).~~

**922.1(2) State management plan.**

~~a. Sections 16 and 18 5310, 5311 and 5339 of Title 49 United States Code federal transit assistance programs within Iowa shall be administered according to “Iowa’s the “Iowa State Management Plan for the Section 16 and 18 FTA Programs Administration of Funding and Grants Under the Federal Transit Administration, Sections 5310, 5311, 5316, 5317 and 5339 Programs,” dated July 1, 1993 March 2017, which has been prepared by the department and approved by the Federal Transit Administration in conformance with FTA Circulars 9040 and 9070.1C 5100.1, 9040.1G and 9070.1G.~~

~~b. Copies of the state management plan are available upon request from: Air and Transit Division the Office of Public Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870; or the department’s website at [www.iowadot.gov](http://www.iowadot.gov).~~

This rule is intended to implement Iowa Code chapter 324A.

[Filed 2/14/18, effective 4/18/18]

[Published 3/14/18]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3693C**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

**Rule making related to capital match revolving loan fund**

The Department of Transportation hereby amends Chapter 923, “Capital Match Revolving Loan Fund,” Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 307A.2 and in 1985 Iowa Acts, chapter 265.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 1985 Iowa Acts, chapter 265.

*Purpose and Summary*

The Department is adopting amendments to Chapter 923 to update the chapter. The following list explains each amendment:

- Item 1 updates subrule 923.1(1), which explains the scope of the chapter, to include state-funded capital projects in addition to federally funded capital projects. This change will allow public transit systems to obtain local matching funds required to qualify for capital purchases under state-funded projects. Federal capital projects remain eligible for local matching funds under the Capital Match Revolving Loan Fund. Since fiscal year 2007, the Department has been the recipient of money from the Rebuild Iowa Infrastructure Fund for the Public Transit Infrastructure Grant Program as detailed in Chapter 924. The Rebuild Iowa Infrastructure Fund is to be used to fund public transit vertical infrastructure projects. Making state-funded capital projects eligible through the Capital Match Revolving Loan Fund will ensure that every transit agency can apply for Public Transit Infrastructure Grant Program funds and complete projects in a timely manner. Item 1 also updates subrule 923.1(2) to correct the name of the office responsible for administering this chapter and to add the Department's website address.

- Item 2 adds the definitions of "department," "project" and "public transit system" to the chapter instead of referring the reader to another chapter to find the definitions.

- Item 3 makes changes to rule 761—923.3(71GA,ch265), which concerns system eligibility criteria, to clarify the language and to coordinate the criteria within the rule with the criteria included in 761—paragraphs 920.5(1)"a," "b," and "c." The Department is removing language concerning use of a centralized accounting system and having one person responsible for managing assets, operations and funding of the system in favor of language requiring compliance with applicable state and federal laws and regulations and the required length of time to keep documentation. The type of accounting system used and number of staff involved at the public transit agency level do not matter so long as the state and federal financial requirements are followed.

- Item 4 makes changes to rule 761—923.4(71GA,ch265), which concerns project eligibility criteria, to strike a criterion that is no longer applicable concerning federal funding eligibility since the Department now includes state projects funded through the Public Transit Infrastructure Grant Program. This item also makes editorial changes for clarity and consistency and corrects a reference to an Iowa Code citation that defines the term "vanpool."

- Item 5 updates rule 761—923.5(71GA,ch265), which concerns procedures, to reflect that a loan request may be for either state or federal funding, to strike the obsolete division name of "air and transit division" and replace it with "department," to make editorial corrections for readability, and to change "signing" of contracts to "execution" to reflect electronic signature methods. This item also changes the approval decisions from the Transportation Commission to the Department to allow for expediency in providing loans as requests are submitted. Item 5 also removes the following duplicative wording: "Submission may be on an annual or individual basis." The timing for submitting an application is already explained under subrule 923.5(2) and allows for loan requests to be made annually or at any time a specific need arises.

TRANSPORTATION DEPARTMENT[761](cont'd)

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 3, 2018, as **ARC 3535C**. No public comments or requests for oral presentations were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Department on February 13, 2018.

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 761—923.1(71GA,ch265) as follows:

**761—923.1(71GA,ch265) General information.**

**923.1(1) Scope of chapter.** The general assembly appropriated money from the petroleum overcharge fund to the department to be used as a revolving loan fund for transit capital purchases by public transit systems. The revolving loan fund will enable public transit systems to obtain the matching funds required to qualify for capital purchases under state or federally funded projects. The fund will provide multiyear interest-free loans to public transit systems to allow faster capital acquisitions. Loan recipients shall be required to demonstrate ability to repay the loan from budgeted funds or revenues.

**923.1(2) Information.** ~~Information, requests~~ Requests for information about and for assistance, and answers to questions about with the preparation and submission of loan requests ~~may be obtained by contacting:~~ should be directed to the Office of Public Transportation, Air and Transit Division Transit, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870. Information is also available on the department's website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 2. Amend rule 761—923.2(71GA,ch265) as follows:

**761—923.2(71GA,ch265) Definitions.** ~~The definitions in rule 761—920.3(324A), Iowa Administrative Code, for “department,” “public transit system,” and “project” shall also apply to this chapter.~~

“Department” means the Iowa department of transportation.

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

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

“Public transit system” means the same as defined in Iowa Code section 324A.1.

ITEM 3. Amend rule 761—923.3(71GA,ch265) as follows:

**761—923.3(71GA,ch265) System eligibility.** A public transit system is eligible to request a capital assistance loan from the revolving loan fund ~~if it~~ provided that the public transit system complies with all of the following criteria:

~~923.3(1) It uses a centralized accounting system that maintains primary documentation for all revenue and expenses~~ The transit system abides by all applicable state and federal laws and regulations.

~~923.3(2) 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.

~~923.3(3) It~~ The transit system maintains ~~its~~ 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.

ITEM 4. Amend rule 761—923.4(71GA,ch265) as follows:

**761—923.4(71GA,ch265) Project eligibility.**

**923.4(1)** A project is eligible if it meets all of the following criteria:

~~a. It~~ The project is a transit-related project for a capital purchase, e.g., new or replacement vehicles, facilities, or both.

~~b. It qualifies for federal funding approval which includes meeting the federal spare vehicle ratio requirement.~~

~~e. b.~~ It The project meets an identifiable transit need that has been included in the public transit system’s planning or programming document.

~~d. c.~~ It The project is part of a statewide program of transit projects which has been adopted by the transportation commission.

~~e. d.~~ The local funding needed for the project justifiably exceeds the public transit system’s annual capital match funding capability.

**923.4(2)** A project to purchase vans for a vanpool, as defined in Iowa Code ~~subsection 325.1(9)~~ section 325A.12, may be submitted by an individual or a group through the appropriate public transit system. A vanpool project is eligible for an interest-free loan from the revolving loan fund only after funds for all other projects have been allocated.

ITEM 5. Amend rule 761—923.5(71GA,ch265) as follows:

**761—923.5(71GA,ch265) Procedure.**

~~923.5(1) Federal funding~~ Funding request. The public transit system shall submit ~~an~~ a funding application for ~~federal funding approval~~ of the proposed project to either the ~~air and transit division department~~ or to the Federal Transit Administration, as required by the type of funding requested.

**923.5(2) Loan request.** The public transit system shall normally submit a request for a revolving fund loan to the ~~air and transit division department~~ when the annual grant application is made, but may submit a request at any time if a specific need arises. The request shall include, but not be limited to, the following topics and documents:

~~a. to e.~~ No change.

**923.5(3) Criteria for selection.** The ~~air and transit division department~~ shall review each loan request and shall evaluate the projects for funding. Based on the following criteria ~~(not listed in order of preference in no particular order)~~, preference shall be given to projects that:

~~a. to f.~~ No change.

**923.5(4) Approval.** Based on available funds, the ~~air and transit division department~~ shall approve loans for projects meeting the criteria in ~~subrule 923.4(1) or shall submit recommended loan projects~~

TRANSPORTATION DEPARTMENT[761](cont'd)

~~meeting the criteria in subrule 923.4(2) to the transportation commission for approval. Submission may be on an annual or an individual basis rule 761—923.4(71GA,ch265).~~

~~923.5(5) Agreement. Upon approval by the transportation commission, the air and transit division department shall prepare a loan contract and send it to the public transit system for signing. The signed contract shall be returned to the air and transit division for signing by the department execution.~~

~~923.5(6) Default. If a public transit system fails to make a loan payment as agreed in the contract, the air and transit division department may, at its option, deduct the amount of any past due loan payment past due from state transit assistance payments allocated to that transit system.~~

[Filed 2/14/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3694C**

## **UTILITIES DIVISION[199]**

**Adopted and Filed**

### **Rule making related to cogeneration and small power production**

The Utilities Board hereby amends Chapter 15, “Cogeneration and Small Power Production,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 17A.4 and chapter 476.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 476.58.

#### *Purpose and Summary*

This rule making sets the standards for safe installation and operation of interconnections between distributed general facilities and electric distribution facilities.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 3, 2018, as **ARC 3538C**.

The Iowa Association of Electric Cooperatives (IAEC); MidAmerican Energy Company (MidAmerican); the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; and Interstate Power and Light Company (IPL) filed statements of position. While expressing general appreciation for the Board's rule-making efforts, IAEC identified minor inconsistencies between proposed paragraph 15.10(1)“a” and Chapter 45 of the Board's administrative rules, which the Board has corrected in this adopted rule making, and expressed confusion over the last paragraph of new 15.10(3)“b.” MidAmerican and OCA suggested a nonsubstantive change to subrule 15.10(5), which the Board has addressed in this rule making. IPL expressed support for the Board's revision to the definition of “disconnection device,” which was corrected prior to publication of the Notice to mirror the definition in Chapter 45.

The Board issued an order adopting amendments on February 12, 2018. The order is available on the Board's electronic filing system at [efs.iowa.gov](http://efs.iowa.gov) under Docket No. RMU-2016-0006. Nonsubstantive changes were made to update IEEE code citations and to provide consistency with Chapter 45.



UTILITIES DIVISION[199](cont'd)

*Adoption of Rule Making*

This rule making was adopted by the Utilities Board on February 12, 2018.

*Fiscal Impact*

After analysis and review of this rule making, no fiscal impact is anticipated.

*Jobs Impact*

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

*Waivers*

Chapter-specific waiver provisions are unnecessary as any person may apply for a waiver of any Board rule under rule 199—1.3(17A,474,476).

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Disconnection device,” “Distributed generation facility” and “Electric meter” in rule **199—15.1(476)**:

“*Disconnection device*” means a lockable visual disconnect or other disconnection device capable of isolating, disconnecting, and de-energizing the residual voltage in a distributed generation facility.

“*Distributed generation facility*” means a qualifying facility, an AEP facility, or an energy storage facility.

“*Electric meter*” means a device used by an electric utility that measures and registers the integral of an electrical quantity with respect to time.

ITEM 2. Amend rule 199—15.10(476) as follows:

**199—15.10(476) Standards for interconnection, safety, and operating reliability.** For purposes of this rule, “electric utility” or “utility” means both rate-regulated and non-rate-regulated electric utilities.

**15.10(1) Acceptable standards.** The interconnection of ~~qualifying facilities and AEP~~ distributed generation facilities and associated interconnection equipment to an electric utility system shall meet the applicable provisions of the publications listed below:

*a.* Standard for Interconnecting Distributed Resources with Electric Power Systems, ~~ANSI/IEEE~~ IEEE Standard 1547-2003. For guidance in applying IEEE Standard 1547, the utility may refer to:

(1) IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—~~IEEE Standard 519-1992~~ 519-2014; and

(2) IEC/TR3 61000-3-7 Assessment of Emission Limits for Fluctuating Loads in MV and HV Power Systems.

*b.* Iowa Electrical Safety Code, as defined in 199—Chapter 25.

*c.* National Electrical Code, ~~ANSI/NFPA 70-2011~~ 70-2014.

**15.10(2) Modifications required.** Rescinded IAB 7/23/03, effective 8/27/03.

**15.10(3) Interconnection facilities.**

## UTILITIES DIVISION[199](cont'd)

~~a.~~ The utility may require the distributed generation facility to have the capability to be isolated from the utility, either by means of a lockable, visible break isolation device accessible by the utility, or by means of a lockable isolation device whose status is indicated and is accessible by the utility. If an isolation device is required by the utility, the device shall be installed, owned, and maintained by the owner of the distributed generation facility and located electrically between the distributed generation facility and the point of interconnection. A draw-out type of circuit breaker accessible to the utility with a provision for padlocking at the drawn-out position satisfies the requirement for an isolation device. A distributed generation facility placed in service after July 1, 2015, is required to have installed a disconnection device. The disconnection device shall be installed, owned, and maintained by the owner of the distributed generation facility and shall be easily visible and adjacent to an interconnection customer's electric meter at the facility. Disconnection devices are considered easily visible and adjacent: for a home or business, up to ten feet away from the meter and within the line of sight of the meter, at a height of 30 inches to 72 inches above final grade; or for large areas with multiple buildings that require electric service, up to 30 feet away from the meter and within the line of sight of the meter, at a height of 30 inches to 72 inches above final grade. The disconnection device shall be labeled with a permanently attached sign with clearly visible letters that gives procedures/directions for disconnecting the distributed generation facility.

(1) If an interconnection customer with distributed generation facilities installed prior to July 1, 2015, adds generation capacity to its existing system that does not require upgrades to the electric meter or electrical service, a disconnection device is not required, unless required by the electric utility's tariff. The customer must notify the electric utility before the generation capacity is added to the existing system.

(2) If an interconnection customer with distributed generation facilities installed prior to July 1, 2015, upgrades or changes its electric service, the new or modified electric service must meet all current utility electric service rule requirements.

~~b.~~ For all distributed generation installations, the customer shall be required to provide and place a permanent placard no more than ten feet away from the electric meter. The placard must be visible from the electric meter. The placard must clearly identify the presence and location of the disconnection device for the distributed generation facilities on the property. The placard must be made of material that is suitable for the environment and must be designed to last for the duration of the anticipated operating life of the distributed generation facility. If no disconnection device is present, the placard shall state "no disconnection device".

If the distributed generation facility is not installed near the electric meter, an additional placard must be placed at the electric meter to provide specific information regarding the distributed generation facility and the disconnection device.

~~b. c.~~ The interconnection shall include overcurrent devices on the facility to automatically disconnect the facility at all currents that exceed the full-load current rating of the facility.

~~e. d.~~ Facilities Distributed generation facilities with a design capacity of 100 kilowatts or less must be equipped with automatic disconnection upon loss of electric utility-supplied voltage.

~~d. e.~~ Those facilities that produce a terminal voltage prior to the closure of the interconnection shall be provided with synchronism-check devices to prevent closure of the interconnection under conditions other than a reasonable degree of synchronization between the voltages on each side of the interconnection switch.

**15.10(4) Access.** ~~If an isolation device is required by the utility, both the operator of the qualifying facility or AEP facility and the utility shall have access to the isolation device at all times. An~~ If a disconnection device is required, the operator of the distributed generation facility, the utility, and emergency personnel shall have access to the disconnection device at all times. For distributed generation facilities installed prior to July 1, 2015, an interconnection customer may elect to provide the utility with access to an isolation a disconnection device that is contained in a building or area that may be unoccupied and locked or not otherwise accessible to the utility by installing a lockbox provided by the utility that allows ready access to the isolation disconnection device. The lockbox shall be in a location determined by the utility, in consultation with the customer, to be accessible by the utility. The

UTILITIES DIVISION[199](cont'd)

interconnection customer shall permit the utility to affix a placard in a location of the utility's choosing that provides instructions to utility operating personnel for accessing the ~~isolation~~ disconnection device. If the utility needs to isolate the distributed generation facility, the utility shall not be held liable for any damages resulting from the actions necessary to isolate the generation facility.

**15.10(5) Inspections and testing.** The operator of the ~~qualifying facility or AEP distributed generation~~ facility shall adopt a program of inspection and testing of the generator and its appurtenances and the interconnection facilities in order to determine necessity for replacement and repair. Such a program shall include all periodic tests and maintenance prescribed by the manufacturer. If the periodic testing of interconnection-related protective functions is not specified by the manufacturer, periodic testing shall occur at least once every five years. All interconnection-related protective functions shall be periodically tested, and a system that depends upon a battery for trip power shall be checked and logged. The operator shall maintain test reports and shall make them available upon request by the electric utility. Representatives of the utility shall have access at all reasonable hours to the interconnection equipment specified in subrule 15.10(3) for inspection and testing with reasonable prior notice to the applicant.

**15.10(6) Emergency disconnection.** In the event that an electric utility or its customers experience problems of a type that could be caused by the presence of alternating currents or voltages with a frequency higher than 60 Hertz, the utility shall be permitted to open and lock the interconnection switch pending a complete investigation of the problem. Where the utility believes the condition creates a hazard to the public or to property, the disconnection may be made without prior notice. However, the utility shall notify the operator of the ~~qualifying facility or AEP distributed generation~~ facility by written notice and, where possible, verbal notice as soon as practicable after the disconnections.

**15.10(7) Notification.** When the distributed generation facility is placed in service, owners of interconnected distributed generation facilities are required to notify local fire departments via U.S. mail of the location of distributed generation facilities and the associated disconnection device(s). The owner is required to provide any information related to the distributed generation facility as reasonably required by that local fire department including but not limited to:

*a.* A site map showing property address; service point from utility company; distributed generation facility and disconnect location(s); location of rapid shutdown and battery disconnect(s), if applicable; property owner's or owner's representative's emergency contact information; utility company's emergency telephone number; and size of the distributed generation facility.

*b.* Information to access the disconnection device.

*c.* A statement from the owner verifying that the distributed generation facility was installed in accordance with the current state-adopted National Electrical Code.

**15.10(8) Disconnections.** If an interconnection customer fails to comply with the foregoing requirements of this rule, the electric utility may require disconnection of the applicant's distributed generation facility until the facility complies with this rule. The disconnection process shall be specified in individual electric utility tariffs or in the interconnection agreement. If separate disconnection of only the distributed generation facility is not feasible or safe, the customer's electric service may be disconnected as provided in 199—Chapter 20.

**15.10(9) Reconnections.** If a customer's distributed generation facility or electric service is disconnected due to noncompliance with this rule, the customer shall be responsible for payment of any costs associated with reconnection once the facility is in compliance with the rules.

[Filed 2/12/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3695C****UTILITIES DIVISION[199]****Adopted and Filed****Rule making related to nonutility services**

The Utilities Board hereby amends Chapter 34, “Nonutility Service,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.4, 474.5 and 476.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 476.2, 476.73, 476.80 and 546.7.

*Purpose and Summary*

This rule making identifies and updates or eliminates rules that are outdated or inconsistent with statutes and other administrative rules.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 22, 2017, as **ARC 3457C**.

On December 12, 2017, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed a statement indicating that OCA had no objection to the proposed amendment. Also on December 12, 2017, Interstate Power and Light Company (IPL) and MidAmerican Energy Company (MidAmerican) (collectively the Joint Utilities) filed a statement objecting to the proposed amendment that would adopt a revised definition, in terms of 60 percent of gross revenue, of the “engaged primarily” standard for a competitor’s eligibility for access to certain utility services. In particular, the Joint Utilities argued that the Board’s proposed amendment is unnecessary since they claim that the current rule language is “entirely consistent with Iowa Code §476.80 because it mirrors the language found therein and does not warrant a change.” They further argued that the proposed redefinition of the “engaged primarily” standard in terms of a percentage of gross business revenue is inconsistent with their business practices. The Board considered the comments but found that the 60 percent threshold was a clearer guideline than the current rule.

The Board issued an order adopting the amendment on February 12, 2018. The order is available on the Board’s electronic filing system at [efs.iowa.gov](http://efs.iowa.gov) under Docket No. RMU-2016-0039. The Board adopted the amendment as published under Notice of Intended Action.

*Adoption of Rule Making*

This rule making was adopted by the Utilities Board on February 12, 2018.

*Fiscal Impact*

After analysis and review of this rule making, the Board concludes that the amendment will have no effect on the expenditure of public moneys within the State of Iowa.

UTILITIES DIVISION[199](cont'd)

*Jobs Impact*

After analysis and review of this rule making, the Board concludes that the amendment will not have a detrimental effect on employment in Iowa.

*Waivers*

Chapter-specific waiver provisions are unnecessary since any person may apply for waiver of any Board rule under rule 199—1.3(17A,474,476).

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making action is adopted:

Amend rule 199—34.4(476) as follows:

**199—34.4(476) Engaged primarily in providing the same competitive nonutility services in the area—defined.** *“A person is engaged primarily in providing the same competitive nonutility services in the area”* when the person on a ~~full-time~~, an ongoing basis sells or leases equipment or products or offers services, accounting for at least 60 percent of the person's gross business revenue, which are functionally interchangeable and considered similar by the public with the nonutility service provided by a public utility in the same identifiable geographic area where the public utility provides utility service.

[Filed 2/12/18, effective 4/18/18]

[Published 3/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/18.

**ARC 3696C**

**VETERINARY MEDICINE BOARD[811]**

**Adopted and Filed**

**Rule making related to veterinary technician examination**

The Iowa Board of Veterinary Medicine hereby amends Chapter 8, “Auxiliary Personnel,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 169.5.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 169.9.

## VETERINARY MEDICINE BOARD[811](cont'd)

*Purpose and Summary*

The amendments allow the examinations for veterinary technicians to be offered more frequently than annually. The fee for the examination has been changed from \$25 plus a \$10 administrative fee to a fee up to \$45 as set by the Board plus an administrative charge set by the Board. Applicants would be limited to five attempts to obtain a passing score, unless the Board gives approval for an additional attempt.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 17, 2018, as **ARC 3563C**. No public comments were received. One change from the Notice was made. The fee for the veterinary technician examination was reduced from “up to \$50” to “up to \$45.”

*Adoption of Rule Making*

This rule making was adopted by the Board on February 22, 2018.

*Fiscal Impact*

The average number of applicants testing is 70, and the Board does not have immediate plans to increase the fee for the examination.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 811—Chapter 14.

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making will become effective on April 18, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rules 811—8.2(169) and 811—8.3(169) as follows:

**811—8.2(169) Registration of veterinary technicians.** All veterinary technicians shall be under the direct control of the board and shall be registered with the state veterinarian, bureau of animal industry, Iowa department of agriculture and land stewardship. Each veterinary technician must pass both a written and practical test the veterinary technician national examination and a veterinary technician state examination as approved by the board. Applications for registration shall be obtained from and remitted to the board. ~~Successful candidates~~ Applicants who have passed both examinations shall be issued a certificate by the board stating that the named candidate is registered as a veterinary technician.

## VETERINARY MEDICINE BOARD[811](cont'd)

**811—8.3(169) Examination.** The veterinary technician state examination shall be given at least once annually at a site or sites to be designated by the board at least 60 days before the date of the examination. The board may provide for additional veterinary technician state examinations as deemed appropriate. In the event the board provides for additional examinations, the site or sites of the examination shall be designated by the board at least 60 days prior to the date of the examination.

**8.3(1)** An application fee of \$25 in an amount determined by the board not to exceed \$45 shall accompany the application to take the ~~examination~~ veterinary technician state examination; and both the fee and the application must be received by the board at least ~~60~~ 30 days before the examination. An additional fee shall be submitted for the veterinary technician national board-written examination as provided by the when a professional examination service, when is utilized by the board as part of their examination process, which shall be the fees charged for the examination by the professional examination service plus \$10 for the costs of administration. ~~Examinations shall be given annually in June at a site to be designated by the board at least 30 days before the date of the examination~~ The additional fee shall be the charges for the examination by the professional examination service plus administrative costs in an amount determined by the board. The fee for the veterinary technician state examination may be waived for qualifying military service personnel upon request.

**8.3(2)** An applicant who fails to earn a passing score on the veterinary technician state examination shall be entitled to retake the examination not earlier than 90 days since the applicant last took the examination. The applicant must submit a new application and the application fee in accordance with subrule 8.3(1) to retake the veterinary technician state examination. An applicant is limited to five total attempts at the veterinary technician state examination; any additional applications to retake the examination beyond the five allowable attempts may be considered by the board and may be granted at the board's discretion.

~~This rule is intended to implement Iowa Code sections 169.5(8), 169.9, 169.12 and 272C.4.~~

ITEM 2. Amend **811—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 17A.3, 169.4, 169.5, 169.9, 169.12, 169.20 and 272C.4.

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