



IOWA ADMINISTRATIVE BULLETIN

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Pages 411 to 588

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2017

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
7	Friday, September 8, 2017	September 27, 2017
8	Friday, September 22, 2017	October 11, 2017
9	Friday, October 6, 2017	October 25, 2017

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, September 12, 2017, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Capitol complex operations, 100.1, 100.2 Filed **ARC 3287C** 8/30/17
Terrace Hill endowment for the musical arts, amendments to ch 116 Filed **ARC 3262C** 8/16/17

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural seeds—federal regulations adopted, 40.15 Filed **ARC 3286C** 8/30/17

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Dental hygienists—provision of educational services without supervision, 10.3, 10.4
Notice **ARC 3253C** 8/16/17
Dentists and dental hygienists—alternative examination for licensure, amendments to chs
11, 12, 15 Notice **ARC 3252C** 8/16/17
Sedation and nitrous oxide inhalation analgesia, 29.1, 29.3 to 29.5 Notice **ARC 3261C** 8/16/17

ECONOMIC DEVELOPMENT AUTHORITY[261]

Iowa jobs training program, amendments to ch 7 Notice **ARC 3268C** 8/30/17
Community catalyst building remediation program, ch 45 Notice **ARC 3256C** 8/16/17

EDUCATION DEPARTMENT[281]

Community colleges, 21.2(9), 21.32(1), 21.33 Filed **ARC 3288C** 8/30/17
Educating homeless children and youth, amendments to ch 33 Filed **ARC 3289C** 8/30/17
Intensive summer literacy program—voluntary implementation, 61.3 Filed **ARC 3290C** 8/30/17
State standards for progression in reading, amendments to ch 62 Filed **ARC 3291C** 8/30/17
Teacher quality program, 83.1 to 83.3, 83.4(9), 83.5(3), 83.6(1)“e,” 83.7 Notice **ARC 3271C** 8/30/17
Financial management of categorical funding, amendments to ch 98 Notice **ARC 3270C** 8/30/17

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Air quality—permit application process, 22.1(3), 22.105(1) Amended Notice **ARC 3251C** 8/16/17
Electronic submittal of manure management plan updates and associated fees, 65.16(3)“b”
Notice **ARC 3257C** 8/16/17

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Community disaster grants, rescind ch 13 Filed **ARC 3263C** 8/16/17

HUMAN SERVICES DEPARTMENT[441]

Residential care facilities (RCFs)—annual cost reports, cost reimbursement methodology,
52.1(3), 54.3 Notice **ARC 3259C** 8/16/17
Medicaid—anesthesia conversion factor, 79.1(2), 79.1(7)“d” Filed **ARC 3292C** 8/30/17
Medicaid—diagnostic related group (DRG) costs, 79.1(5)“f”(3) Filed **ARC 3293C** 8/30/17
Medicaid—site of service differential for physician services in facilities, 79.1(7)“b” Filed **ARC 3294C** 8/30/17
Medicaid—primary care physician rates, 79.1(7)“c” Filed **ARC 3295C** 8/30/17
Medicaid—reimbursement for Medicare Part A and Part B crossover claims, 79.1(22),
80.2(2) Filed **ARC 3296C** 8/30/17
Foster care—supervised apartment living (SAL), 152.1, 156.12, 202.9 Notice **ARC 3260C** 8/16/17

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Iowa stopgap measure, ch 82 Filed Emergency **ARC 3281C** 8/30/17

IOWA FINANCE AUTHORITY[265]

Home and community-based services rent subsidy program, 24.1 to 24.9 Notice **ARC 3272C** 8/30/17
Military service member home ownership assistance program, 27.2 to 27.5 Notice **ARC 3273C** 8/30/17
HOME investment partnerships program, 39.2 to 39.9 Notice **ARC 3274C** 8/30/17
Shelter assistance fund, 41.1, 41.2, 41.4, 41.6, 41.10 Notice **ARC 3275C** 8/30/17
Emergency solutions grant program, 42.1, 42.2, 42.4 to 42.8, 42.10 to 42.12 Notice **ARC 3276C** 8/30/17

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Fees, 8.1, 8.2(2)“f,” 8.3, 8.4, 8.5(1)“d,” 8.7, 8.9 Notice **ARC 3258C** 8/16/17

Physician supervision of a physician assistant, amendments to ch 21 Filed **ARC 3264C**..... 8/16/17

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Paddlefish fishing; catfish and bass fishing tournaments, 44.2, 44.4, 81.2 Notice **ARC 3279C**..... 8/30/17

PAROLE BOARD[205]

CORRECTIONS DEPARTMENT[201]“umbrella”

Review of rules—title of designated official, communication methods and interview proceedings, juveniles serving life sentences, hearings via videoconferencing, parole, amendments to chs 2 to 8, 10, 11, 14 to 16 Filed **ARC 3297C**..... 8/30/17

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA

COMPREHENSIVE[591]

Environmental protection charge (EPC); insurance fund; aboveground petroleum storage tank fund, rescind chs 5, 6, 10, 12, 14 Notice **ARC 3267C**..... 8/30/17

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Public sector collective bargaining, amend chs 1, 2, 4, 6 to 8, 11, 16; adopt ch 5 Notice **ARC 3277C**, also Filed Emergency **ARC 3278C**..... 8/30/17

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

Problem gambling policies and procedures; racehorse medications, 5.4(12), 10.7(1)“k” Notice **ARC 3255C**..... 8/16/17

REVENUE DEPARTMENT[701]

Electronic filing of W-2 and 1099 forms—extension of deadline, 46.3(3) Notice **ARC 3284C**..... 8/30/17
Property assessment appeal board, amendments to ch 126 Notice **ARC 3285C**..... 8/30/17

SECRETARY OF STATE[721]

Election administration; voting; voter identification and registration, amendments to chs 21, 22, 26, 28 Notice **ARC 3282C**..... 8/30/17

TRANSPORTATION DEPARTMENT[761]

Iowa scenic byway program, amendments to ch 132 Filed **ARC 3298C**..... 8/30/17
RISE program, amendments to ch 163 Filed **ARC 3299C**..... 8/30/17
Recreational trails program, amendments to ch 165 Filed **ARC 3300C**..... 8/30/17
Public improvement quotation process for governmental entities, amendments to ch 180 Notice **ARC 3269C**..... 8/30/17
Iowa airport registration; aircraft registration, amendments to chs 720, 750 Filed **ARC 3301C**..... 8/30/17

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Certificates of franchise authority for cable and video service, 44.7, 44.8 Filed **ARC 3302C**..... 8/30/17

VOTER REGISTRATION COMMISSION[821]

Voter registration; status; lists of registered voters; election registers, 2.8(3), 2.10, 2.14, 2.15, 3.10, 5.1(1), 7.2 Notice **ARC 3283C**..... 8/30/17

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Procedures for department interaction with employers and claimants, amendments to chs 1, 22, 24 Filed **ARC 3265C**..... 8/16/17
Procedures for department interaction with employers and claimants; updates related to technology, amendments to chs 22 to 25 Filed **ARC 3303C**..... 8/30/17
Employer records, reports, contribution and charges; claims; benefits, amendments to chs 22 to 24 Notice **ARC 3250C**..... 8/16/17
Employer contribution and charges; cash value of room and board, amendments to chs 23, 25 Notice **ARC 3254C**..... 8/16/17
Employer contribution and charges; claims and benefits, 23.69, 23.70, 23.72(1), 24.1, 24.39, 24.40 Notice **ARC 3280C**..... 8/30/17
Unemployment appeal hearings; updates related to technology, amendments to ch 26 Filed **ARC 3266C**..... 8/16/17

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Senator Jack Whitver
4019 NE Bellagio Circle
Ankeny, Iowa 50021

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Representative Megan Jones
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Sioux Rapids, Iowa 50585

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

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

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

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

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

DENTAL BOARD[650]

Dental hygienists—provision of educational services without supervision, 10.3, 10.4 IAB 8/16/17 ARC 3253C	Board Office, Suite D 400 S.W. Eighth St. Des Moines, Iowa	September 12, 2017 2 p.m.
Dentists and dental hygienists—alternative examination for licensure, amendments to chs 11, 12, 15 IAB 8/16/17 ARC 3252C	Board Office, Suite D 400 S.W. Eighth St. Des Moines, Iowa	September 12, 2017 2 p.m.
Sedation and nitrous oxide inhalation analgesia, 29.1, 29.3 to 29.5 IAB 8/16/17 ARC 3261C	Board Office, Suite D 400 S.W. Eighth St. Des Moines, Iowa	September 12, 2017 2 p.m.

EDUCATION DEPARTMENT[281]

Teacher quality program, 83.1 to 83.3, 83.4(9), 83.5(3), 83.6(1)“e,” 83.7 IAB 8/30/17 ARC 3271C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 19, 2017 10 to 11 a.m.
Financial management of categorical funding, amendments to ch 98 IAB 8/30/17 ARC 3270C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 19, 2017 9 to 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality—permit application process, 22.1(3), 22.105(1) IAB 8/16/17 ARC 3251C	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	September 5, 2017 10 a.m.
Bacteria water quality criteria; Iowa wasteload allocation (WLA) procedure, 61.2(4), 61.3, 62.8 IAB 7/19/17 ARC 3202C	State Bank Room Washington Public Library 115 W. Washington St. Washington, Iowa	September 5, 2017 4 p.m.
	Meeting Room B Urbandale Public Library 3520 86th St. Urbandale, Iowa	September 6, 2017 4 p.m.
	Harlan Community Library 718 Court St. Harlan, Iowa	September 7, 2017 4 p.m.
Electronic submittal of manure management plan updates and associated fees, 65.16(3)“b” IAB 8/16/17 ARC 3257C	Auditorium Wallace State Office Bldg. Des Moines, Iowa	September 5, 2017 1:30 p.m.

MEDICINE BOARD[653]

Fees, 8.1, 8.2(2)“f,” 8.3, 8.4, 8.5(1)“d,” 8.7, 8.9 IAB 8/16/17 ARC 3258C	Board Office, Suite C 400 S.W. Eighth St. Des Moines, Iowa	September 5, 2017 10 a.m.
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NATURAL RESOURCE COMMISSION[571]

Paddlefish fishing; catfish and bass fishing tournaments, 44.2, 44.4, 81.2 IAB 8/30/17 ARC 3279C	Conference Room 4W Wallace State Office Bldg. Des Moines, Iowa	September 19, 2017 12 noon to 3 p.m.
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PUBLIC SAFETY DEPARTMENT[661]

Consumer fireworks sales licensing and safety standards, ch 265 IAB 6/21/17 ARC 3123C	Public Conference Room 125 Oran Pape State Office Bldg. Des Moines, Iowa	September 8, 2017 10 a.m.
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RACING AND GAMING COMMISSION[491]

Problem gambling policies and procedures; racehorse medications, 5.4(12), 10.7(1)“k” IAB 8/16/17 ARC 3255C	Commission Office, Suite 100 1300 Des Moines St. Des Moines, Iowa	September 5, 2017 9 a.m.
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SECRETARY OF STATE[721]

Election administration; voting; voter identification and registration, amendments to chs 21, 22, 26, 28 IAB 8/30/17 ARC 3282C	Secretary of State Office Lucas State Office Bldg. Des Moines, Iowa	October 16, 2017 3 p.m.
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TRANSPORTATION DEPARTMENT[761]

Public improvement quotation process for governmental entities, amendments to ch 180 IAB 8/30/17 ARC 3269C	South Conference Room, First Floor Administration Bldg. 800 Lincoln Way Ames, Iowa	September 21, 2017 10 a.m. (If requested)
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VOTER REGISTRATION COMMISSION[821]

Voter registration; status; lists of registered voters; election registers, 2.8(3), 2.10, 2.14, 2.15, 3.10, 5.1(1), 7.2 IAB 8/30/17 ARC 3283C	Secretary of State Office Lucas State Office Bldg. Des Moines, Iowa	October 16, 2017 3 p.m.
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The following list will be updated as changes occur.

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

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

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

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ARC 3268C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.106A and 15.108(6), the Iowa Economic Development Authority gives Notice of Intended Action to amend Chapter 7, “Iowa Jobs Training Program,” Iowa Administrative Code.

The proposed amendments to Chapter 7 incorporate changes made in statute over several legislative sessions and changes desired by community college stakeholders and the Economic Development Authority. These amendments are proposed to ensure consistent use of language and terms and that the allocation of funds conforms to Iowa Code chapter 260C; update program definitions, maximum award amounts, application scoring criteria where applicable, references to 261—Chapter 195, “Public Records and Fair Information Practices,” and forms used by community colleges; incorporate references to the 260F data system; and strike references to entrepreneurial training projects, job retention projects, and projects funded through the Grow Iowa Values Fund.

The Economic Development Authority Board approved this rule making at its meeting held on July 21, 2017.

Interested persons may submit comments on or before September 19, 2017. Written comments may be submitted to Kristin Hanks-Bents, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; e-mail kristin.hanks-bents@iowaeda.com.

These amendments do not have any fiscal impact to the state of Iowa.

After analysis and review of this rule making, the Authority finds that providing financial assistance for projects under the Iowa Jobs Training Program will have a positive effect on job creation and growth.

These amendments are intended to implement Iowa Code chapter 260F.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of “Agreement,” “Authority,” “Certification,” “Date of commencement of the project,” “Eligible business,” “Employee,” “Jobs training program,” “Participating business,” “Program services,” and “Project” in rule **261—7.3(260F)**:

“*Agreement*” means the agreement between a business and a community college concerning a project.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Certification*” means the community college and business agree that the information contained in the application is accurate. The certification also gives the authority permission to research the history of the business and perform other related activities necessary for the evaluation of the application.

“*Date of commencement of the project*” means the date of the preliminary agreement or the date an application for assistance is received by the authority.

“*Eligible business*” or “*business*” means a business training employees which is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, warehousing or wholesaling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health, or professional services and which meets the other criteria established by the authority. A business engaged in the provision of services must have customers outside of Iowa to be eligible. The business site to receive training must be located in Iowa. “Eligible business” does not include a business whose training costs can be economically funded under Iowa Code chapter 260E, a business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

of the state, or a business which is involved in a strike, lockout, or other labor dispute in Iowa. If a business closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area of the state, then the business is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

“Employee” means a person currently employed by a business who is to be trained. An employee for whom training is planned must hold a current position intended by the employer to exist on an ongoing basis with no planned termination date. Training is available only to an employee who is hired by the business, is currently employed by the business, and for whom the business pays withholding tax. However, “employee” does not include a person with executive responsibilities, a replacement worker who is hired as a result of a strike, lockout, or other labor dispute in Iowa, or an employee hired as a temporary worker.

“Jobs training program” or *“program”* means the project or projects established by a community college for the training of employees.

“Participating business” means a business training employees which enters into an agreement with the community college.

“Program services” includes but is not limited to the following:

1. Training of employees;
2. Adult basic education and job-related instruction;
3. Career and technical skill-assessment services and testing;
4. Training facilities, equipment, materials, and supplies;
5. Administrative expenses for the jobs training program;
6. Subcontracted services with institutions governed by the state board of regents, private colleges or universities, or other federal, state, or local agencies;
7. Contracted or professional services.

“Project” means a training arrangement which is the subject of an agreement entered into between a community college and an eligible business to provide program services. “Project” also means an authority-sponsored training arrangement which is sponsored by the authority and administered under Iowa Code sections 260F.6A and 260F.6B.

ITEM 2. Rescind the definitions of “Department,” “Lead business,” “Prospective employee,” and “Supplier network training” in rule **261—7.3(260F)**.

ITEM 3. Amend rule 261—7.4(260F) as follows:

261—7.4(260F) Program funding.

7.4(1) Program funds consist of any moneys allocated by the ~~department~~ authority and the board for the purpose of this program, all repayments of loans or other awards or recaptures of awards, and earned interest, including interest earned on program funds held by the community colleges.

7.4(2) A community college 260F account is established in the ~~department~~ authority. The ~~distribution allocation~~ of funds in this account, to the community colleges, shall be ~~based upon the percentages prescribed in this rule, unless the general assembly stipulates otherwise in the appropriation process determined using the distribution formula established in Iowa Code section 260C.18C.~~

~~**7.4(3)** Sixty-seven point five percent of the funds from the community college 260F account shall be distributed to each community college using the distribution formula established in Iowa Code section 260C.18.~~

~~**7.4(4)** Twenty-five percent of the funds from the community college 260F account shall be distributed to community colleges for high technology apprenticeship programs based upon related eligible contact hours under the programs administered during the prior fiscal year as determined by the department of education. Contact hours generated in on-the-job training experiences are not eligible for consideration for apprenticeship funding.~~

~~**7.4(5)** Seven point five percent of the funds from the community college 260F account shall be held by the department to fund community college sponsored business network training projects and~~

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~~shall be available on a first-come, first-served basis, based on the date an application is received by the department.~~

~~7.4(6)~~ **7.4(3)** Any unexpended or uncommitted funds remaining in the community college 260F account on May 1 of the fiscal year shall revert to a general account to be available on a first-come, first-served basis, based on the date an application is received by the department authority.

~~7.4(7)~~ Contingent on the availability of program funds, a department-sponsored business network training project account consisting of funds allocated by the department and the board is established in the department to fund department-sponsored business network training projects.

~~7.4(8)~~ Contingent on the availability of program funds, a department-sponsored high technology apprenticeship project account consisting of funds allocated by the department board is established in the department to fund department-sponsored high technology apprenticeship training projects.

ITEM 4. Amend subrules 7.5(1) and 7.5(2) as follows:

7.5(1) The maximum award which may be approved for each project at a business site is \$25,000 \$50,000 in a fiscal year.

7.5(2) A business site may be approved for multiple projects, but the total of the awards for two or more projects shall not exceed \$50,000 \$100,000 within a three-year period. The three-year period shall begin with the department authority approval date of the first project approved within the three-year period.

ITEM 5. Strike “department” wherever it appears in subrules **7.6(3)**, **7.7(2)** and **7.10(3)**, rule **261—7.19(260F)**, subrules **7.21(2)**, **7.21(3)**, **7.24(2)**, **7.24(4)** to **7.24(6)** and **7.24(8)**, rule **261—7.25(260F)**, subrules **7.26(2)**, **7.26(4)** to **7.26(6)** and **7.26(8)**, rule **261—7.27(260F)**, subrules **7.30(6)** and **7.32(4)** to **7.32(6)**, and rule **261—7.33(260F)** and insert “authority” in lieu thereof as the context requires.

ITEM 6. Amend rule 261—7.9(260F) as follows:

261—7.9(260F) Use of program funds.

7.9(1) The following costs associated with the administration of any project are eligible for program funding:

a. Community college administrative costs associated with the development and operation of a project, not to exceed ~~the rate charged for a 260E project~~ 15 percent of the project cost.

b. Legal fees.

7.9(2) The following costs associated with the provision of program services for any project are eligible for program funding:

a. ~~Vocational and skill assessment testing.~~

b. ~~Adult basic education.~~

c. ~~Job related training.~~

d. ~~Cost of company, college, or contracted trainer or training services.~~

e. ~~Training-related materials, equipment, software, and supplies.~~

f. ~~Lease or rental of training facilities.~~

g. ~~Training-related travel and meals.~~

h. ~~Subcontracted services.~~

i. ~~Contracted or professional services.~~

j. ~~Pre-employment training for prospective employees.~~

7.9(3) Reimbursement of employee wages while the employee is in training is not allowed.

7.9(4) Production equipment, when used for training, may be an allowable cost. The cost of equipment used in training but subsequently used in production shall be prorated, as identified in 261—8.12(15,76GA, ch1180), with the percentage of “used in production” cost paid by the business.

7.9(5) A community college may use funds awarded to a project to cover reasonable administrative costs and legal fees for that project ~~when such costs are not covered by application fees or interest earnings. This includes administrative and legal costs incurred for a project that is canceled after funds are released to the community college but before being released to the business.~~

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7.9(6) A community college may not use funds from one project's program award to cover any costs incurred by another project.

ITEM 7. Rescind subrule **7.10(2)**.

ITEM 8. Renumber subrule **7.10(3)** as **7.10(2)**.

ITEM 9. Rescind and reserve rule **261—7.11(260F)**.

ITEM 10. Amend rule 261—7.12(260F) as follows:

261—7.12(260F) Separate account. The community college shall establish a separate program account ~~in order to document all program transactions and from which repayments for loans shall be made to the department authority.~~

ITEM 11. Rescind and reserve rules **261—7.13(260F)** to **261—7.17(260F)**.

ITEM 12. Amend rule 261—7.18(260F) as follows:

261—7.18(260F) Agreement Letter of intent.

~~7.18(1)~~ **7.18(1)** A letter of intent allows training to start on a specific date.

~~7.18(1)~~ **7.18(2)** A community college and a business, or apprenticeship sponsor or entrepreneurial training provider may, but are not required to, enter into ~~an agreement~~ a letter of intent.

~~7.18(2)~~ **7.18(3)** A community college and a business or entrepreneurial training provider which enter into ~~an agreement~~ a letter of intent shall use Agreement Letter of Intent, Form 260F-2. A college and an apprenticeship sponsor which enter into ~~an agreement~~ a letter of intent shall use Apprenticeship Agreement Letter of Intent, Form 260F-2A.

~~7.18(3)~~ **7.18(4)** ~~An agreement~~ A letter of intent shall remain in effect for a maximum of one calendar year from the date of the ~~agreement~~ letter. ~~An agreement~~ A letter of intent for one project does not establish the commencement date for subsequent projects.

ITEM 13. Amend rule 261—7.20(260F) as follows:

261—7.20(260F) Application process.

7.20(1) An application for training assistance must be submitted to the ~~department authority~~ by a community college on behalf of a business or apprenticeship sponsor. An application shall not be accepted by the ~~department authority~~ if submitted directly by a business or apprenticeship sponsor.

7.20(2) Community colleges shall use Application for Assistance, ~~Form 260F-1, available in the 260F data system,~~ to apply for 260F business assistance. Apprenticeship Application for Assistance, Form 260F-1D, shall be used for apprenticeship assistance.

7.20(3) Required contents of the application will be described in the application package.

7.20(4) Applications must be submitted ~~via the 260F data system to Iowa Department of Economic Development, Division of Administration, Workforce Development Programs, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address~~ the authority.

7.20(5) The ~~department authority~~ will score applications according to the criteria specified in 261—7.21(260F).

7.20(6) To be funded, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified elsewhere in these rules.

7.20(7) The ~~department authority~~ may approve, reject, defer, or refer an application to another training program.

7.20(8) The ~~department authority~~ reserves the right to require additional information from the business or apprenticeship sponsor.

7.20(9) Application approval shall be contingent on the availability of funds. The ~~department authority~~ shall reject or defer an application if funds are not available.

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ITEM 14. Amend subrule 7.21(1) as follows:

7.21(1) The criteria used for scoring 260F business or consortium applications and the points for each criteria are as follows:

- ~~a. More than 50 percent of the business's sales are out of state, 5 points.~~
- ~~b. More than 50 percent of the business's operating expenditures are spent within the state of Iowa, 5 points.~~
- ~~c. The number of the business's in-state competitors is low, 5 points.~~
- ~~d. The business's products have increased or will increase the business's customer base in Iowa, 5 points.~~
- ~~e. The business's products have resulted in or will result in a decrease in the importation of foreign-made goods into the USA, 5 points.~~
- ~~f. The majority of the business's suppliers are located in Iowa, 5 points.~~
- ~~g. The business's current products help diversify Iowa's economy, 5 points.~~
- ~~h. The business indicates the potential for future growth and product diversification, 5 points.~~
- ~~i. The business's average wage rate for all employees is above the average wage rate in the county or region where the business is located, 5 points. "Region" is the service delivery area as defined in Iowa Code section 84B.2.~~
- ~~j. The business provides employee health insurance and other benefits, 5 points.~~
- ~~k. The majority of the business's employees are employed full-time, 5 points.~~
- ~~l. New skills which employees acquire from the training program will increase the marketability of their skills, 10 points.~~
- ~~m. The application has established the business's need for training, 10 points.~~
- ~~n. The 260F cost of training per employee does not exceed comparable costs for training at a state of Iowa community college or university, 5 points.~~
- ~~o. The business's contribution to the training project is above the minimum program match requirement, 5 points.~~
- ~~p. The application documents that all considerations, including funding required to begin the training project, have been addressed, 5 points.~~
- ~~q. The application establishes a positive training impact on the business's ability to survive, 10 points.~~
- a. The business has a plan for future potential growth and product diversification. 10 points.
- b. The majority of the business's employees are permanent full-time. 10 points.
- c. Average wages for employees are at or above the laborshed wages for the business's location. 10 points.
- d. The business provides a cash match greater than 25 percent (minimum). 10 points.
- e. The application explains why the business needs the training identified in the training plan. 10 points.
- f. The application explains how the training will contribute to the continued existence of the business. 10 points.
- g. The application identifies which skills the employees will acquire from the training and how the skills will increase the employees' marketability. 5 points.
- h. The average cost of training per employee is comparable to the cost of training at Iowa community colleges or universities. 5 points.
- i. The application documents that all considerations, including funding required to begin the training project, have been addressed. 5 points.
- j. The employer provides health insurance and at least one other employee benefit. 5 points.
- k. Employee skills, knowledge, and abilities will be improved as a result of this training. 10 points.
- l. The business's competitive stance will be improved as a result of this training. 10 points.

To be funded, applications must receive a minimum score of 65 out of 100 points and meet all other applicable eligibility criteria.

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ITEM 15. Rescind and reserve subrule **7.21(4)**.

ITEM 16. Amend rule 261—7.22(260F) as follows:

261—7.22(260F) Training ~~contract~~ agreement.

7.22(1) A community college shall enter into a training ~~contract~~ agreement with the business(es), lead business, lead organization, apprenticeship sponsor(s), or lead apprenticeship sponsor within 90 days of written notice of application approval from the ~~department~~ authority, using Training ~~Contract Agreement~~, Form 260F-4, for 260F business-driven projects and using Form 260F-4D for apprenticeship projects.

7.22(2) A business or apprenticeship sponsor shall not modify any provision of the ~~contract~~ agreement without the written approval of the community college.

7.22(3) The community college, with the written consent of the business or apprenticeship sponsor, has the authority to modify all provisions of the ~~contract~~ agreement except for 260F business, business network and consortium project modifications which result in a reduction of the number of employees to be trained or which significantly change the training program.

7.22(4) The community college and the business or apprenticeship sponsor are authorized to change the ending date of training, training provider, or other minor modifications to the training program. ~~A signed copy of the modification must be sent to the department.~~ All modifications must be uploaded to the 260F data system prior to the ending date of training. If the modification authorizes a change of the ending date of training, the modification must be uploaded to the 260F data system prior to the original ending date of training. For example, if a training agreement specifies an ending date of training of December 31, 2018, and a community college and business agree to extend the ending date of training to December 31, 2019, then the modification must be uploaded prior to December 31, 2018.

7.22(5) Modifications of 260F business, business network and consortium projects which result in a reduction of the number of employees to be trained or change the training program content must be approved by the ~~department~~ authority, community college, and business.

7.22(6) The ~~contract~~ agreement shall not be modified in any way that would result in a violation of the ~~Aet~~ Iowa Code chapter 260F.

7.22(7) Lead businesses, lead apprenticeship sponsors and lead organizations that choose to be the only signatory on the training contract for a ~~department-sponsored~~ authority-sponsored business network, community college-sponsored business network, ~~department-sponsored~~ authority-sponsored apprenticeship or community college-sponsored apprenticeship project shall be responsible for all default and reporting requirements on behalf of the other businesses or apprenticeship sponsors participating in the project.

ITEM 17. Amend rule 261—7.23(260F) as follows:

261—7.23(260F) Special requirements for community college consortium projects.

7.23(1) The community college shall submit Consortium Application for Assistance, ~~Form 260F-1A~~ available on the 260F data system, to the ~~department~~ authority for project approval.

7.23(2) The community college shall enter into a training ~~contract~~ agreement with the consortium within 90 days of written notice of application approval from the ~~department~~ authority, using Consortium Training ~~Contract Agreement~~, Form 260F-4A.

7.23(3) All default provisions specified in 261—7.30(260F) shall apply to consortium projects.

7.23(4) In the event of a default, a financial penalty will be assigned by the ~~department~~ authority to the consortium business or businesses identified by the community college as being responsible for the default.

7.23(5) Each business that participates in the consortium shall complete a Final Performance Report, Form 260F-5, at the completion of training as a condition of the loan's being forgiven.

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ITEM 18. Amend rule 261—7.24(260F), introductory paragraph, as follows:

261—7.24(260F) Special requirements for community college-sponsored business network projects. The community colleges and the authority are authorized to fund business network training projects which include five or more businesses and are located in two or more community college districts. A business network training project must have a designated organization or lead business to serve as the administrative entity that will coordinate the training program. The businesses must have common training needs and develop a plan to meet those needs.

ITEM 19. Amend subrule 7.24(10) as follows:

7.24(10) In the case of business network training assistance, ~~which takes the form of supplier network training as defined in 261—7.3(260F),~~ the department authority shall make a good faith effort to determine the probability that the proposed project will cause the displacement of employees of existing Iowa businesses. Any business network training project which ~~takes the form of supplier network training and~~ would have the effect of displacing employees of existing Iowa end-product manufacturers shall not be approved.

ITEM 20. Amend rule 261—7.26(260F), introductory paragraph, as follows:

261—7.26(260F) Special requirements for community college-sponsored high technology apprenticeship projects. The community colleges and the authority are authorized to fund high technology apprenticeship programs which comply with the requirements specified in Iowa Code section 260C.44 and which may include both new and statewide apprenticeship programs. Notwithstanding the provisions of Iowa Code section 260F.6(2), relating to maximum award amounts, moneys allocated to the community colleges with high technology apprenticeship programs shall be distributed to the community colleges based upon contact hours under the programs administered during the prior fiscal year as determined by the department of education.

ITEM 21. Rescind and reserve rules **261—7.28(260F)** and **261—7.29(260F)**.

ITEM 22. Amend subrules 7.30(1) and 7.30(2) as follows:

7.30(1) A business or apprenticeship sponsor fails to complete the training project within the agreed period of time as specified in the training ~~contract~~ agreement. Such business or apprenticeship sponsor shall be required to repay 20 percent of total project funds expended by the community college and the business.

7.30(2) A business or apprenticeship sponsor fails to train the agreed number of employees as specified in the training ~~contract~~ agreement. Such business or apprenticeship sponsor shall be required to repay a proportionate amount of total project funds expended by the community college and the business or apprenticeship sponsor. The proportion shall be based on the number of employees not trained compared to the number of employees to have been trained.

ITEM 23. Amend rule 261—7.31(260F) as follows:

261—7.31(260F) Options and procedures on default.

7.31(1) The community college shall notify the ~~department within five working days, using Notice of Possible Default, Form 260F-6,~~ authority whenever the community college determines that an event of default has occurred or is likely to occur.

7.31(2) The community college shall document its efforts to reconcile the condition(s) responsible for the default and shall provide the ~~department~~ authority with copies of all related correspondence and documents of the community college and the business or apprenticeship sponsor.

7.31(3) The community college shall notify the ~~department, using Declaration of Default, Form 260F-7,~~ authority when it has determined that an event of default cannot be cured.

7.31(4) When notice of failure to cure the default is received from the community college, the ~~department~~ authority shall communicate with the business or apprenticeship sponsor, in writing, in an attempt to resolve the default.

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7.31(5) When the ~~department's~~ authority's efforts to reconcile are successful, the ~~department~~ authority shall notify the community college, in writing, to continue project operations. Continuation of project operations may be subject to new conditions imposed by the ~~department~~ authority as part of the reconciliation.

7.31(6) When the ~~department's~~ authority's efforts to reconcile are unsuccessful and upon the ~~department's~~ authority's request, the community college shall assign the agreement to the ~~department~~ authority for appropriate proceedings at which time the ~~department~~ authority shall institute collection procedures or notify the attorney general to initiate appropriate legal actions.

7.31(7) When a community college assigns an agreement to the ~~department~~ authority for a project declared to be in default, the community college shall return all remaining 260F funds to the ~~department~~ authority within 45 days of assignment.

ITEM 24. Amend subrules 7.32(1) and 7.32(2) as follows:

7.32(1) When a community college determines that a business or apprenticeship sponsor is in default, and the default has not been cured within the time period stated in the contract, the ~~school~~ community college is authorized to withhold training funds and payments to the business or apprenticeship sponsor, without notice to the business or apprenticeship sponsor.

7.32(2) The attorney general may take whatever action at law or in equity as necessary and desirable to satisfy the default, ~~including pursuit of a tax sale of the employer's business property as provided for under Iowa Code section 260F.3(6).~~

ITEM 25. Amend rule 261—7.34(260F) as follows:

261—7.34(260F) Open records. Information submitted to the ~~department~~ authority is subject to Iowa Code chapter 22, the public records law. Applications for training funds submitted to the ~~department~~ authority are available for public examination. ~~Information~~ If a business provides information which the business believes contains trade secrets recognized and protected by such as as such by law, or the release of which would give an advantage to competitors and serves no public purpose or which meets other provisions for confidential treatment as authorized in Iowa Code section 22.7, and establishes that such information is subject to confidential treatment under Iowa Code section 22.7 or as otherwise provided for by law, then such information shall be kept confidential. The department has adopted, with certain exceptions described in 261—Chapter 100, Uniform Rules on Agency Procedure, relating to public records and fair information practices. The uniform rules are printed in the first Volume of the Iowa Administrative Code. Uniform rule X.5 Rule 261—195.5(17A,22) describes how a person may request a record to be treated as confidential and withheld from public examination. Businesses requesting confidential treatment of certain information submitted to the department authority shall follow the procedures described in the uniform rule 261—195.5(17A,22). The department authority will process such requests as outlined in uniform rule X.5 and 261—Chapter 100 rule 261—195.5(17A,22).

ITEM 26. Amend rule 261—7.35(260F) as follows:

261—7.35(260F) Required forms. ~~Use of the following forms by the~~ The community college is required to complete and upload the following forms, as applicable, within the 260F data system:

1. General Application for Assistance, Form 260F-1;
2. and 3. No change.
4. Business Network Application for Assistance (Department Authority), Form 260F-1C;
5. No change.
6. Apprenticeship Application for Assistance (Department Authority), Form 260F-1E;
7. Agreement Letter of Intent, Form 260F-2;
8. Apprenticeship Agreement Letter of Intent, Form 260F-2A;
9. No change.
10. Training Contract Agreement, Form 260F-4;
11. Consortium Training Contract Agreement, Form 260F-4A;
12. Business Network Training Contract Agreement (Community College), Form 260F-4B;

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13. Apprenticeship Training ~~Contract Agreement~~ (Community College), Form 260F-4D;
14. Business Network Training ~~Contract Agreement~~ (~~Department Authority~~), Form 260F-4C;
15. Apprenticeship Training ~~Contract Agreement~~ (~~Department Authority~~), Form 260F-4E;
16. No change.
- ~~17. Apprenticeship Performance Report, Form 260F-5A;~~
- ~~18. 17. Notice of Possible Default, Form 260F-6;~~
- ~~19. 18. Declaration of Default, Form 260F-7;~~
- ~~20. College and Business Certification, 260F-8;~~
20. Environmental Quality Form, to include a Solid Waste Plan and Hazardous Waste Plan (if applicable), Form 260F-9.

ITEM 27. Amend **261—Chapter 7**, implementation sentence, as follows:

These rules are intended to implement ~~2003 Iowa Acts, First Extraordinary Session, House File 692, and Iowa Code chapter 260F as amended by 2003 Iowa Acts, First Extraordinary Session, House File 683~~ Iowa Code chapter 260F.

ARC 3271C**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 83, “Teacher and Administrator Quality Programs,” Iowa Administrative Code.

Chapter 83 implements teacher and school administrator quality programs. These proposed amendments conform to 2017 Iowa Acts, House File 642, which amends Iowa Code sections 284.1, 284.4, and 284.5 to make the beginning teacher mentoring and induction program under those Iowa Code sections voluntary for school districts and to allow school districts to utilize the provisions of the teacher leadership and compensation framework specified in Iowa Code sections 284.15 through 284.17 as a means of providing beginning teacher mentoring and induction. These proposed amendments also reflect the changes that 2017 Iowa Acts, House File 291, makes to Iowa Code chapter 20, which relates to collective bargaining. A more detailed explanation of these amendments follows:

Item 1 amends the purpose statement of Chapter 83 to provide that the statute now expands the choices available to districts to provide mentoring to beginning teachers, not necessarily the mentoring and induction program required by prior law.

Item 2 revises the definition of “beginning teacher” to account for an additional pathway for converting an initial license to a standard license.

Item 3 restructures current rule 281—83.3(284) into two subrules. Proposed subrule 83.3(1) makes clear that the beginning teacher mentoring and induction program previously required by current law is now one of two options. Proposed subrule 83.3(2) describes the second option available to school districts for providing mentoring to beginning teachers. This second option is based on the teacher leadership and compensation framework contained in Iowa Code sections 284.15 through 284.17.

Items 4 through 6 and 8 make changes required by 2017 Iowa Acts, House File 291, which, as part of changes to public employee collective bargaining under Iowa Code chapter 20, makes changes to Iowa Code chapter 284.

Item 7 updates paragraph 83.6(1)“e,” regarding professional development for teachers, to account for the new option for mentoring beginning teachers.

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Interested individuals may make written comments on the proposed amendments on or before September 19, 2017, at 4:30 p.m. Comments on the proposed amendments should be directed to Phil Wise, Administrative Rules Co-Coordinator, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail phil.wise@iowa.gov; or fax (515)242-5988.

A public hearing will be held on September 19, 2017, from 10 to 11 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

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

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

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

These amendments are intended to implement 2017 Iowa Acts, House File 642, sections 32, 33 and 34, and House File 291.

The following amendments are proposed.

ITEM 1. Amend rule 281—83.1(284,284A), introductory paragraph, as follows:

281—83.1(284,284A) Purposes. The goal of the teacher quality program is to enhance the learning, achievement, and performance of all students through the recruitment, support, and retention of quality Iowa teachers. The program shall contain specific strategies that include a mentoring and induction program for beginning teachers as described in rule 281—83.3(284), either in subrule 83.3(1) or 83.3(2), teacher evaluations, and district and building support for professional development that includes best practice aimed at increasing student achievement.

ITEM 2. Amend rule 281—83.2(284,284A), definition of “Beginning teacher,” as follows:

“*Beginning teacher*” means an individual serving under an initial, Class A, exchange, or intern license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a teacher. For purposes of the beginning teacher mentoring and induction program created pursuant to Iowa Code section 284.5 or in an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15, “beginning teacher” also includes preschool teachers who are licensed by the board of educational examiners under Iowa Code chapter 272 and are employed by a school district or area education agency.

ITEM 3. Amend rule 281—83.3(284) as follows:

281—83.3(284) Mentoring and induction program for beginning teachers.

83.3(1) Option one: *beginning teacher mentoring and induction program.*

83.3(1) a. Purpose. The beginning teacher mentoring and induction program is created to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers. Completion of a beginning teacher mentoring and induction program is one manner in which a beginning teacher may meet the requirement of Iowa Code section 272.28(1).

83.3(2) b. Participation. ~~All school~~ School districts and area education agencies ~~shall~~ may provide a beginning teacher mentoring and induction program for all beginning teachers. A beginning teacher, as defined in this chapter, shall be informed by the school district or area education agency, prior to the beginning teacher’s participation in a mentoring and induction program, of the Iowa teaching standards and criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district or area education agency. The beginning teacher shall be comprehensively evaluated by the end of the beginning teacher’s second year of teaching to determine whether the teacher meets expectations to move to the career level. The school district or area education agency shall recommend

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for a standard license a beginning teacher who has successfully met the Iowa teaching standards as determined by a comprehensive evaluation.

(1) If a beginning teacher who is participating in a mentoring and induction program leaves the employ of a school district or area education agency prior to completion of the program, the school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in a program prior to the subsequent hiring. If the general assembly appropriates moneys for purposes of Iowa Code section 284.5, a school district or area education agency is eligible to receive state assistance for up to two years for each beginning teacher the school district or area education agency employs who was formerly employed in an accredited nonpublic school or in another state as a first-year teacher. The school district or area education agency employing the teacher shall determine the conditions and requirements of a teacher participating in a mentoring and induction program.

(2) A school district or area education agency may offer a teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district or area education agency determines that the teacher is likely to successfully complete the mentoring and induction program by meeting the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district's or area education agency's expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher's evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district's or area education agency's mentoring and induction program. The school district or area education agency shall notify the board of educational examiners that the teacher will participate in a third year of the school district's program. The teacher shall undergo a comprehensive evaluation at the end of the third year.

(3) For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation required for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria shall be as described in rule 281—83.4(284). A school district or area education agency shall participate in state program evaluations.

~~83.3(3)~~ c. *Plan.* Each school district or area education agency that offers a beginning teacher mentoring and induction program shall develop a sequential two-year beginning teacher mentoring and induction plan based on the Iowa teaching standards. The plan shall be included in the school district's comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7, subsection 21. A school district or area education agency shall have the board adopt a beginning teacher mentoring and induction program plan and written procedures for the program. At the board's discretion, the district or area education agency may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district's or area education agency's beginning teacher mentoring and induction program shall include, but are not limited to, the following:

- ~~a.~~ (1) Goals for the program.
- ~~b.~~ (2) A process for the selection of mentors.
- ~~c.~~ (3) A mentor training process which shall:
 - ~~(1)~~ 1. Be consistent with effective staff development practices and adult professional needs to include skills needed for teaching, demonstration, and coaching.
 - ~~(2)~~ 2. Address mentor needs, indicating a clear understanding of the role of the mentor.
 - ~~(3)~~ 3. Result in the mentor's understanding of the personal and professional needs of new teachers.
 - ~~(4)~~ 4. Provide the mentor with an understanding of the district expectations for beginning teacher competencies based on the Iowa teaching standards.
 - ~~(5)~~ 5. Facilitate the mentor's ability to provide guidance and support to new teachers.
- ~~d.~~ (4) A supportive organizational structure for beginning teachers which shall include:
 - ~~(1)~~ 1. Activities that provide access and opportunities for interaction between mentor and beginning teacher that at a minimum provide:
 - ~~1.~~ • Released time for mentors and beginning teachers to plan;
 - ~~2.~~ • The demonstration of classroom practices;
 - ~~3.~~ • The observation of teaching; and

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4. • Feedback.
- ~~(2)~~ 2. ~~Selection~~ A selection process for who will be in the mentor/beginning teacher partnership.
- ~~(3)~~ 3. Roles and responsibilities of the mentor.
- e. ~~(5)~~ 5. ~~Evaluation~~ An evaluation process for the program, which shall include:
- ~~(1)~~ 1. An evaluation of the district and area education agency program goals,
- ~~(2)~~ 2. An evaluation process that provides for the minor and major program revisions, and
- ~~(3)~~ 3. A process for how information about the program will be provided to interested stakeholders.
- ~~f.~~ (6) The process for dissolving mentor and beginning teacher partnerships.
- ~~g.~~ (7) A plan that reflects the needs of the beginning teacher employed by the district or area education agency.
- ~~h.~~ (8) Activities designed to support beginning teachers by:
- ~~(1)~~ 1. Developing and enhancing competencies for the Iowa teaching standards, and
- ~~(2)~~ 2. Providing research-based instructional strategies.
- ~~83.3(4)~~ d. *Budget.* Funds, if appropriated by the general assembly, received by a school district or area education agency from the beginning teacher mentoring and induction program shall be used for any or all of the following purposes:
- ~~a.~~ (1) To pay mentors as they implement the plan. A mentor in a beginning teacher induction program approved under this chapter shall be eligible for an award of \$500 per semester for full participation in the program. A district or area education agency may use local dollars to increase the mentor award.
- ~~b.~~ (2) To pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system for a pension and annuity retirement system established under Iowa Code chapter 294 for such amounts paid by the district or area education agency.
- These funds are miscellaneous funds or are considered encumbered. A school district or area education agency shall maintain a separate listing within its budget for payments received and expenditures made for this program. Funds that remain unencumbered or unobligated at the end of the fiscal year will not revert, but will remain available for expenditure for the purposes of the program until the close of the succeeding fiscal year.
- 83.3(2) Option two: teacher leadership and compensation system.**
- a. *Purpose.* One purpose of Iowa's teacher leadership and compensation system is to attract able and promising new teachers by offering short-term and long-term professional development and leadership opportunities. Two years of successful teaching experience in a school district with an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15 ("framework for beginning teachers" for purposes of this rule) is one manner in which a beginning teacher may meet the requirement of Iowa Code section 272.28(1).
- b. *Participation.* School districts may provide an approved career paths, leadership roles, and compensation framework or approved comparable system as provided in Iowa Code section 284.15. A beginning teacher, as defined in this chapter, shall be informed by the school district, prior to the beginning teacher's participation in a framework for beginning teachers, of the Iowa teaching standards and criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district. The beginning teacher shall be comprehensively evaluated by the end of the beginning teacher's second year of teaching to determine whether the teacher meets expectations to move to the career level. The school district shall recommend for a standard license a beginning teacher who has successfully met the Iowa teaching standards as determined by a comprehensive evaluation.
- (1) If a beginning teacher who is participating in a framework for beginning teachers leaves the employ of a school district prior to completion of the framework, the school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in such a framework prior to the subsequent hiring.
- (2) A school district may offer a teacher a third year of participation in a framework for beginning teachers if, after conducting a comprehensive evaluation, the school district determines that the teacher is likely to successfully meet the Iowa teaching standards by the end of the third year of eligibility. The

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third year of eligibility is offered at the employing district's expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher's evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district's framework for beginning teachers. The school district shall notify the board of educational examiners that the teacher will participate in a third year of the school district's framework for beginning teachers. The teacher shall undergo a comprehensive evaluation at the end of the third year.

(3) For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation required for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria shall be as described in rule 281—83.4(284). A school district shall participate in state program evaluations.

c. *Plan assurances.* Each school district that offers a framework under Iowa Code sections 284.15 through 284.17 and uses it for purposes of meeting the school district's obligations to beginning teachers shall provide assurances to the department that the district's framework for beginning teachers meets the requirements of those Iowa Code sections and attends to the Iowa teaching standards and criteria described in rule 281—83.4(284).

d. *Inapplicability to area education agencies.* This subrule and the option created by it are not available to area education agencies. Only subrule 83.3(1) is available to area education agencies; however, a teacher employed by an area education agency may be included in a framework or comparable system established by a school district if the area education agency and the school district enter into a contract for such purpose.

ITEM 4. Amend subrule 83.4(9) as follows:

83.4(9) ~~The school board shall provide comprehensive evaluations for beginning teachers using the Iowa teaching standards and criteria listed in rule 281—83.4(284). The school board, for the purposes of performance reviews for teachers other than beginning teachers, shall provide evaluations that contain, at a minimum, the Iowa teaching standards and criteria listed in rule 281—83.4(284). A local school board and its certified bargaining representative may negotiate, pursuant to Iowa Code chapter 20, additional teaching standards and criteria for use in a performance review. In any school district or area education agency where there is no certified bargaining unit, additional standards and criteria may be determined by the board.~~

ITEM 5. Amend paragraph **83.5(3)“e”** as follows:

e. Provisions for an intensive assistance program as provided in Iowa Code section 284.8 that addresses the remediation defined under subrules 83.4(1) through 83.4(8) ~~or any other standards or criteria established by a collective bargaining agreement.~~

(1) ~~A local school board and its certified bargaining representative shall negotiate, pursuant to Iowa Code chapter 20, evaluation and grievance procedures for beginning teachers and for teachers other than beginning teachers that are not in conflict with Iowa Code chapter 284. If a supervisor or an evaluator determines, at any time, as a result of a teacher's performance that the teacher is not meeting district expectations under subrules 83.4(1) through 83.4(8) or any other standards or criteria established in the collective bargaining agreement, the evaluator shall, at the direction of the teacher's supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are not subject to negotiation or grievance procedures established pursuant to Iowa Code chapter 20 as amended by 2017 Iowa Acts, House File 291.~~

(2) A teacher who is not meeting the applicable standards and criteria based on a determination made pursuant to paragraph 83.5(3)“e” shall participate in an intensive assistance program. However, a teacher who has previously participated in an intensive assistance program relating to particular Iowa teaching standards or criteria shall not be entitled to participate in another intensive assistance program relating to the same standards or criteria and shall be subject to the provisions of paragraph 83.5(3)“f.”

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ITEM 6. Adopt the following new paragraph **83.5(3)“f”**:

f. Following a teacher's participation in an intensive assistance program, the teacher shall be reevaluated to determine whether the teacher successfully completed the intensive assistance program and is meeting district expectations under the applicable Iowa teaching standards or criteria. If the teacher did not successfully complete the intensive assistance program or continues not to meet the applicable Iowa teaching standards or criteria, the board may do any of the following:

- (1) Terminate the teacher's contract immediately pursuant to Iowa Code section 279.27 as amended by 2017 Iowa Acts, House File 291.
- (2) Terminate the teacher's contract at the end of the school year pursuant to Iowa Code section 279.15 as amended by 2017 Iowa Acts, House File 291.
- (3) Continue the teacher's contract for a period not to exceed one year. However, the contract shall not be renewed and shall not be subject to Iowa Code section 279.15 as amended by 2017 Iowa Acts, House File 291.

ITEM 7. Amend paragraph **83.6(1)“e”** as follows:

e. Beginning teacher mentoring and induction. ~~The A~~ school district shall develop and implement a beginning teacher mentoring and induction plan as outlined in subrule ~~83.3(3)~~ 83.3(1) or a framework for beginning teachers as outlined in subrule 83.3(2). ~~The district district's beginning teacher mentoring and induction plan or framework for beginning teachers shall be included in the comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7(21)“a” and shall align with the district professional development plan described in paragraph 83.6(1)“b.”~~ An area education agency shall develop and implement a beginning teacher mentoring and induction plan as outlined in subrule 83.3(1), which shall align with the area education agency's professional development plan described in paragraph 83.6(1)“b.”

ITEM 8. Amend rule 281—83.7(284) as follows:

281—83.7(284) Teacher quality committees. Each school district and area education agency shall create a teacher quality committee pursuant to 2007 Iowa Code Supplement section 284.4. The committee is subject to the requirements of the Iowa open meetings law (Iowa Code chapter 21). To the extent possible, committee membership shall have balanced representation with regard to gender. The committee shall do all of the following:

1. Monitor the implementation of the requirements of statutes and administrative code provisions relating to this chapter, including requirements that affect any agreement negotiated pursuant to Iowa Code chapter 20 as amended by 2017 Iowa Acts, House File 291.
2. Monitor the evaluation requirements of this chapter to ensure evaluations are conducted in a fair and consistent manner throughout the school district or agency. ~~In addition to any negotiated evaluation procedures,~~ The committee shall develop model evidence for the Iowa teaching standards and criteria. The model evidence will minimize paperwork and focus on teacher improvement. The model evidence will determine which standards and criteria can be met through observation and which evidence meets multiple standards and criteria.
3. Determine, following the adoption of the Iowa professional development model by the state board of education, the use and distribution of the professional development funds distributed to the school district or agency as provided in 2007 Iowa Code Supplement section 284.13, subsection 1, paragraph “d,” based upon school district or agency, attendance center, and individual teacher professional development plans.
4. Monitor the professional development in each attendance center to ensure that the professional development meets school district or agency, attendance center, and individual teacher professional development plans.
5. ~~Ensure the agreement negotiated pursuant to Iowa Code chapter 20 determines~~ Determine the compensation for teachers on the committee for work responsibilities required beyond the normal workday.

EDUCATION DEPARTMENT[281](cont'd)

6. Make recommendations to the school board and the certified bargaining representative regarding the expenditures of market factor incentives.

ARC 3270C**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the Department of Education hereby gives Notice of Intended Action to amend Chapter 98, “Financial Management of Categorical Funding,” Iowa Administrative Code.

Chapter 98 outlines the financial management of categorical funding. The proposed amendments to Chapter 98 reflect significant legislative changes to categorical funding for Iowa school districts brought about during the 2017 Legislative Session. Those changes include greater flexibility for school districts with some categorical funds; the ability of a school district to establish a flexibility account within the general fund that can be used for certain purposes, including any general fund purpose, upon approved school board resolution; major changes to beginning teacher mentoring and induction programs; the ability to transfer from the general fund to the school district’s student activity account an amount necessary for the purchase of protective and safety equipment; and programmatic changes for students who are persistently at risk in reading. A more detailed explanation of these amendments follows:

Item 1: 2017 Iowa Acts, House File 565, amends Iowa Code section 298A.2 to allow a school corporation to establish a flexibility account into which it might transfer unexpended and unobligated funds in any school district fund or school district general fund account if the program, purpose, or requirements for the expenditure of such moneys have been repealed or are no longer in effect. The amendment to rule 281—98.2(256,257) implements that policy change.

Item 2: 2017 Iowa Acts, House File 565, amends Iowa Code section 298A.2 to allow a school corporation to establish a flexibility account into which it might transfer unexpended and unobligated funds from its home school assistance program. The amendment to rule 281—98.12(257,299A) implements that policy change.

Item 3: 2017 Iowa Acts, House File 564, amends Iowa Code chapter 256C, which relates to the allowable uses of preschool categorical funding. House File 565 amends Iowa Code chapter 256C to allow the transfer of unexpended and unobligated funds from a school district’s preschool foundation aid funding for deposit in the school district’s flexibility account established under Iowa Code section 298A.2(2). The amendment to rule 281—98.13(256C,257) is consistent with these changes in the Iowa Code.

Item 4: 2017 Iowa Acts, House File 565, amends Iowa Code chapter 257, which relates to the appropriate uses of categorical funding for at-risk students, alternative programs and alternative schools, and returning dropout and dropout prevention programs. The amendment to rule 281—98.18(257) implements those policy changes and also makes technical corrections.

Item 5: 2017 Iowa Acts, House File 565, designates gifted and talented programs under Iowa Code section 257.46(1) as one of the uses of the flexibility account created in Iowa Code section 298A.2. The amendment to rule 281—98.20(257) reflects that new funding source for gifted and talented programs.

Item 6: 2017 Iowa Acts, House File 564 and House File 565, amend Iowa Code chapter 257, designating the appropriate uses of categorical funding for at-risk programs, alternative programs or alternative schools, and potential or returning dropout prevention programs. The amendment to rule 281—98.21(257) implements those policy changes and also makes technical corrections.

EDUCATION DEPARTMENT[281](cont'd)

Item 7: This amendment makes a technical correction to rule 281—98.22(257), which relates to the use of unexpended general fund balances.

Item 8: 2017 Iowa Acts, House File 564, amends Iowa Code section 257.10 to provide school districts with deference with respect to their financing of school programs. The amendment to rule 281—98.23(256D,257) implements that deference to school district decision making.

Item 9: 2017 Iowa Acts, House File 564, amends Iowa Code chapter 257, which relates to the teacher salary supplement, to provide school districts deference with respect to the financing of that program. This amendment implements that change and also makes a technical correction to rule 281—98.24(257,284) dealing with the teacher salary supplement.

Item 10: 2017 Iowa Acts, House File 564, House File 565, and House File 642, amend Iowa Code chapters 257 and 284 with respect to educator quality professional development and beginning teacher mentoring and induction. The amendment to rule 281—98.26(257,284) reflects those policy changes and also makes a technical correction.

Item 11: 2017 Iowa Acts, House File 565, amends Iowa Code section 298A.2 to allow a school corporation to establish a flexibility account into which it may transfer unexpended and unobligated funds from any of the following sources: the statewide voluntary preschool program, the professional development supplement, and the home school assistance program. Iowa Code section 298A.2 as amended by 2017 Iowa Acts, House File 565, establishes requirements for the transfer of funds to the flexibility account and the appropriate uses of those funds in the flexibility account. Those uses include “any other general fund purpose.” Deference is given to a school district in the use of such funds. The proposed adoption of new rule 281—98.27(257,298A) reflects those changes.

Item 12: 2017 Iowa Acts, House File 642, amends Iowa Code sections 284.1, 284.4, and 284.5 to make the beginning teacher mentoring and induction program under those sections voluntary for school districts and to allow school districts to utilize the provisions of the teacher career paths and leadership roles specified in Iowa Code section 284.15 as a means of providing beginning teacher mentoring and induction. House File 642 also eliminates categorical funding for beginning teacher mentoring and induction programs. The amendment to rule 281—98.42(257,284) reflects those statutory changes.

Item 13: 2017 Iowa Acts, House File 642, amends Iowa Code section 279.68(1)“a” to require a school district to provide intensive supplemental reading instruction to any student who has been identified as persistently at risk in reading, beyond grade three if necessary, until the student is reading at grade level. The amendment to rule 281—98.45(279) reflects that statutory change and also makes a technical correction.

Item 14: 2017 Iowa Acts, House File 564, amends Iowa Code section 298A.8 to allow school districts, by board resolution, to transfer moneys from the general fund to the student activity fund to purchase protective and safety equipment. This policy change was made retroactively effective to July 1, 2016. The amendment to subrule 98.61(2) reflects those changes.

Item 15: 2017 Iowa Acts, House File 564, amends Iowa Code section 298A.8 to allow the student activity fund to receive funds transferred from a school district’s general fund. The amendment to subrule 98.70(1) reflects that statutory change.

Interested individuals may make written comments on the proposed amendments until 4:30 p.m. on September 19, 2017. Comments on the proposed amendments should be directed to Phil Wise, Administrative Rules Co-Coordinator, Iowa Department of Education, Second Floor, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail phil.wise@iowa.gov; or fax (515)242-5988.

A public hearing will be held on September 19, 2017, from 9 to 10 a.m. in the State Board Room, Second Floor, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

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

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

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

EDUCATION DEPARTMENT[281](cont'd)

These amendments are intended to implement Iowa Code sections 256.9, 256C.3, 256C.4, 257.10, 257.11, 257.41, 257.46, 272.28, 279.68, 282.10, 284.1, 284.4, 284.5, 284.6, 284.13, 284.15, 284.16, 298A.2, 298A.8, and 299A.12 as amended by 2017 Iowa Acts, House File 564, House File 565, and House File 642.

The following amendments are proposed.

ITEM 1. Amend rule 281—98.2(256,257) as follows:

281—98.2(256,257) General finance. The categorical funding provided for various purposes to school districts and area education agencies includes general financial characteristics that are detailed in the following subrules.

98.2(1) and **98.2(2)** No change.

98.2(3) Mandatory carryforward. ~~Any~~ Notwithstanding the flexibility account as described in rule 281—98.27(257,298A), any portion of categorical funding provided by the state that is not expended by the end of the fiscal year in which it was received by or for which it was allocated to the school district or area education agency shall be carried forward as a reserved fund balance and added to the subsequent year's budget for that purpose. The funding can only be expended for the purposes permitted for that categorical funding. Where a local match is required for categorical funding, the amount unexpended at the end of the fiscal year that is carried forward shall not be used as part of the required local match.

98.2(4) Discontinued funding. In the event that a categorical funding source is discontinued and an unexpended balance remains, the school district or area education agency ~~shall carry forward the unexpended balance and expend the remaining balance within the subsequent 24 months for the purposes which were allowed in the final year that the funding was allocated or granted prior to discontinuation unless a rule in this chapter provides for a longer period. This subrule does not apply to market factor incentive pay funding, which may be carried forward until expended, but any expenditures from the market factor incentive pay funding must be appropriate under Iowa Code section 284.11 (2007 and 2007 Supplement).~~ may do one of, or a combination of, the following:

a. Carry forward the unexpended balance and expend the remaining balance within the subsequent 24 months for the purposes which were allowed in the final year that the funding was allocated or granted prior to discontinuation unless a rule in this chapter provides for a longer period. This option does not apply to market factor incentive pay funding, which may be carried forward until expended, but any expenditures from the market factor incentive pay funding must be appropriate under Iowa Code section 284.11 (2007 Iowa Code and 2007 Iowa Code Supplement).

b. Transfer the unexpended balance to the flexibility account as described in rule 281—98.27(257,298A).

98.2(5) and **98.2(6)** No change.

98.2(7) Excess expenditures. The school district or area education agency shall not charge to categorical funding more expenditures than the total of the current year's funding or allocation, plus any carryforward balance from the previous year, plus any moneys designated from the flexibility account as described in rule 281—98.27(257,298A).

98.2(8) No change.

ITEM 2. Amend rule 281—98.12(257,299A) as follows:

281—98.12(257,299A) Home school assistance program. The home school assistance program (HSAP) is a program for a specific category of students and is provided outside the basic educational program provided to regularly enrolled students by the school district. If a district offers a home school assistance program, the state foundation aid that the district receives pursuant to Iowa Code section 257.6(1) "a"(5), and any amount designated for this purpose from the flexibility account as described in rule 281—98.27(257,298A), shall be expended for purposes of providing the home school assistance program.

98.12(1) and **98.12(2)** No change.

EDUCATION DEPARTMENT[281](cont'd)

98.12(3) Flexibility account. All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2 as amended by 2017 Iowa Acts, House File 565, section 6(2), provided all statutory requirements of the home school assistance program have been met, including funding all requests for services and materials from parents or guardians of students eligible to access the program.

ITEM 3. Amend rule 281—98.13(256C,257) as follows:

281—98.13(256C,257) Statewide voluntary four-year-old preschool program. The statewide voluntary four-year-old preschool program is a program for a specific category of students. Funding for the program is for the purpose of providing a high-quality early learning environment for four-year-old children whose families choose to access such programs.

98.13(1) Appropriate uses of categorical funding. ~~Because the program is specifically instructional, expenditures generally are limited to the functions of instruction, student support services and staff support services, but up to 5 percent of the allocation can be used for actual documented costs of program administration, outreach activities, and rent for facilities not owned by the school district.~~ Foundation aid funding provided for the program may be used by approved local programs and community providers for any purpose designated by the board of directors of the school district to meet standards for high-quality preschool instruction and for purposes that directly or indirectly benefit students enrolled in the approved local program. These purposes include, but are not limited to, the following:

- a. Functions of instruction, including instructional equipment and supplies and material and equipment designed to develop students' large and small motor skills.
- b. Functions of student support services, including translation services.
- c. Functions of staff support services, including professional development for preschool teachers.
- d. Up to 5 percent of the allocation can be used for actual documented costs of program administration, outreach activities, and rent for facilities not owned by the school district.
- e. Food and beverages used by enrolled students.
- f. Safety equipment.
- g. Playground equipment and repair costs.
- h. Costs of transportation involving children participating in the approved program. The costs of transporting other children associated with the preschool program or transporting as provided in Iowa Code section 256C.3(3) "h" may be prorated by the school district.
- i. Other direct costs that enhance the approved local program, including contracting with community providers for such services.
- j. Costs of attendance for a child who is younger or older than four years old and is enrolled in the program may be paid from these funds, or from another school district account or fund from which preschool program expenditures are authorized by law, if space and funding are available; however, the child shall not be counted for state funding purposes.

98.13(2) Pass-through funding to community-based providers. The school district shall pass through to a community-based provider for each eligible pupil enrolled in the district's approved local program not less than 95 percent of the per-pupil amount.

a. The community-based provider may use up to 10 percent of the 95 percent portion for documented allowable administrative and operational costs of providing the district's approved local program. The costs of outreach activities, rent for facilities not owned by the school district, and transportation for children participating in the preschool program are also permissive costs allowed as part of the 10 percent under this paragraph.

b. Any portion of the 95 percent not documented as expended for direct instruction or administrative and operational costs as allowed by this rule shall be refunded to the district annually on or before July 1.

c. Any portion refunded to the district shall be added to the total amount available for the district's approved local program for the subsequent school year, excluding the portion of such unexpended and

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unobligated funding that the school district authorizes to be transferred to the district's flexibility account described in rule 281—98.27(257,298A).

98.13(3) No change.

98.13(4) *Flexibility account.* All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2 as amended by 2017 Iowa Acts, House File 565, section 6(2), and described in rule 281—98.27(257,298A), provided the board of directors of the school district has determined all statutory requirements for the use of such funding have been met.

In order to transfer funds to the flexibility account, the district must have provided preschool programming during the fiscal year for which funding remained unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.

ITEM 4. Amend rule 281—98.18(257) as follows:

281—98.18(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program formula supplementary weighting. Formula supplementary weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to students identified as at-risk, potential or returning dropouts, and secondary students attending an alternative program or alternative school pursuant to Iowa Code section 257.11(4) "a." ~~as amended by 2015 Iowa Acts, House File 658, section 37.~~

98.18(1) *Appropriate uses of categorical funding.* Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain programs for at-risk pupils, alternative programs and alternative schools for secondary students, and returning dropout and dropout prevention programs. Appropriate uses include, but are not limited to:

a. Salary and benefits for the teacher(s) and guidance counselor(s) of identified students participating in the approved programs when the teacher ~~(or counselor)~~ or guidance counselor is dedicated to providing services directly and exclusively to the identified students beyond the services provided by the school district to students who are not identified as at risk or as potential or returning dropouts. If the teacher ~~(or counselor)~~ or guidance counselor is part-time serving the program and part-time regular classroom teacher ~~(or counselor)~~ or guidance counselor, then the portion of time that is related to these programs may be charged to the program funding, but the portion of time that is related to the regular classroom or regular guidance counseling program shall not.

b. Professional development for all teachers, guidance counselors, and staff working with identified students under an approved program or in an alternative school setting.

c. Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

- (1) Meet the needs of K through 12 identified students,
- (2) Are beyond those provided by the regular school program,
- (3) Are necessary to provide the services listed in the school district's approved at-risk or returning dropout and dropout prevention program plan, and
- (4) Will remain with the K through 12 at-risk program, alternative program or alternative school, or returning dropout and dropout prevention program.

d. Instructional costs necessary to address the behavior of a child during instructional time when those services are not otherwise provided to students who do not require special education and when the costs exceed the costs of instruction of pupils in a regular curriculum, the costs exceed the maximum tuition rate prescribed in Iowa Code section 282.24, the child has not been placed in a facility operated by the state, and all of the following apply:

- (1) The child does not require special education.
- (2) The child is not placed by the department of human services or a court in a residential or day treatment program where the treatment necessary to address the student's behavior was included in the contract with the placement agency.

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(3) The child is not placed in a hospital unit, health care facility, psychiatric medical institution for children or other treatment facility where the cost of treatment necessary to address the student's behavior is covered by insurance or Medicaid.

(4) The board of directors of the district of residence has determined that the child is likely to inflict self-harm or likely to harm another student.

e. Costs incurred for a program intended to address high rates of absenteeism, truancy, or frequent tardiness.

e. f. ~~Up to 5 percent of the total amount~~ Amounts that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4) "a" ~~as amended by 2015 Iowa Acts, House File 658,~~ or as a modified supplemental amount received under Iowa Code section 257.41 ~~as amended by 2015 Iowa Acts, House File 658,~~ may be used in the budget year for purposes of providing districtwide, or buildingwide, or grade-specific at-risk and dropout prevention programming targeted to nonidentified students.

98.18(2) No change.

ITEM 5. Amend rule 281—98.20(257), introductory paragraph, as follows:

281—98.20(257) Gifted and talented program. Gifted and talented program funding is included in the school district cost per pupil calculated for each school district under the school foundation formula. The per-pupil amount increases each year by the supplemental state aid percentage. This amount must account for not more than 75 percent of the school district's total gifted and talented program budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total gifted and talented program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the gifted and talented program. The 75 percent portion, the local match, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants shall be accounted for as categorical funding.

ITEM 6. Amend rule 281—98.21(257) as follows:

281—98.21(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program—modified supplemental amount. A modified supplemental amount is available through a school district-initiated request to the school budget review committee pursuant to Iowa Code section ~~257.38 as amended by 2015 Iowa Acts, House File 658; section 257.39; and sections 257.40 and 257.41~~ sections 257.38, 257.39, and 257.40, and section 257.41 as amended by 2015 Iowa Acts, House File 658 2017 Iowa Acts, House File 565. This amount must account for no more than 75 percent of the school district's total at-risk program, alternative program or alternative school, and potential or returning dropout budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, local match, previous year carryforward, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants shall be accounted for as categorical funding.

98.21(1) Purpose of categorical funding. The purpose of the modified supplemental amount is to provide funding to meet the needs of identified students for costs in excess of the amount received under rule 281—98.18(257) pursuant to Iowa Code section 257.11(4) ~~as amended by 2015 Iowa Acts, House File 658.~~ The funding shall be used only for expenditures that are directly related to the district's approved program plan established pursuant to Iowa Code sections 257.38 through 257.41.

a. Returning dropouts are resident pupils who have been enrolled in a school district in any of grades 7 through 12 who withdrew from school for a reason other than transfer to another school or school district and who subsequently reenrolled in a public school in the school district.

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b. Potential dropouts are resident pupils who are enrolled in a school district who demonstrate poor school adjustment as indicated by two or more of the following:

- (1) High rate of absenteeism, truancy, or frequent tardiness.
- (2) Limited or no extracurricular participation or lack of identification with school, including but not limited to expressed feelings of not belonging.
- (3) Poor grades, including but not limited to failing in one or more school subjects or grade levels.
- (4) Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.
- (5) Children in grades kindergarten through 3 who meet the definition of at-risk children adopted by the department of education.

98.21(2) *Appropriate uses of categorical funding.* Appropriate uses of the funding for an approved program include, but are not limited to:

a. Salary and benefits for instructional staff, instructional support staff, guidance counselors, and school-based youth services staff dedicated to providing services directly and exclusively to the identified students participating in the approved program beyond the services provided by the school district to students who are not identified as at risk or as potential or returning dropouts. However, if the staff person or guidance counselor works part-time with students who are participating in the approved program and has another unrelated staff assignment, only the portion of the staff person's or guidance counselor's time that is related to the program may be charged to the program funding. The school district shall have the authority to designate and submit in the program plan the portion of the staff member's or guidance counselor's time and related salary and benefits dedicated to this purpose.

For purposes of this paragraph, an alternative setting may be necessary to provide for a program which is offered at a location off school grounds and which is intended to serve student needs by improving relationships and connections to school, decreasing truancy and tardiness, providing opportunities for course credit recovery, or helping students identified as at risk to accelerate through multiple grade levels of achievement within a shortened time frame.

b. Professional development for all teachers, guidance counselors, and staff working with identified students under an approved program.

c. to g. No change.

h. Costs incurred for a program intended to address high rates of absenteeism, truancy, or frequent tardiness.

~~*h. i.* Up to 5 percent of the total amount Amounts that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4) "a" as amended by 2015 Iowa Acts, House File 658, or as a modified supplemental amount received under Iowa Code section 257.41 may be used in the budget year for purposes of providing districtwide, ~~or~~ buildingwide, or grade-specific at-risk and dropout prevention programming targeted to nonidentified students.~~

98.21(3) No change.

ITEM 7. Amend rule 281—98.22(257), introductory paragraph, as follows:

281—98.22(257) Use of the unexpended general fund balance. The unexpended general fund balance is ~~commonly called the secretary's balance and~~ refers to the fund balance remaining in the general fund at the end of the fiscal year.

ITEM 8. Adopt the following **new** subrule 98.23(3):

98.23(3) Deference. Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10 as amended by 2017 Iowa Acts, House File 564, section 9.

ITEM 9. Amend rule 281—98.24(257,284) as follows:

281—98.24(257,284) Teacher salary supplement. ~~Beginning with the fiscal year 2009-2010, the educational excellence Phase II program and the educator quality basic salary program were combined. Remaining balances in the educational excellence Phase II program and the educator quality basic salary program shall be expended for the same purposes as the teacher salary supplement. A teacher~~

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may be employed in both an administrative and a nonadministrative position by a board of directors of a school district and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

98.24(1) and **98.24(2)** No change.

98.24(3) *Deference.* Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10 as amended by 2017 Iowa Acts, House File 564, section 9.

ITEM 10. Amend rule 281—98.26(257,284) as follows:

281—98.26(257,284) Educator quality professional development, also known as professional development supplement. The purpose of the funding is to implement the professional development provisions of the teacher career paths and leadership roles specified in Iowa Code section 284.7 or 284.15.

98.26(1) *Appropriate uses of categorical funding.* Appropriate uses of the educator quality professional development funding, and any amount designated for professional development purposes from the flexibility account as described in rule 281—98.27(257,298A), are limited to providing professional development to teachers, including additional salaries for time beyond the normal negotiated agreement; activities and pay to support a beginning teacher mentoring and induction program that meets the requirements of Iowa Code section 284.5; pay for substitute teachers, professional development materials, speakers, and professional development content; textbooks and curriculum materials used for classroom purposes if such textbooks and curriculum materials include professional development; administering assessments pursuant to Iowa Code sections 256.7(21) "b"(1) and 256.7(21) "b"(2) if such assessments include professional development; costs associated with implementing the individual professional development plans; and payments to a whole grade sharing partner school district as negotiated as part of the new or existing agreement pursuant to Iowa Code subsection 282.10(4). The use of the funds shall be balanced between school district, attendance center, and individual professional development plans, and every reasonable effort to provide equal access to all teachers shall be made.

98.26(2) No change.

98.26(3) *Deference.* Deference shall be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10 as amended by 2017 Iowa Acts, House File 564, section 9.

98.26(4) *Transfer to flexibility account.* All or a portion of the moneys received as professional development supplement that remain unexpended and unobligated at the end of a fiscal year may be transferred for deposit to the flexibility account as described in rule 281—98.27(257,298A).

In order to transfer funds to the flexibility account, all requirements of Iowa Code chapter 284 must be met.

ITEM 11. Adopt the following **new** rule 281—98.27(257,298A):

281—98.27(257,298A) Flexibility account. Beginning with the budget year beginning July 1, 2017, in accordance with Iowa Code section 298A.2 as amended by 2017 Iowa Acts, House File 565, section 6(2), a flexibility account shall be established in the general fund of each school corporation if the school corporation has authorized a transfer of all or a portion of its unexpended and unobligated funds from any of the following sources: the statewide voluntary preschool program, the professional development supplement, and the home school assistance program. Additionally, moneys from any other school district fund or general fund account can be transferred to the flexibility account if the program, purpose, or requirements for expenditure of such moneys have been repealed or are no longer in effect.

98.27(1) *Requirements for transfer to the flexibility account.* In order to transfer funds to the flexibility account, the board of directors of the school corporation must determine that the statutory requirements for the source funds have been met.

a. To transfer funds from the statewide voluntary preschool program, the school district must have provided preschool programming during the fiscal year for which funding remains unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.

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b. To transfer funds from the home school assistance program, the school district must have funded all requests for services and materials from parents and guardians of students eligible to access the program.

98.27(2) *Requirements for use of funds deposited to the flexibility account.* Expenditures from the flexibility account shall be approved by a resolution of the board of directors of the school corporation which meets all requirements stipulated in Iowa Code section 298A.2 as amended by 2017 Iowa Acts, House File 565, section 6(2) “d.”

98.27(3) *Appropriate uses of categorical funding.* Appropriate uses of funds transferred to the flexibility account are limited to the following:

- a.* Start-up costs for an approved local program under the statewide voluntary preschool program.
- b.* Support of the approved statewide voluntary preschool program.
- c.* Professional development requirements under the professional development supplement.
- d.* Support of the home school assistance program.
- e.* Support of the at-risk program, alternative program or alternative school, and potential or returning dropout prevention program.
- f.* Support of the approved gifted and talented program.
- g.* Any other general fund purpose.

98.27(4) *Inappropriate uses of categorical funding.* Inappropriate uses of funds within the flexibility account include any expenditures for purposes not specified in Iowa Code section 298A.2 as amended by 2017 Iowa Acts, House File 565.

98.27(5) *Deference.* Deference shall be given to the decisions of school districts’ boards of directors in accordance with Iowa Code section 257.10 as amended by 2017 Iowa Acts, House File 565, section 9.

ITEM 12. Amend rule 281—98.42(257,284) as follows:

281—98.42(257,284) Beginning teacher mentoring and induction program. The purpose of the beginning teacher mentoring and induction program is to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers. Effective July 1, 2017, as established by 2017 Iowa Acts, House File 642, this program is addressed within educator quality professional development as described in rule 281—98.26(257,284).

~~**98.42(1)** *Appropriate uses of categorical funding.* Appropriate uses of the beginning teacher mentoring and induction program funding include costs to provide each mentor of a beginning teacher with the statutory award for participation in the school district’s or area education agency’s beginning teacher mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer’s share of contributions to federal social security and the Iowa public employees’ retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, for such amounts paid by the school district or area education agency.~~

~~**98.42(2)** *Inappropriate uses of categorical funding.* Inappropriate uses of beginning teacher mentoring and induction program funding include any costs not listed in subrule 98.42(1) as appropriate uses.~~

ITEM 13. Amend rule 281—98.45(279) as follows:

281—98.45(279) Early literacy. School districts shall provide intensive supplemental reading instruction to any student who has been identified as ~~exhibiting a substantial deficiency persistently at risk~~ in reading, based upon an assessment or through teacher observations. The student’s reading proficiency shall be reassessed by locally determined or statewide assessments. The student shall continue to be provided with intensive reading instruction, at grade levels beyond grade three if necessary, until the reading deficiency is remedied student is reading at grade level. ~~The district shall promote effective evidence-based programming, instruction and assessment practices across schools to~~

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~~support all students in becoming proficient readers by the end of the third grade. Programs and services may extend beyond third grade.~~

98.45(1) *Appropriate uses of categorical funding.* Appropriate uses of early literacy program funding include, but are not limited to:

- a. Intensive supplemental instructional programs, instructional support, and assessment for identified students;
- b. Professional development for staff regarding early literacy program requirements, instructional materials, and assessments;
- c. Purchase of supplemental or specialized curriculum or instructional materials and assessments that are scientific, research-based and meet the standards of Iowa Code section 279.68 for identified students;
- d. If not already being provided with other sources of funding or general program funding, tutoring, mentoring, and extended school day, week, or year programs for identified students;
- e. Intensive summer literacy programs ~~at the K-3 level~~ for identified students;
- f. Transportation services for identified students participating in intensive summer literacy programs;
- g. The fee charged by the department for implementation of the early warning assessment for literacy provided in accordance with Iowa Code sections 256.7(31) and 279.68, effective with the budget year beginning July 1, 2017, pursuant to 2017 Iowa Acts, House File 642.

98.45(2) No change.

ITEM 14. Amend subrule 98.61(2) as follows:

98.61(2) *Appropriate uses of the general fund.* Appropriate expenditures in the general fund include, but are not limited to, the following:

- a. to r. No change.
- s. Beginning with the budget year beginning July 1, 2016, transferring, by board resolution, to the student activity fund an amount necessary to purchase protective and safety equipment required for any extracurricular interscholastic athletic contest or competition that is sponsored or administered by an organization as defined in Iowa Code section 280.13, as allowed under Iowa Code section 298A.2 as amended by 2017 Iowa Acts, House File 565, pursuant to 2017 Iowa Acts, House File 564.

~~s. t.~~ Paying any other costs not required to be accounted for in another fund.

ITEM 15. Amend subrule 98.70(1) as follows:

98.70(1) *Sources of revenue in the student activity fund.* Sources of revenue in the student activity fund include income derived from student activities such as gate receipts, ticket sales, admissions, student club dues, donations, fund-raising events, ~~and~~ any other receipts derived from student body cocurricular or extracurricular activities, contests, and exhibitions as well as interest on the investment of those moneys, ~~and amounts transferred from the general fund under Iowa Code section 298A.2 as amended by 2017 Iowa Acts, House File 565, as described in paragraph 98.61(2)“s.”~~

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IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r,” the Iowa Finance Authority proposes to amend Chapter 24, “Home and Community-Based Services Rent Subsidy Program,” Iowa Administrative Code.

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The purpose of these amendments is to simplify and clarify the rules governing the Home and Community-Based Services Rent Subsidy Program.

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

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on September 19, 2017. Comments may be addressed to Carolann Jensen, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may be faxed to (515)725-4901 or e-mailed to carolann.jensen@iowa.gov.

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

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

These amendments are intended to implement Iowa Code section 16.47.

The following amendments are proposed.

ITEM 1. Amend rule 265—24.1(16) as follows:

265—24.1(16) Purpose. This chapter defines and structures the rent subsidy program for persons who participate in a home- and community-based services (HCBS) waiver program ~~and who meet the nursing facility level of care for HCBS waiver services as established on or after July 1, 2005, including habilitation services, or Money Follows the Person (MFP).~~ This program is designed to provide rent assistance to ~~these persons to help them~~ HCBS waiver and MFP participants live successfully in their own home and the community until they become eligible for any other local, state or federal rent assistance.

ITEM 2. Amend rule 265—24.2(16) as follows:

265—24.2(16) Definitions.

“Adult” means a person aged 18 or over.

“Applicant” means a person aged 18 or over who participates in one of the home- and community-based services waiver programs, habilitation services, or Money Follows the Person.

“Authority” means the Iowa finance authority.

“Child” or “children” means a person or persons under 18 years of age.

“Dependent relative” or “dependent relatives” means a person or persons as defined by the department of human services under the provisions set forth in 441—subrule 51.4(4).

“Habilitation services” means an Iowa Medicaid program designed to provide home- and community-based services to Iowans with the functional impairments typically associated with chronic mental illnesses.

“Home- and community-based services rent subsidy program” means a program as established in 2017 Iowa Acts, House File 586, section 3.

“Home- and community-based services waiver program” or “HCBS” means any of the waiver programs administered by the department of human services under the provisions set forth in 441—Chapter 83 including, but not limited to, the ill and handicapped waiver, the elderly waiver, the AIDS/HIV waiver, the mental retardation waiver, the brain injury waiver, and the physical disabilities waiver, the habilitation services waiver, or Money Follows the Person.

“Housing Choice Voucher (HCV) program” means the federal government’s major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market as created in Section 201 of Title 2 of Public Law 93-383, also known as the Housing and Community Development Act of 1974, with implementing regulations found in 24 CFR Part 982. Applicants apply for the HCV program through the local public housing authority.

“HUD” means the U.S. Department of Housing and Urban Development.

“Immediate family member” means a spouse, parent or child.

IOWA FINANCE AUTHORITY[265](cont'd)

“Legal guardian” means a person lawfully invested with the power, and charged with the obligation, of taking care of and managing the property and rights of a recipient who, because of age, understanding, or self-control, is considered incapable of administering the recipient’s own affairs.

“Legal representative” for personal or health care decisions means a person possessing a durable power of attorney for health care, guardian, or next of kin (spouse, adult children, parents, adult siblings under Iowa Code chapter 144A). “Legal representative” for financial decisions means a person possessing a power of attorney, a representative payee, fiduciary or conservator.

“Money Follows the Person (MFP)” means Iowa’s Money Follows the Person (MFP) partnership for community integration program, which provides opportunities for individuals in Iowa to move out of intermediate care facilities for persons with intellectual disabilities (ICF/ID) or nursing facilities, and into the community.

“Qualified dependent(s)” means the applicant’s spouse or child who is claimed as a dependent of the applicant for federal income tax purposes.

“Qualified rental unit” means an apartment, mobile home, or private room a housing unit for which a signed written lease rental agreement exists and which is governed by Iowa Code chapter 562A. A qualified rental unit does not include a home owned by a an immediate family member.

“Representative payee” means a person who is appointed for a recipient who is unable to receive and manage the recipient’s own benefits due to mental or physical impairments. The representative payee is to use the benefits in the recipient’s best interest and is personally liable for misuse of funds.

“Residential-based supported community living services” means residential-based supported community living services as defined in 441—subrule 78.41(10).

ITEM 3. Amend rule 265—24.3(16) as follows:

265—24.3(16) Eligibility requirements. All of the following criteria shall be met.

~~**24.3(1) HCBS recipient.** The person shall be an adult recipient of one of the HCBS waiver programs or a child receiving residential-based supported community living services under the mental retardation HCBS waiver program.~~

~~**24.3(2) 24.3(1) Demonstrated need.** To An applicant must demonstrate need, adult applicants must provide evidence that they are responsible for paying more than 30 percent of their gross income for rent and that they are not receiving and are ineligible for other rental assistance. In the case of children receiving residential-based supported community living services under the mental retardation HCBS waiver program, they or their families or guardians must provide evidence that the children are not receiving and are ineligible for other rental assistance and that more than 30 percent of the children’s gross income is obligated for rent. A minimum contribution of \$25 toward the cost of rent is expected from all applicants. This program may not be used to substitute for any other rent subsidy that a person had been receiving at the time of or immediately prior to the time of application to this program. Persons receiving rental assistance at the time of or immediately prior to the time of application to this program shall not be eligible. for rent subsidy by meeting all of the following requirements:~~

~~a. The applicant shall provide a copy of an executed rental agreement showing the applicant as a tenant, with signatures by the landlord and the applicant or the applicant’s legal guardian;~~

~~b. The applicant shall provide evidence that the applicant pays more than 30 percent of the applicant’s gross income for rent, with a minimum contribution of \$25 per month;~~

~~c. The applicant shall not receive any other permanent rental assistance;~~

~~d. The applicant may not use this program to substitute for any other permanent rent subsidy that the applicant had been receiving at the time of or immediately prior to the time of application to this program; and~~

~~e. The applicant’s rental unit may not be owned by someone who lives in the unit.~~

~~**24.3(3) Risk of nursing facility care.** Applicants must be able to demonstrate both of the following:~~

~~a. That they have been assessed as needing, at a minimum, nursing facility level of care for HCBS waiver services; and~~

~~b. That they have insufficient funds to pay their community housing costs and that insufficient funds will cause them to enter a facility that provides, at a minimum, nursing facility level of care.~~

IOWA FINANCE AUTHORITY[265](cont'd)

~~24.3(4)~~ **24.3(2)** *Ineligible for other rent subsidies.* The person applicant shall have been determined ineligible or be on the waiting list for rent subsidy programs, or provide documentation that the waiting list is closed, under the U.S. Department of Housing and Urban Development (HUD) and any other available rent subsidy programs HUD Housing Choice Voucher (HCV) program administered by Iowa's public housing authorities. In the event that the HCV waiting list is currently closed, the applicant is responsible for monitoring the status of the waiting list application period and must apply at the first available opportunity and provide documentation of HCV application submission to the local public housing authority or be subject to removal from the HCBS rent subsidy program or the HCBS rent subsidy program waiting list.

~~24.3(5)~~ *Responsible for rent.* Adult program participants shall be financially responsible for rent. In the case of children receiving residential-based supported community living services under the mental retardation HCBS waiver program, they or their families must demonstrate this financial responsibility.

ITEM 4. Amend rule 265—24.4(16) as follows:

265—24.4(16) Application. Applications for the HCBS rent subsidy program may be obtained on the authority's Web site at www.iowafinanceauthority.gov www.iowafinanceauthority.gov/HCBS. Applications shall be submitted to the Iowa Finance Authority, HCBS Rent Subsidy Program, 2015 Grand Avenue, Des Moines, Iowa 50312 as directed on the application.

24.4(1) Application process. ~~A person who wishes to apply~~ An applicant shall complete the Application application for HCBS Rent Subsidy rent subsidy and provide verification of the following: all required documentation as specified in the application.

~~a.~~ The applicant's estimated monthly gross income for the 12 months following application, including written evidence from the income sources used to determine that income.

~~b.~~ Written evidence from sources of local rental assistance available in the applicant's community that the applicant has applied for that rental assistance and that the applicant has been determined ineligible or placed on a waiting list for that rental assistance. If the waiting list for rental assistance has been closed, a copy of that notice is considered written documentation if signed and dated by a representative of the local rental assistance program.

~~c.~~ The total amount of the monthly rent for the qualified rental unit.

~~d.~~ The total number of bedrooms in the qualified rental unit.

~~e.~~ The applicant's number of dependent relatives living full-time in the qualified rental unit.

24.4(2) Date of application. The date of the application shall be the date the completed application including all required documentation is received by the authority, including written verification of gross income, written verification of application to other rental assistance programs or a signed, dated copy of the waiting list closure notice, and written verification that the applicant needs nursing facility level of care for HCBS waiver services.

24.4(3) Eligibility determination. The applicant, the applicant's legal representative, or the applicant's case manager shall be notified of the amount of monthly rent subsidy within 25 ~~30~~ business days of the authority's receipt approval of a complete application. The notice shall be sent on or about the date when the authority determines that funding is available to approve the applicant's rent subsidy. In addition, the applicant may elect to have any of the following notified: legal guardian, case manager or representative payee.

24.4(4) Waiting list. After funds appropriated for this purpose are obligated, the authority shall deny pending applications. The authority shall maintain and administer a statewide waiting list for funding of HCBS rent subsidy as follows:

~~a.~~ A denial shall be accompanied by a notice of decision, which will be sent within 25 business days of the authority's receipt of a complete application. The notice shall state that no funds are available and that the applicant will be placed on the waiting list, or that the applicant does not meet eligibility requirements.

~~b.~~ Applicants not awarded funding shall be placed on a statewide waiting list according to the order in which the completed applications and verification were received by the authority. In the event that more than one application is received on the same day, the person shall be entered on the waiting list

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on the basis of the day of the month of the person's birthday, with the lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

~~c. When funding allows additional persons to be added to the rent subsidy program, their names shall be taken from the statewide waiting list, and their eligibility shall be determined at that time. If the completed application and verification of eligibility are not received by the time line specified by the authority, the person's name shall be dropped from consideration for receipt of the rent subsidy payment.~~

a. When an application is received, the applicant will be placed on the established waiting list according to the order in which the completed application and all required supporting documents were received by the authority.

b. Waiting list priority shall be given to an applicant:

(1) Who is an approved MFP participant.

(2) Who is transitioning from an out-of-state institutional placement.

(3) Who is transitioning from an institutional setting within Iowa.

(4) Whose rent subsidy has been terminated due to lack of available funds under subrule 24.7(3).

c. When funding allows additional applicants to be added to the HCBS rent subsidy program, their names shall be taken from the statewide waiting list, updated information will be requested, and each applicant's eligibility shall be determined at that time based upon receipt of the requested updated documentation. If the completed application and verification of eligibility are not received by the deadline specified by the authority, the applicant's name may be removed from the waiting list.

ITEM 5. Amend rule 265—24.5(16) as follows:

265—24.5(16) Amount of rent subsidy.

24.5(1) Use of subsidy. Assistance shall be used for rental expense.

24.5(2) Maximum monthly payment for rent. Assistance for rent shall be equal to the lesser of the rent paid, not to exceed 100 percent of the current fair market rent under guidelines of the applicable by the applicant or the current applicable fair market rent as published by HUD low rent housing program in for the area where the person's applicant's residence is located, less 30 percent of the applicant's gross monthly income of the applicant. The fair market rent used shall be that for a one-bedroom unit or a proportionate share of the fair market rent in living units containing more than one bedroom. When the applicant resides with a dependent relative(s) qualified dependent(s), the proportionate share may consist of additional bedrooms, applying the same maximum monthly payment standard.

24.5(3) Monthly payment. Applicants approved for HCBS rent subsidy payments shall receive an ongoing monthly payment which is equal to the amount determined pursuant to subrule 24.5(2); provided, however, that the authority will not send any payments that amount to less than \$25 \$50 but will accrue subsidy payments until such time as at least \$25 \$50 is accumulated. An approved rent subsidy shall be payable on a monthly basis following approval.

ITEM 6. Amend rule 265—24.6(16) as follows:

265—24.6(16) Redetermination of eligibility.

24.6(1) Time of completion. A redetermination of eligibility for HCBS rent subsidy payments shall be completed:

a. At least once every 12 months.

b. When a change in circumstances occurs that affects eligibility in accordance with rule 265—24.3(16).

c. If the person recipient moves from the residence stated on the approved application.

d. When there is a change greater than \$40 \$100 in the recipient's estimated gross monthly income.

24.6(2) Renewal notice. The authority shall send a renewal notice at least 60 calendar days before the deadline date for annual redetermination of eligibility.

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a. The recipient shall submit the completed ~~Application application~~ for HCBS Rent Subsidy rent subsidy and required verification materials to the ~~Iowa Finance Authority, HCBS Rent Subsidy Program, 2015 Grand Avenue, Des Moines, Iowa 50312~~ authority, as directed on the application.

b. If the authority does not receive the completed application and verification of continuing eligibility by the ~~thirtieth day following the date of notification~~ due date as noted on the authority's Web site, the ~~person's~~ recipient's rent subsidy shall be terminated.

ITEM 7. Amend rule 265—24.7(16) as follows:

265—24.7(16) Termination of rent subsidy payments.

24.7(1) *Reasons for termination.* The HCBS rent subsidy shall terminate at the end of the month in which any of the following occur, and a notice shall be sent ~~which states~~ stating the reason for the termination, ~~which may include, but is not limited to, the following:~~

a. The ~~person~~ recipient does not meet one or more of the eligibility criteria listed in rule 265—24.3(16).

b. ~~The person dies.~~

c. Completion of the required documentation is not received by the deadline established by the authority.

~~*d.*~~ *c.* No further funds are available for the HCBS rent subsidy program.

d. The recipient, case manager, legal guardian or representative payee demonstrates abusive or threatening language or behavior toward authority staff.

e. The recipient is determined to have provided false information.

24.7(2) *Reporting of changes.* The ~~person~~ applicant or the applicant's designated responsible party as certified in the application is required to report to the authority any changes that may affect eligibility within ten business days ~~any changes that may affect eligibility~~ of the occurrence of the change. Failure to do so may result in the applicant's responsibility for repayment of to repay HCBS rent subsidy funds and termination of the HCBS rent subsidy. (See rule 265—24.8(16).)

24.7(3) *Insufficient funding.* If funds are not sufficient to cover payments for all ~~persons on recipients~~ under the HCBS rent subsidy program, persons recipients shall be terminated from the rent subsidy program in inverse order based on the date of initial the approved application. ~~The person, such that the most recently approved recipients shall be terminated from the program first, and the recipient terminated from the program shall move be placed back to on~~ the waiting list, with the person's recipient's original application approval date dictating the person's recipient's position on the waiting list as ~~stated at subrule 24.4(4).~~ The authority is responsible for notifying the persons who will be removed from the rent subsidy for this reason.

ITEM 8. Rescind rule 265—24.8(16) as follows:

265—24.8(16) *Fraudulent practices relating to the rent subsidy program.* A person is guilty of a fraudulent practice if that person, or the person's representative, with the intent to gain financial assistance for which that person is not eligible, knowingly makes or causes to be made a false statement or representation, or knowingly fails to report to an employee of the authority any change in circumstances affecting that person's eligibility for financial assistance. ~~In cases of found fraudulent practices, the authority may require, as a condition of continued participation in the rent subsidy program, repayment of the amount that was received by the recipient while the recipient was ineligible.~~

ITEM 9. Rescind rule 265—24.9(16) as follows:

265—24.9(16) Appeals.

24.9(1) An applicant whose application has been timely filed may appeal the authority's decision by filing a written notice of appeal within 14 days of the decision before the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. To be considered timely, the notice of appeal must actually be received at the above address within the time frame specified.

24.9(2) The notice of appeal shall state the grounds upon which the applicant challenges the decision.

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~~24.9(3) An appeal shall be heard by the executive director of the authority. The executive director shall grant the appellant reasonable opportunity to gather information and inquire as to why the decision in question was made. The executive director shall allow the appellant to present all the relevant facts supporting the appellant's position. Such presentation shall be held not later than 30 days after the filing of an appeal, unless the parties agree to hold the presentation on a later date.~~

~~24.9(4) Within 7 days of the presentation, the executive director shall issue a written decision which clearly states whether or not the authority's decision was appropriate. Such decision shall be delivered to the appellant and the board of the authority.~~

~~24.9(5) If the executive director determines that the authority's decision was not appropriate, the executive director shall recommend to the board of the authority a proper remedy.~~

~~24.9(6) Final agency action. After receiving a written decision from the executive director, the board must either approve or decline to approve the executive director's recommendation no later than the next regularly scheduled board meeting. Such action by the board shall be the final decision of the agency.~~

~~24.9(7) Judicial review. Judicial review of the authority's final decisions may be sought in accordance with Iowa Code section 17A.19.~~

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Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 16.5(1)“m,” 16.5(1)“r,” 16.54(5), and 17A.3(1)“b,” the Iowa Finance Authority proposes to amend Chapter 27, “Military Service Member Home Ownership Assistance Program,” Iowa Administrative Code.

The purpose of these amendments is to clarify and simplify the rules governing the Military Service Member Home Ownership Assistance Program.

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

The Authority will receive written comments on the proposed rules until 4:30 p.m. on September 19, 2017. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to (515)725-4901 or e-mailed to mark.thompson@iowa.gov.

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

These amendments are intended to implement Iowa Code section 16.54.

The following amendments are proposed.

ITEM 1. Amend rule 265—27.2(16) as follows:

265—27.2(16) Definitions. As used in this chapter, unless the context otherwise requires:

“*Closing agent*” means the attorney, real estate firm, or closing company that is closing the cash sale qualifying purchase transaction and that prepares the cash sale settlement statement.

“*Eligible service member*” means a person purchasing his or her primary residence in the state of Iowa who, at the time of application for a grant under the program, (1) is or was, if discharged under honorable conditions, a member of the national guard, reserve, or regular component of the armed forces of the United States under Title 10 or Title 32 and has served at least 90 days of active duty service, other than training, beginning on or after September 11, 2001, or during the period of the Persian Gulf Conflict, beginning August 2, 1990, and ending April 6, 1991; (2) was honorably discharged due to injuries incurred while on active federal service beginning on or after September 11, 2001, or during

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the period of the Persian Gulf Conflict, beginning August 2, 1990, and ending April 6, 1991; or (3) is a surviving spouse of a service member who met the eligibility criteria of (1) or (2) above.

“*Facilitating lender*” means a lender that is not a participating lender but that is approved by the authority to make loans under the military home ownership assistance program pursuant to Iowa Code section 16.54(5) and subrule 27.3(7).

“*Home ownership assistance*” means the one-time assistance of up to \$5,000 per eligible service member that may be used toward down payment or closing costs, or both, in the purchase of a qualified home. This assistance does not require repayment except pursuant to rule 265—27.4(16).

“*Participating lender*” means a lender approved for participation in one or more of the authority’s first mortgage financing home buyer programs. ~~Eligible home buyer program participating lenders are those that make available the authority’s home buyer program to customers in the same manner as other mortgage loan programs.~~ The authority maintains a list of participating lenders on its Web site: www.iowafinanceauthority.gov.

“*Program*” or “*military home ownership assistance program*” or “*MHOA*” means the military service member home ownership assistance program authorized by Iowa Code section 16.54 as amended by 2010 Iowa Acts, House File 2148.

“*Qualified home*” means a home that is located in the state of Iowa; that is purchased by an eligible service member as the service member’s primary residence, that will be immediately occupied by the service member or spouse, and that falls an eligible service member purchases, occupies, and uses as the service member’s primary residence. The home must fall into one of the following categories:

1. Single-family residence, including “stick-built” homes, modular homes, or manufactured homes, provided the home is attached to a permanent foundation and is taxed as real estate;
2. Condominium;
3. Townhome;
4. A property containing two to four residential units, where one unit is to be occupied by the eligible service member as ~~his or her~~ the service member’s primary residence.

The following categories of property shall not constitute a qualified home:

- ~~Multifamily properties of five units or more;~~
- ~~Commercial or nonresidential property;~~
- ~~Farmland or other investment property;~~
- ~~Recreational vehicles, mobile homes, or trailers that are not both attached to a permanent foundation and taxed as real estate.~~

“*Qualified mortgage*” means a permanent mortgage loan made pursuant to one of the authority’s home buyer mortgage programs unless the lender offers a lower annual percentage interest rate (APR), fixed-rate, fully amortizing first mortgage meeting the requirements of paragraph 27.3(2)“a.” financing that is more financially advantageous for the service member. ~~The authority’s home buyer mortgage program information may be obtained on the authority’s Web site at www.iowafinanceauthority.gov.~~

“*Status documentation*” means written documentation of ~~verifying that the applicant’s status with the armed forces of the United States, typically~~ applicant is an eligible service member. This documentation may include, but is not limited to, a copy of a valid DD Form 214, showing character of service other than dishonorable, or the applicant’s most recent ~~four months of~~ leave and earnings statements representing 90 days of active duty.

“*Title guaranty certificate*” means the certificate issued by the Iowa title guaranty division of the authority pursuant to Iowa Code section 16.92 to ensure marketable title to the lender or the homeowner, or both. ~~Information about title guaranty may be obtained at the title guaranty Web site at www.iowafinanceauthority.gov.~~

ITEM 2. Amend rule 265—27.3(16) as follows:

265—27.3(16) Application procedure and determination of eligibility.

27.3(1) Prior approval. Whether the purchase of a qualified home is by mortgage financing or cash, prior approval of the assistance by the authority is required. Approval of the request will entail application and include supporting document review by the authority and a determination of the service

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member's eligibility by the Iowa department of veterans affairs. ~~A minimum of two weeks should be allowed for response from the authority.~~

27.3(2) *Financed home purchases.*

a. ~~In the case of the purchase of a qualified home that is to be financed, the eligible service member must apply for assistance under the program through a participating or facilitating lender ~~or a lender approved to facilitate MHOA assistance. The~~ If the service member qualifies for one of the authority's home buyer mortgage programs, the mortgage financing provided shall be a qualified mortgage loan made pursuant to one of the authority's home buyer mortgage programs if the service member qualifies for it; provided, however, that notwithstanding the foregoing, a service member may utilize a mortgage loan that is not made pursuant to one of the authority's home buyer mortgage programs if: Service members who are not eligible for one of the authority's home buyer mortgage programs and are not purchasing on a cash basis may use any permanent financing available to them.~~

~~(1) Such mortgage loan is offered by either:~~

~~1. A lender that participates in one of the authority's first mortgage financing programs, or~~

~~2. A lender approved pursuant to Iowa Code section 16.54(5); and~~

~~(2) The authority determines that the offered financing would be economically feasible and financially advantageous for the eligible service member. The authority shall presume an offer of financing to be financially advantageous for the eligible service member if the offered financing has an annual percentage rate that is at least 25 basis points lower than the most nearly equivalent loan offered by participating lenders on the same date pursuant to one of the authority's home buyer mortgage programs.~~

~~If the service member does not qualify for one of the authority's home buyer mortgage programs, another permanent, fixed-rate, fully amortizing mortgage loan may be used.~~

b. ~~To apply for the military assistance, the eligible service member shall provide the participating or facilitating lender with all of the following:~~

~~(1) Status status documentation; and all necessary program documents.~~

~~(2) A bona fide purchase agreement with any addenda or attachments for a primary residence;~~

~~(3) A complete loan application on Form 1003;~~

~~(4) A copy of a government-issued photo identification card or a lender certification that a government-issued photo identification card has been provided;~~

~~(5) A copy of the subject appraisal; and~~

~~(6) Documentation that demonstrates the home will be occupied as a primary residence.~~

e. ~~The eligible service member shall assist the participating lender in completing an MHOA application on a form approved by the authority stating the amount of the assistance being requested. In the event the service member is not using one of the authority's mortgage programs, the request submission must include early truth-in-lending and good-faith estimate disclosures.~~

~~*d. c.* Once it the lender has received all of the information required by this subrule, the lender shall transmit copies of the loan application, the status documentation, the purchase agreement, the photo ID, the appraisal, any necessary supporting documentation, and the MHOA application to the authority.~~

27.3(3) *Cash home purchases.* ~~In the case of a cash purchase of a qualified home, the eligible service member shall provide directly to the authority status documentation, a completed MHOA application form obtained from the authority, and a bona fide the purchase agreement with any addenda or attachments for a primary residence, and a title guaranty commitment.~~

27.3(4) *Referral of status documentation to Iowa department of veterans affairs.* ~~Upon receipt of the completed MHOA application, the The authority shall submit the status documentation, upon receipt, to the Iowa department of veterans affairs for verification that the applicant's duty status is consistent with the definition of "applicant is an eligible service member."²² The Iowa department of veterans affairs shall be the final authority as to whether an applicant's duty status is consistent with the definition of "applicant is an eligible service member."²²~~

27.3(5) *Notice of MHOA approval.* ~~Upon confirmation of the applicant's service record eligibility by the Iowa department of veterans affairs and the authority, provided that the information submitted on~~

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~~the application form complies with the requirements of this chapter, the authority shall notify the lender, or eligible service member in the case of a cash purchase, that the MHOA application has been approved.~~

27.3(6) *Gaps in funding.* In cases where the military assistance funds are unavailable during the home purchase process, MHOA requests for approval ~~shall~~ may be placed on a waiting list. When funds are again available, ~~provided that all other criteria have been met, including issuance of the title guaranty certificate, and where the home purchase closed without the benefit of military assistance funds being applied toward closing costs or down payment, the proceeds of the assistance shall be paid~~ (1) directly to the participating ~~lender/servicing~~ lender or servicing lender to be applied toward the qualified mortgage loan's principal balance, or (2) if the qualified home was purchased pursuant to a cash purchase transaction, directly to the eligible service member. ~~Additional documentation required shall include a statement executed by~~ The authority will notify the applicant authorizing that the assistance to will be applied to the principal balance.

27.3(7) *Approval process for facilitating lender status.* Pursuant to Iowa Code section 16.54(5), an Iowa-regulated or federally regulated lender with a physical location in the state of Iowa may submit an application to the authority for approval, even if such lender does not participate in the authority's home ownership programs for home buyers. ~~The application shall include a written request to be approved as an MHOA facilitating lender, a check for \$500 payable to the authority, a narrative describing the lender's mortgage origination process, including mortgage loan products offered through the lender, documentation of Iowa or federal regulation showing that the applicant is in good standing, an errors and omissions insurance declaration evidencing coverage of at least \$300,000, and a completed electronic funds transfer form. Lenders should allow a minimum of two weeks' response time from the authority. The approval to be a facilitating lender shall be valid for one year, and lenders annually will need to submit an application, including the application fee. The application fee may not be charged in part or in full to a service member or to a property seller. Any approval granted pursuant hereto shall be contingent upon the approved lender's offering eligible service members a lower annual percentage rate than the annual percentage rates available at such time from lenders that participate in the authority's first mortgage financing programs.~~

ITEM 3. Amend rule 265—27.4(16) as follows:

265—27.4(16) MHOA award. Assistance awarded hereunder shall be up to \$5,000 toward the purchase of a qualified home ~~and may be used for down payment or for closing costs, or for both. Assistance funds must be applied to the purchase of a qualified home and, in the case of mortgage financing, the mortgage must be a qualified mortgage. Any assistance proceeds which are not used for down payment or closing costs toward the purchase of a qualified home which is financed by a mortgage or cash purchase transaction must be returned to the authority.~~

27.4(1) *MHOA reimbursement.* ~~The participating lender or cash payment home buyer shall advance funds at closing in an amount equal to the amount of the assistance on behalf of the eligible service member to be applied toward closing costs or the down payment. The~~ After closing, the lender or cash payment home buyer, as applicable, shall, within 30 days of closing, submit to the authority a copy of the copies of the following documents: an executed HUD-1 Settlement Statement (or, if the transaction is a cash purchase, the eligible service member may use the settlement statement certified by a closing agent and the eligible service member), a copy of settlement statement, the deed conveying title to the qualified home, a copy of a title guaranty certificate issued for the qualified home commitment, and the military grant agreement and certification (form obtained from the authority) for reimbursement for the amount of the assistance. In the event the mortgage financing is not made pursuant to one of the authority's home buyer programs, reimbursement documentation shall include a certified copy of the promissory note, and mortgage, and final truth in lending disclosure. After closing, for cash home purchasers, the eligible service member shall submit to the authority a copy of the executed settlement statement, the deed conveying title and the executed title guaranty certificate.

27.4(2) *MHOA assistance restrictions and limitations.* All assistance under the program is subject to funding availability. Assistance will be awarded in the order in which ~~completed MHOA applications are received~~ all required documentation is received and approved by the authority. Assistance awarded

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pursuant to the program is personal to its recipient and may not be assigned. Only one award of assistance shall be awarded per home purchase. If both homeowners are eligible service members, only one may use the MHOA per home purchase. If another home is purchased at a later date, the other eligible service member may use the MHOA on the second home if the program exists and funds are available. An eligible service member shall receive only one award under the program. While program funds are available, the award shall be valid for 60 days in the case of purchases of existing or completed property and 120 days in the case of purchases of property being constructed or renovated. A reasonable extension may be granted with evidence of a purchase loan in progress which has been delayed due to circumstances beyond the service member's control.

ITEM 4. Rescind rule 265—27.5(16) as follows:

~~**265—27.5(16) Income, purchase price and qualified mortgage.** There are no income or purchase price limits under the program except for eligible service members purchasing with mortgage financing under one of the authority's home buyer programs. Service members who are not eligible for one of the authority's home buyer mortgage programs and are not purchasing on a cash basis must use other permanent mortgages made by the lender. Service members may also, if eligible, use other subsidy funds from the authority as allowed by one or more of the authority's programs, grant fund assistance available through other public agencies, nonprofit organizations, or the service member's employer, or any forgivable, "soft second" lien subsidy. Information about the authority's home buyer programs or how to contact a participating lender may be obtained on the authority's Web site at www.iowafinanceauthority.gov.~~

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Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 16.5(1)“m,” 16.5(1)“r” and 17A.3(1)“b,” the Iowa Finance Authority proposes to amend Chapter 39, “HOME Investment Partnerships Program,” Iowa Administrative Code.

The purpose of these amendments is to clarify the rules and eliminate redundancies or conflicts with federal laws or regulations relating to the HOME Investment Partnerships Program.

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

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on September 19, 2017. Comments may be addressed to Carolann Jensen, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to (515)725-4901 or e-mailed to carolann.jensen@iowa.gov.

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

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

These amendments are intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. sections 12701 et seq.

The following amendments are proposed.

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ITEM 1. Amend rule 265—39.2(16) as follows:

265—39.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

“Activity” means one or more specific housing activities, projects or programs assisted through the HOME investment partnerships program.

“Administrative plan” means a document that a HOME recipient establishes that describes the operation of a funded activity in compliance with all state and federal requirements.

“Affordability period” means the length of time a recipient or subrecipient must impose the rent or occupancy income restrictions on the units assisted by HOME funds as established by federal program requirements.

“CHDO” means a community housing development organization, which is a nonprofit organization registered with the Iowa secretary of state and certified as such by IFA, pursuant to 24 CFR 92.2 (July 24, 2013).

“Consolidated plan” means the state’s housing and community development planning document and the annual action plan update approved by HUD.

“Contract” means a binding written agreement between IFA and the recipient or subrecipient for the purpose of utilizing HOME funds to build, buy or rehabilitate (or both buy and rehabilitate) affordable housing for rent or homeownership or to provide direct rental assistance to low-income people.

“Developer” means any individual or entity responsible for initiating and controlling the development process and ensuring that all phases of the development process, or any material portion thereof, are accomplished. The development process applies to transitional housing, rental housing, rehabilitation and rental housing new construction.

“Development subsidies” means financial assistance provided to developers of newly constructed, single-family housing to address the added costs of constructing housing. In such cases, the total cost of development is likely to exceed the sales price or the appraised fair market value of the housing. Additional costs might include labor, materials and equipment; professional design and construction oversight costs; and required third-party energy efficiency verification and certification costs.

“Displaced homemaker” means an individual who (1) is an adult; (2) has not worked full-time/full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and (3) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

“Energy Star” means a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that establishes standards and practices to improve energy efficiency.

“Energy Star certification” means a property meets strict guidelines for energy efficiency set by the U.S. Environmental Protection Agency (EPA), making the property 20 to 30 percent more efficient than standard homes. Homes achieve this level of performance through a combination of energy-efficient improvements, including effective insulation systems, high-performance windows, tight construction and ducts, efficient heating and cooling equipment, and Energy Star-qualified lighting and appliances.

“Energy Star rater” means a certified inspector who works closely with the builder throughout the construction process to help determine the needed energy-saving equipment and construction techniques and to conduct required on-site diagnostic testing and inspections to document that the home is eligible to earn the Energy Star certification.

“First-time homebuyer” or *“homebuyer”* means an individual or an individual and the individual’s spouse who have not owned a home during the three-year period before the purchase of a home with HOME assistance, except that an individual who is a displaced homemaker or single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while a homemaker, owned a home with the individual’s spouse or resided in a home owned by a spouse; and an individual may not be excluded from consideration on the basis that the individual owns or owned, as a principal residence during the three-year period before purchase of a home with HOME assistance, a dwelling unit whose structure is (1) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations or (2) not in compliance with state, local or model building

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~~codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.~~

~~“Fully accessible unit” means a unit designed and constructed for full accessibility in accordance with Section 1002 of the International Code Council (ICC) A117.1.~~

~~“HOME” means the HOME Investment Partnerships Program, authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990.~~

~~“HUD” means the U.S. Department of Housing and Urban Development.~~

~~“IDIS” means the HUD Integrated Disbursement and Information System.~~

~~“IFA” means the Iowa finance authority.~~

~~“Lead hazard reduction or abatement carrying costs” means the additional costs incurred by lead professionals to ensure that target housing is lead-safe at the completion of rehabilitation. “Lead hazard reduction or abatement carrying costs” includes, but is not limited to, required notifications and reports, lead hazard or abatement evaluations, revisions to project specifications to achieve lead safety, lead hazard reduction or abatement oversight, and clearance testing and final assessment.~~

~~“LIHTC” means low-income housing tax credits and federal tax incentives created through the Tax Reform Act of 1986 and allocated through IFA for affordable rental housing development.~~

~~“Local financial support” means financial investment by the recipient through the use of the recipient’s own discretionary funds that are a permanent financial contribution or commitment applied to and related to the objectives of the housing activity or project assisted through the HOME partnership program and that are used during the same time frame as the requested housing activity or project.~~

~~“Local support” means involvement, endorsement and investment by local citizens, local organizations or the governing body of the local government in which the housing project is located. The local support shall promote the objectives of the housing activity or projects assisted through HOME.~~

~~“Low-income” means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD. An individual does not qualify as a low-income family if the individual is enrolled as a student at an institution of higher education; is under 24 years of age; is not a veteran of the United States military; is unmarried; does not have a dependent child; and is not otherwise individually low-income or does not have parents who qualify as low-income.~~

~~“Multifamily housing” means a structure with five or more dwelling units serving five or more family residences.~~

~~“Net proceeds” means the amount determined by calculating the difference between the sale price and the amount of the outstanding principal loan balance owed plus any seller’s reasonable and customary closing costs associated with the sale.~~

~~“New construction rental units” means the on-site construction or erection of a building, or buildings, for the purpose of providing rental housing units. New construction rental units include conventional, on-site, stick-built construction and on-site erection or fabrication of manufactured housing units or components of units. New construction rental units also include the addition of any rental units outside the existing walls (the building envelope) of an existing building, or buildings, that are part of a rental rehabilitation, renovation or conversion project.~~

~~“Period of affordability” means the length of time a recipient or subrecipient must impose the rent or occupancy income restrictions on the units assisted by HOME funds as established by federal program requirements.~~

~~“Program income” means gross income received by the participating jurisdiction, state recipient, or a subrecipient directly generated from the use of HOME funds or matching contributions.~~

~~“Project” means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking. The project includes all the activities associated with the site and building. For tenant-based rental assistance, project means assistance to one or more families.~~

~~“Project completion” means that all construction work and title transfer (if applicable) are completed and the final draw of HOME funds has been disbursed. In addition:~~

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1. ~~For homebuyer projects, the beneficiary data have been entered into IDIS;~~
 2. ~~For rental projects, the units have all been initially occupied and the unit data have been entered into IDIS;~~

3. ~~For tenant-based rental assistance projects, all HOME funds associated with the tenant-based rental assistance contract have been disbursed and beneficiary data have been entered into IDIS.~~

~~“Qualified veteran” means a person who served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable.~~

~~“Reasonable and customary closing costs” means:~~

1. ~~Seller’s reasonable and customary closing costs incurred include, but are not limited to: abstract updating, title search fees, document preparation fees, bringing current the seller’s county taxes, and real estate commission fees. Ineligible costs include, but are not limited to: lender discount points, allowances, inspection fees, and buyer closing costs.~~

2. ~~Buyer’s reasonable and customary closing costs incurred include, but are not limited to: lender origination fees, credit report fees, fees for the title evidence or title opinion, fees for recording and filing of legal documents, attorneys’ fees, appraisal fees, and required inspection fees. Ineligible costs under this definition include, but are not limited to: prepayment of taxes, prepayment of insurance, lender discount points and seller’s closing costs.~~

~~“Recaptured funds” means HOME funds which are recouped by the recipient when the housing unit assisted by the HOME program homebuyer funds does not continue to be the principal residence of the assisted homebuyer for the full period of affordability period.~~

~~“Recipient” means the entity under contract with IFA to receive HOME funds and undertake the funded housing activity.~~

~~“Repayment” means HOME funds which the recipient shall repay to IFA because the funds were invested in a project or activity that is terminated before completion or were invested in a project or activity which failed to comply with federal program requirements.~~

~~“Single-family housing unit” means a one- to four-family residence, combination of manufactured housing unit and lot, or manufactured housing lot.~~

~~“Single parent” means an individual who (1) is unmarried or is legally separated from a spouse; and (2) has one or more minor children of whom the individual has custody or joint custody, or is pregnant.~~

~~“Subrecipient” means a public agency or nonprofit organization selected by IFA to administer all or a portion of an activity to produce affordable housing, provide down payment assistance, or provide tenant-based rental assistance under the HOME program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subrecipient. The selection of a subrecipient by IFA is not subject to the procurement procedures and requirements under federal or state law.~~

~~“Technical services” means all services that are necessary to carry out individual, scattered site activities including but not limited to: (1) conducting initial inspections, (2) work write-up or project specification development, (3) cost estimate preparation, (4) construction supervision associated with activities that do not require an architect or engineer, (5) lead hazard reduction or lead abatement need determination and oversight, (6) lead hazard reduction or abatement carrying costs, (7) temporary relocation coordination, (8) financing costs such as security agreement preparation and recording or filing fees, (9) processing of individual applications for assistance, (10) income eligibility determination and verification, (11) value determination (new construction) or after rehabilitation value determination (existing structures), and (12) project-specific environmental clearance processes.~~

~~“Technical services provision” means the cost to provide other individual housing project related services such as: (1) financing costs (security agreement preparation, recording and filing fees), (2) processing individual applications for assistance, (3) income eligibility determination and verification, (4) after rehabilitation value determination, and (5) project-specific environmental clearance.~~

~~“Very low income” means families whose annual incomes do not exceed 50 percent of the median income for the area, as determined by HUD. An individual does not qualify as a very low income family if the individual is enrolled as a student at an institution of higher education; is under 24 years of age;~~

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~~is not a veteran of the United States military; is unmarried; does not have a dependent child; and is not otherwise individually very low income or does not have parents who qualify as very low income.~~

ITEM 2. Amend rule 265—39.3(16) as follows:

265—39.3(16) Eligible applicants. Eligible applicants for HOME assistance include all incorporated cities and all counties within the state of Iowa, nonprofit 501(c) organizations, CHDOs, and for-profit corporations or partnerships. Any eligible applicant may apply directly to IFA.

~~39.3(1) Any eligible applicant may apply directly to IFA.~~

~~39.3(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.~~

ITEM 3. Amend rule 265—39.4(16) as follows:

265—39.4(16) Eligible activities and forms of assistance.

~~39.4(1) Eligible activities may include transitional housing, tenant-based rental assistance, rental housing rehabilitation (including conversion and preservation), rental housing new construction and adaptive reuse, homebuyer assistance that includes some form of direct subsidy to the homebuyer, and other housing-related activities as may be deemed appropriate by IFA. Assisted housing may be single family housing or multifamily housing and may be designed for occupancy by homebuyers or tenants.~~

~~a. Assisted units shall meet the period of affordability as set forth in the federal program requirements.~~

~~b. For homebuyer assistance, the initial purchase price for newly constructed units or the after-rehabilitation value for rehabilitated units shall not exceed the maximum homeownership value limit as established by HUD.~~

~~c. For a rental project, rents shall be limited to the rents allowed by HUD for HOME.~~

~~d. Assisted households shall meet income limits established by federal program requirements.~~

~~(1) For a rental project, all assisted units shall be rented to low-income households; at initial occupancy, at least 90 percent of the units shall be rented to households with incomes at or below 60 percent of the area's median family income and, for projects with five or more units, at least 20 percent of the units shall be rented to very low income households.~~

~~(2) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; at least 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.~~

~~(3) For homebuyer assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted.~~

~~e. Property standards. All newly constructed housing (single family and multifamily housing) shall be constructed in accordance with any locally adopted and enforced building codes, standards and ordinances. In the absence of locally adopted and enforced building codes, the requirements of the state building code shall apply.~~

~~(1) All rental housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted and enforced building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the state building code shall apply.~~

~~(2) All single family housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the most current version of Iowa's Minimum Housing Rehabilitation Standards shall apply (all communities with populations of 15,000 or less).~~

~~f. Energy Star. All new rental construction must obtain Energy Star certification verified by an Energy Star rater.~~

39.4(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans or other forms of assistance as may be approved by IFA.

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~~39.4(3)~~ For all single family housing projects or activities assisting homebuyers, the only form of HOME assistance to the end beneficiary is a forgivable loan.

~~39.4(4)~~ **39.4(3)** Program income must be returned to IFA.

~~39.4(5)~~ **39.4(4)** A site including any building located thereon or project acquired or used for rental activities must be held in fee simple title by the recipient upon the disbursement of HOME funds and throughout the contract term with IFA. An installment contract or leasehold interest is not an acceptable recipient interest.

~~39.4(6)~~ **39.4(5)** A site including any building located thereon or project acquired or used for homebuyer activities must be held in fee simple title by the recipient or homebuyer upon the disbursement of HOME funds and throughout the contract term with IFA. An installment contract or leasehold interest is not an acceptable recipient or homebuyer interest.

ITEM 4. Amend rule 265—39.5(16) as follows:

265—39.5(16) Application procedure.

~~39.5(1)~~ HOME applications shall be reviewed at least annually. IFA reserves the right to withhold funding from the annual HOME competitive cycle to compensate for insufficient number of or quality of applications received, to ensure IFA meets its 15 percent CHDO set aside from HOME funds, to add HOME funds to existing HOME awards within one year of the original award date, to reallocate deobligated or recaptured funds, and to fund projects that are consistent with the Rural Development Section 515 Preservation Demonstration Program as long as the program exists. In the event that funds are withheld from the annual competitive cycle, IFA will entertain additional applications, requests for proposals, or other forms of requests as deemed appropriate by IFA will be received from eligible applicants as often as the state expects funding from HUD. The applications must be submitted on the forms or online system prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

~~39.5(2)~~ Joint applications. For applicants requesting funding from both the HOME and LIHTC programs, the applicant may request application forms and related materials from the LIHTC program at IFA. IFA will make a joint tax credit and HOME application available to a potential applicant. The applicant must submit to IFA the completed application with required HOME attachments by the deadline established in the application package. An applicant shall meet the requirements of the LIHTC and HOME programs to receive an award of HOME funds.

a.— IFA shall appoint a joint review team to discuss and review applications for HOME and LIHTC funds and any other funding sources. Staff for each program may communicate frequently regarding common projects. Information contained in the joint application will be shared with each program.

b.— HOME staff shall review applications for eligibility and for activity threshold requirements. The joint review team shall meet to compare and discuss each common project. Final award decisions regarding funding recommendations will be made in accordance with IFA's qualified allocation plan (scoring and set-asides) and the HOME application requirements. Staff for each program will make recommendations for funding to the IFA board of directors. A decision by one program does not bind the other program to fund a project.

c.— An applicant for the HOME program must meet the threshold requirements outlined in rule 265—39.6(16).

ITEM 5. Amend rule 265—39.6(16) as follows:

265—39.6(16) Application requirements. To be considered for HOME assistance, an application shall meet the following threshold criteria.

39.6(1) The application shall propose a housing activity consistent with the HOME fund purpose and eligibility requirements and the state consolidated plan.

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39.6(2) The application shall document the applicant's capacity to administer the proposed activity. Such documentation may include evidence of successful administration of prior housing activities. IFA reserves sole discretion to deny funding to an applicant that has failed to comply with federal or state requirements in the administration of a previous project funded by the state of Iowa or that failed to comply with federal requirements in the administration of a previous project funded in any other state. Documentation of the ability of the applicant to provide technical services and the availability of certified lead professionals and contractors either trained in safe work practices or certified as abatement contractors may also be required as applicable to the HOME fund activity.

~~**39.6(3)** The application shall provide evidence of the need for the proposed activity, the potential impact of the proposed activity, the feasibility of the proposed activity, and the impact of additional housing resources on the existing related housing market.~~

~~**39.6(4)** The application shall demonstrate local support for the proposed activity.~~

~~**39.6(5)** The application shall show that a need for HOME assistance exists after all other financial resources have been identified and secured for the proposed activity.~~

~~**39.6(6)** The application shall include HOME certification that the applicant will comply with all applicable state and federal laws and regulations.~~

~~**39.6(7)** Maximum per-unit subsidy amount, subsidy layering, and underwriting review. The following shall apply to all applications:~~

~~*a.*—The total amount of HOME funds awarded on a per-unit basis may not exceed the per-unit dollar limitations established under Section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for nonprofit elevator-type projects that apply to the area in which the housing is located.~~

~~*b.*—IFA shall evaluate the project in accordance with subsidy layering guidelines adopted by HUD for this purpose.~~

~~*c.*—The total amount of HOME funds awarded on a per-unit basis cannot exceed the pro rata or fair share of the total project costs when compared to a similar unit in a rental activity.~~

~~*d.*—IFA shall conduct an underwriting review of the project.~~

~~**39.6(8)** An application for a homebuyer assistance activity must indicate that recipients will require the beneficiaries of the applicant's homebuyer assistance activity to use a principal mortgage loan product that meets the following criteria:~~

~~*a.*—With the exception of Habitat for Humanity principal mortgage loan products, the principal mortgage loan must be the only repayable loan in all individual homebuyer assistance projects.~~

~~*b.*—The HOME assistance must be recorded in second lien position to the principal mortgage loan, if one exists. Recipients of HOME homebuyer assistance must maintain their assistance security agreements in the above-stated recording position throughout the applicable period of affordability and will not be allowed to subordinate the required recording position to any other form of assistance, such as home equity loans. A homebuyer search is required, and any collection/unpaid obligation that would become a judgment or any judgments must be paid in full prior to closing.~~

~~*c.*—Any mortgage lending entity's principal mortgage loan products may be used provided they meet all of the following minimum requirements:~~

~~(1) The loan must be a fully amortizing, fixed-rate loan with rate not to exceed Fannie Mae 90-day yield \pm 0.125% or VA-published interest rate at par;~~

~~(2) No less than a 15-year, fully amortized, fixed-rate mortgage shall be used; and~~

~~(3) No adjustable rate mortgages or balloon payment types of mortgages will be allowed.~~

~~**39.6(9)** An application for a homebuyer assistance activity must stipulate that homebuyer assistance is for first-time homebuyers or qualified veterans only and that the assisted unit will remain as the assisted homebuyer's principal residence throughout the required period of affordability, which must be verified annually by the subrecipient. If the assisted homebuyer fails to maintain the home as the principal residence during the period of affordability, then all HOME funds associated with that address must be repaid to IFA.~~

~~**39.6(10)** An application for a homebuyer assistance activity must include a system for:~~

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- ~~a. Annual verification that all assisted units are insured for at least the full value of the assisted unit;~~
- ~~b. Underwriting review of the potential homebuyer;~~
- ~~c. Housing counseling to homebuyers; and~~
- ~~d. Application of IFA policies and procedures regarding homebuyer assistance activities.~~

ITEM 6. Amend rule 265—39.7(16) as follows:

265—39.7(16) Application review criteria.

39.7(1) IFA shall evaluate applications and make funding decisions based on general activity criteria, need, impact, feasibility, and activity administration based upon the specific type of activity to be undertaken. The activity criteria shall be a part of the application. Training will be offered prior to the application deadline to provide information and technical assistance to potential applicants.

39.7(2) Notice of the availability of funding and the funding round requirements will be placed on IFA's Web site at www.iowafinanceauthority.gov.

39.7(3) Special consideration will be given to applications where 100 percent of the HOME funded rental units are fully accessible units.

ITEM 7. Amend rule 265—39.8(16) as follows:

265—39.8(16) Allocation of funds.

39.8(1) IFA may retain up to 10 percent of the state's annual HOME allocation from HUD for administrative costs associated with program implementation and operation.

39.8(2) Not less than 15 percent of the state's annual HOME allocation shall be reserved for eligible housing activities developed, sponsored or owned by CHDOs.

39.8(3) IFA reserves the right to set aside a portion of the state's annual HOME allocation for rental housing activities for the Rural Development Section 515 Preservation Demonstration Program as long as the program exists.

39.8(4) Not more than 5 percent of the state's annual HOME allocation may be reserved for CHDO operating expenses.

39.8(5) IFA reserves the right to limit or exceed the amount of funds set aside for any single activity type.

39.8(6) A single award shall be limited to no more than:

- ~~a. \$600,000 for single family housing activity, or~~
- ~~b. \$1,000,000 for rental project, or~~
- ~~c. \$1,000,000 for tenant based rental assistance activity.~~

39.8(7) Single family per unit subsidies.

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

~~b. Assistance for single family housing activities providing acquisition assistance for housing (mortgage buy down, down payment or closing costs assistance or both, or combinations thereof) is limited to \$35,000 per unit, inclusive of all costs, including technical services costs.~~

39.8(8) 39.8(3) Subrecipients shall identify general administrative costs in the HOME application. IFA reserves the right to negotiate the amount of funds provided for general administration, but in no case shall the amount for general administration exceed 10 percent of a total HOME award. Only local government and nonprofit recipients are eligible for general administrative funds. Subrecipients must certify that all general administrative costs reimbursed by HOME funds are separate from and not reimbursed by HOME as technical services costs.

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~~39.8(9)~~ **39.8(4)** IFA reserves the right to negotiate the amount and terms of a HOME award.

~~39.8(10)~~ **39.8(5)** IFA reserves the right to make award decisions such that the state maintains the required level of local match to HOME funds.

ITEM 8. Amend rule 265—39.9(16) as follows:

265—39.9(16) Administration of awards. Applicants selected to receive HOME awards shall be notified by letter from the IFA executive director or designee.

~~39.9(1) Preaudit survey.~~ Rescinded IAB 10/5/11, effective 11/9/11.

~~39.9(2) Contract.~~ A contract shall be executed between the recipient and IFA. These rules, the approved application, the IFA HOME Program Guide for the specified activity and all applicable federal and state laws and regulations shall be part of the contract.

~~a.—~~The recipient shall execute and return the contract to IFA within 45 days of transmittal of the final contract from IFA. Failure to do so may be cause for IFA to terminate the award.

~~b.—~~Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Contracts may be conditioned upon the timely completion of these requirements.

~~c.—~~Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

~~d.—~~Rescinded IAB 12/15/10, effective 1/19/11.

~~e.—~~Release of funds shall be conditioned upon IFA's receipt and approval of documentation of environmental clearance.

~~39.9(3) Local administrative and technical services contracts.~~

~~a.—~~Subrecipients awarded funds to perform the general administrative functions for homebuyer assistance and tenant-based rental assistance activities shall enter into a contract with IFA.

~~b.—~~Recipients awarded funds for activities requiring technical services (e.g., inspections, work write-ups, cost estimates, construction supervision, lead hazard reduction need determination and oversight, lead hazard reduction carrying costs, and temporary relocation coordination) that employ a third-party entity to perform all or part of the technical services shall enter into a contractual agreement for the technical services to be performed. The procurement must follow 24 CFR Part 84 and 24 CFR Part 85, when necessitated by those regulations.

~~39.9(4) Requests for funds.~~ Recipients shall submit requests for funds in the manner and on forms prescribed by IFA. Individual requests for funds shall be made in whole dollar amounts equal to or greater than \$500 per request, except for the final draw of funds. Adequate and itemized documentation supporting the amount of funds requested shall be provided to and approved by IFA prior to release of funds. For rental projects, IFA may retain up to 10 percent of the total HOME award for up to 30 days after the recipient satisfactorily completes the work, all HOME-assisted units have been initially occupied, and a final draw and completion form has been submitted to and approved by IFA. For homebuyer projects, IFA may retain up to 5 percent of the total HOME award until the subrecipient satisfactorily completes the work and the final draw and completion form for the last activity in the project has been submitted to and approved by IFA.

~~39.9(5) Record keeping and retention.~~

~~a.—~~HOME-funded projects. For HOME-funded projects, 24 CFR 92.508 provides the record retention requirements. Recipients and subrecipients shall retain the following:

~~(1)—~~For rental housing projects, records shall be retained for five years after the project completion date, except that records of individual tenant income verifications, project rents and project inspections shall be retained for the most recent five-year period, until five years after the period of affordability terminates;

~~(2)—~~For homebuyer housing projects, records shall be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the period of affordability terminates;

~~(3)—~~For tenant-based rental assistance projects, records shall be retained for five years after the project completion date;

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~~(4) For records covering displacements and acquisitions, see 24 CFR 92.508;~~

~~(5) For records relating to litigation, see 24 CFR 92.508.~~

~~b. Representatives of IFA, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a HOME funds award; to the total project receipts and expenditures related to new construction, acquisition, or rehabilitation; and to any records maintained by third-party administrators for general administration or technical services for the HOME-funded project. IFA reserves the right to demand any and all additional records and documents that may relate to the HOME award.~~

~~39.9(6) Performance reports and reviews. Recipients shall submit performance reports to IFA in the manner and on forms prescribed by IFA. Reports shall assess the use of funds and progress of activities. IFA may perform reviews or field inspections necessary to ensure recipient performance.~~

~~39.9(7) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alterations of the funded activities affecting the scope, location, objectives or scale of the approved activity. Amendments shall be requested in writing by the recipient and are not considered valid until approved in writing by IFA following the procedure specified in the contract between the recipient and IFA.~~

~~39.9(8) Compliance with federal, state and local laws and regulations. Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable federal, state and local regulations. IFA may require a construction sign meeting specifications outlined by IFA to be erected on the property at the initiation of construction or rehabilitation of rental projects.~~

~~39.9(9) Remedies for noncompliance. At any time, IFA may, for cause, find that a recipient is not in compliance with the requirements of this program. At IFA's discretion, remedies for noncompliance may include, but not be limited to, penalties up to and including the return of program funds to IFA. Reasons for a finding of noncompliance include the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activities in a timely manner.~~

~~39.9(10) Appeals process for findings of noncompliance. Appeals will be entertained in instances where it is alleged that IFA staff participated in a decision which was unreasonable, arbitrary, or capricious or otherwise beyond the authority delegated to IFA. Appeals should be addressed to the executive director of IFA. Appeals shall be in writing and submitted to IFA within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. IFA's executive director will make the final decision on all appeals.~~

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Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 16.5(1)“r,” 16.41, and 17A.3(1)“b,” the Iowa Finance Authority proposes to amend Chapter 41, “Shelter Assistance Fund,” Iowa Administrative Code.

The purpose of these amendments is to clarify the rules and update definitions.

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

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on September 19, 2017. Comments may be addressed to Amber Lewis, Iowa Finance Authority, 2015

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Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to (515)725-4901 or e-mailed to amber.lewis@iowa.gov.

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

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

These amendments are intended to implement Iowa Code section 16.41.

The following amendments are proposed.

ITEM 1. Amend rule 265—41.1(16) as follows:

265—41.1(16) Purpose. The shelter assistance fund is created ~~for the purposes of rehabilitation, expansion, or to support the costs of operations of group home shelters for the homeless and domestic violence shelters, essential services for the homeless, and evaluation and reporting of services for the homeless, and match moneys for federal funds for the homeless management information system.~~

ITEM 2. Amend rule 265—41.2(16) as follows:

265—41.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

“*Applicant*” means an eligible provider of homeless services which is applying for program funds.

“*Domestic violence shelter*” means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.

“*ESG*” means the Emergency Solutions Grant Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

“*HMIS*” means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

“*Homeless*” or “*homeless individual*” shall have the meaning set forth in 24 CFR Part 91.

“*Homeless shelter*” means a facility which provides temporary shelter with overnight sleeping accommodations for homeless persons and which does not require occupants to sign leases or occupancy agreements. ~~Any project funded to provide shelter under the ESG program or which was awarded SAF funds during federal fiscal year 2010 may continue to be funded in the shelter category under SAF.~~

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*IFA*” means the Iowa finance authority.

~~“*Major rehabilitation*” means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.~~

“*Nonprofit organization*” means an organization:

1. No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;
2. That has a voluntary board;
3. That has a functioning accounting system or has designated a fiscal agent that will maintain a functioning accounting system for the organization;
4. That practices nondiscrimination in the provision of assistance; and
5. That has registered with the state of Iowa as a nonprofit corporation.

~~“*Obligated*” means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the shelter assistance fund. Funds awarded by IFA by a written agreement or letter of award requiring payment from the shelter assistance fund are obligated.~~

“*Program participant*” means any person or family who is homeless or at risk of becoming homeless and who seeks assistance from a recipient and is provided assistance utilizing SAF funds.

“*Recipient*” means any organization to which IFA distributes program funds.

~~“*Rehabilitation*” means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including~~

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~~improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.~~

~~“Renovation” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.~~

~~“SAF” means shelter assistance fund according to Iowa Code section 16.41.~~

~~“Value of the building” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient.~~

ITEM 3. Amend rule 265—41.4(16) as follows:

265—41.4(16) Eligible activities. Eligible activities may include the following, where the activities are necessary to assist program participants:

~~1. Rehabilitation, renovation, or expansion of buildings for use in providing services for the homeless.~~

~~2. 1. Normal operating expenses for homeless and domestic violence shelters, including staff salaries, maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the shelter. Where no appropriate shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual. Eligible costs may also include the costs of third-party agencies’ providing food either to one or more shelters or directly to program participants.~~

~~3. 2. Essential services for individuals and families in homeless and domestic violence shelters, including case management, child care, education services, employment assistance and job training, outpatient health services (to the extent that such health services are otherwise unavailable), legal services, life skills training, mental health services (to the extent that such mental health services are otherwise unavailable), substance abuse treatment services (to the extent that such substance abuse treatment is otherwise unavailable), and transportation (transportation that is necessary to provide services).~~

~~4. 3. Evaluation of services for the homeless, including the implementation of the HMIS.~~

ITEM 4. Amend rule 265—41.6(16) as follows:

265—41.6(16) Application procedures. IFA shall issue requests for applications ~~on an annual basis periodically~~, as long as funds are available. Requests for applications may combine the ESG program with the SAF program. The applications shall be submitted on the forms or ~~on-line~~ online system prescribed by IFA. Application requirements, priorities, and maximum and minimum grant awards will be established by IFA for each competition.

ITEM 5. Amend rule 265—41.10(16) as follows:

265—41.10(16) Requirements placed on recipients.

~~**41.10(1) Building use.** Any building for which SAF program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If SAF program funds are used for operating costs, the recipient is required to continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:~~

~~a. In the case of a building that was not operated as a provider of services for the homeless before receipt of SAF program funds, on the date of initial occupancy as a provider of services to the homeless.~~

~~b. In the case of a building that was operated as a provider of services to the homeless before the receipt of SAF program funds, on the date that those funds are first obligated to the homeless service provider.~~

~~**41.10(2) Building standards.** Any building for which SAF program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.~~

IOWA FINANCE AUTHORITY[265](cont'd)

~~41.10(3)~~ **41.10(1)** *Participation by homeless individuals and families.* To the maximum extent possible, SAF program recipients are required to involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted with SAF funds, in providing services assisted with SAF funds, and in providing services for occupants of facilities assisted with SAF funds.

~~41.10(4)~~ **41.10(2)** *Termination of assistance and grievance procedure.* Recipients shall establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process shall include a hearing that provides individuals a full opportunity to address issues of noncompliance.

~~41.10(5)~~ **41.10(3)** *Data reporting system.* Recipients shall participate in the HUD-approved HMIS adopted by IFA as required in the executed contract, unless the recipient qualifies as a domestic violence shelter, in which case the recipient shall participate in required data collection and reporting activities using a comparable database as defined by HUD.

~~41.10(6)~~ **41.10(4)** *Ensuring confidentiality.* Recipients shall develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

~~41.10(7)~~ **41.10(5)** *Requirements for religious organizations.* Recipients shall not engage in religious proselytizing or counseling using SAF funds, nor require attendance at religious services as a requirement or condition to receive assistance with SAF funds, nor limit services or give preference to persons seeking assistance with SAF funds on the basis of religion.

~~41.10(8)~~ **41.10(6)** *Prohibition against involuntary family separation.* If a shelter provides services to families with children under the age of 18, the age of a child under the age of 18 shall not be used as a basis for denying any family's admission to shelter.

~~41.10(9)~~ **41.10(7)** *Lead-based paint.* Recipients shall follow the federal rules for lead-based paint, including the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR Part 35, Subparts A, B, H, J, K, M, and R, which apply to all shelters occupied by program participants.

~~41.10(10)~~ **41.10(8)** *Habitability standards.* Recipients shall follow the federal rules for habitability, ensuring that shelters funded with SAF adhere to minimum habitability standards for being safe, sanitary, and adequately maintained, according to the regulations at CFR Part 576.403. Standards include considerations for the following: (1) structure and materials, (2) access, (3) space and security, (4) interior air quality, (5) water supply, (6) sanitary facilities, (7) thermal environment, (8) illumination and electricity, (9) food preparation, (10) sanitary conditions, and (11) fire safety.

~~41.10(11)~~ **41.10(9)** *Other requirements.* IFA may, at its discretion, impose additional requirements on recipients, which will be described in the request for applications, the grant contract, or other guidance materials issued from time to time.

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IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 16.5(1)“r” and 17A.3(1)“b,” the Iowa Finance Authority proposes to amend Chapter 42, “Emergency Solutions Grant Program,” Iowa Administrative Code.

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The purpose of these amendments is to clarify and simplify the rules and to eliminate redundancies or conflicts with federal law and regulations.

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

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on September 19, 2017. Comments may be addressed to Amber Lewis, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to (515)725-4901 or e-mailed to amber.lewis@iowa.gov.

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

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

These amendments are intended to implement Iowa Code section 16.5(1)"m" and 42 U.S.C. Sections 11371 through 11378.

The following amendments are proposed.

ITEM 1. Amend rule 265—42.1(16) as follows:

265—42.1(16) Purpose. ~~The Emergency Solutions Grant Program is a federal program of the U.S. Department of Housing and Urban Development, designed to improve the quality of services to the homeless and to prevent individuals and families from becoming homeless~~ assist individuals and families to quickly regain stability in permanent housing after experiencing a housing crisis or homelessness. ~~The program will make available needed services and help meet the costs of providing essential social services so that homeless individuals and families have access not only to safe and sanitary shelter but also to the supportive services and other types of assistance the individuals and families need to improve their situations.~~ The Iowa finance authority is the recipient and administrator of ESG program funds allocated to the state of Iowa.

ITEM 2. Amend rule 265—42.2(16) as follows:

265—42.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

"Applicant" means an eligible provider of eligible homeless services which is applying for funds through the ESG program.

~~*"Domestic violence shelter"* means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.~~

~~*"Emergency shelter"* means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons, in accordance with the definition at 24 CFR Part 576.~~

"ESG program" or *"ESGP"* means the Emergency Solutions Grant Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

"HMIS" means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

"Homeless" or *"homeless individual"* shall have the meaning set forth in 24 CFR Part 91.

~~*"Homeless prevention"* means activities or programs designed to prevent the incidence of homelessness.~~

~~*"Homeless shelter"* means a facility providing temporary housing and services for homeless persons.~~

"HUD" means the U.S. Department of Housing and Urban Development.

"IFA" means the Iowa finance authority.

~~*"Major rehabilitation"* means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.~~

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~~“Obligated” means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the grant amount. Funds awarded by IFA by a written agreement or letter of award requiring payment from the grant amount are obligated.~~

~~“Private, nonprofit organization” means a secular or religious an organization described in Section 501(c) of the Internal Revenue Code which:~~

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board,
3. Practices nondiscrimination in the provision of services to clients, and
4. Has registered with the state of Iowa as a nonprofit corporation.

~~“Recipient” means any private, nonprofit organization or city or county government to which IFA distributes ESG program funds.~~

~~“Rehabilitation” means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.~~

~~“Renovation” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.~~

~~“SAF” means the shelter assistance fund, as set forth in 265—Chapter 41.~~

~~“Subrecipient” means any private, nonprofit organization or city or county government to which the recipient IFA distributes ESG program funds.~~

~~“Transitional housing” means a project that is designed to provide housing and appropriate support services to homeless persons to facilitate movement to independent living within a specified time frame.~~

~~“Value of the building” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or the subrecipient.~~

ITEM 3. Amend rule 265—42.4(16) as follows:

~~**265—42.4(16) Eligible activities.** Eligible activities are based on guidelines established by the Stewart B. McKinney Homeless Assistance Act of 1987 and are further defined in 24 CFR Part 576. Activities assisted by this program may include only the following:~~

~~**42.4(1) Street outreach.** Provision of essential services necessary to reach out to unsheltered homeless people; to connect them with emergency shelter, housing, or critical services; and to provide urgent, non-facility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility.~~

~~**42.4(2) Emergency shelter Shelter.** Provision of essential services to homeless families and individuals in emergency shelters and the operation of emergency shelters.~~

~~**42.4(3) Prevention of homelessness.** The provision of housing relocation and stabilization services, and short- or medium-term rental assistance, or other financial assistance as necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the definition of “homeless” in 24 CFR Part 576.2 experiencing homelessness.~~

~~**42.4(4) Rapid re-housing.** The provision of housing relocation and stabilization services, and short- or medium-term rental assistance, or other financial assistance as necessary to help a homeless an individual or family experiencing homelessness to move as quickly as possible into permanent housing and achieve stability in that housing.~~

~~**42.4(5) Administrative costs.** A recipient subrecipient may use a portion of a grant received for administrative purposes as determined by IFA. IFA reserves the authority for distribution of administrative funds.~~

~~**42.4(6) Homeless Management Information System (HMIS) projects.** IFA may award grants for HMIS implementation to support data collection, reporting, and analysis as long as the total amount of such grants does not exceed 10 percent of the total Emergency Solutions Grant Program allocation. Eligible costs may include equipment, software, services, personnel, space, and operations for HMIS activities. In the case of parties to a supportive housing grant agreement or renewal grant agreement~~

IOWA FINANCE AUTHORITY[265](cont'd)

~~with the United States Department of Housing and Urban Development for HMIS implementation who are in need of the required cash match,~~ IFA may in its discretion award such a grant, subject to the terms of this subrule, without regard to the application and review provisions of rules 265—42.6(16) and 265—42.7(16). Subrecipients of grants in support of other eligible activities listed in subrules 42.4(1) to 42.4(4) may also use a portion of such grants to support data collection and reporting using the HMIS or comparable database.

ITEM 4. Amend rule 265—42.5(16) as follows:

265—42.5(16) Ineligible activities. As a general rule, any activity that is not authorized under the provisions of P.L. 100-628 is ineligible to be carried out with ESG program funds. ~~The following are items specifically listed as ineligible in 24 CFR Part 576.~~

- ~~1. Acquisition or new construction of an emergency shelter for the homeless;~~
- ~~2. Rehabilitation administration, such as preparation of work specifications, loan processing, or inspections;~~
- ~~3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).~~

ITEM 5. Amend rule 265—42.6(16) as follows:

265—42.6(16) Application procedures. IFA will issue requests for ~~proposals from eligible applicants applications periodically, as often long as the state expects funding from HUD.~~ Requests for ~~proposals applications~~ may combine the ESG program with the SAF program. ~~The proposals must application shall be submitted on the forms or on-line system as prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match, and the estimated number of persons to be served by the applicant. Maximum Application requirements, priorities, and maximum and minimum grant awards will be established by IFA for each competition.~~

ITEM 6. Amend rule 265—42.7(16) as follows:

265—42.7(16) Application review process. The following procedures will be used in the review of applications.

42.7(1) Review; threshold criteria; eligible activities.

a. Review of applications. ~~Applications will be reviewed by a panel appointed by IFA. Applications will be reviewed based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. Applicant experience and capacity, as well as past performance, are top priorities. Other review IFA may utilize a panel to review the applications. Review criteria include, but are not limited to, program design, applicant experience and capacity, community partnerships and need, performance, budget and grant management, program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources.~~

b. Threshold criteria. IFA will identify threshold criteria that all programs must meet in order to be eligible.

c. Activities eligible during funding cycle. Each competition round will also specify which of the total eligible program activities will be supported during that competition round.

42.7(2) If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application or referred to another funding source or the application may be disqualified.

42.7(3) IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

IOWA FINANCE AUTHORITY[265](cont'd)

42.7(4) IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

42.7(5) Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

~~**42.7(6)** IFA reserves the right to negotiate all aspects of a funding request prior to final approval.~~

~~**42.7(7)** IFA shall establish the term of each funding award.~~

ITEM 7. Amend rule 265—42.8(16) as follows:

265—42.8(16) Matching requirement. Each subrecipient of ESG program funds must ~~match the grant amount with an equal amount~~ provide matching contributions, according to the requirements of each competition. In calculating the amount of matching funds, the following may be included: cash contributions expended for allowable costs of the subrecipient for the ESG program or noncash contributions, including the value of any real property, equipment, goods, or services contributed to the subrecipient's ESG program provided that, if the subrecipient had to pay for them with grant funds, the costs would have been allowable. IFA may allow an exemption of matching funds up to a maximum of \$100,000 of the state allocation received from HUD for the subrecipients least capable of providing such matching amounts. The subrecipient must document its need to participate in this exemption from matching requirements and must receive prior approval from IFA before the exemption will be effective.

ITEM 8. Rescind rule 265—42.10(16) as follows:

265—42.10(16) Restrictions placed on recipients and subrecipients.

~~**42.10(1) Use as provider of homeless services.** Any building for which ESG program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If program funds are used for operating and maintenance costs, the recipient must continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:~~

~~*a.*—In the case of a building that was not operated as a provider of services for the homeless before receipt of ESG program funds, on the date of initial occupancy as a provider of services to the homeless.~~

~~*b.*—In the case of a building that was operated as a provider of services to the homeless before the receipt of ESG program funds, on the date that those funds are first obligated to the homeless service provider.~~

~~**42.10(2) Building standards.** Any building for which ESG program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.~~

~~**42.10(3) Participation by homeless individuals and families.** To the maximum extent possible, the subrecipient must involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted with ESG funds, in providing services assisted with ESG funds, and in providing services for occupants of facilities assisted with ESG funds.~~

~~**42.10(4) Termination of assistance and grievance procedure.** Recipients and subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.~~

~~**42.10(5) Data reporting system.** Recipients and subrecipients shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract, unless the recipient or subrecipient qualifies as a domestic violence shelter, in which case the recipient or subrecipient shall participate in required data collection and reporting activities using a comparable database defined by HUD (HUD HMIS Data Standards, Revised Notice March 2011).~~

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~~42.10(6) *Ensuring confidentiality.* Recipients and subrecipients must develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.~~

~~42.10(7) *Coordination with other homeless services.* Subrecipients must coordinate and integrate, to the maximum extent practicable, grant-funded activities with other homeless service programs in the community.~~

~~42.10(8) *Access to mainstream services and resources.* Subrecipients must ensure that all program participants are assisted, to the maximum extent practicable, in obtaining mainstream services and financial assistance, including housing, health, social services, employment, education, and youth programs for which participants are eligible.~~

ITEM 9. Renumber rules ~~265—42.11(16)~~ and ~~265—42.12(16)~~ as ~~265—42.10(16)~~ and ~~265—42.11(16)~~.

ITEM 10. Amend renumbered rule ~~265—42.10(16)~~ as follows:

~~265—42.10(16) Compliance with applicable federal and state laws and regulations.~~ All recipients and subrecipients shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Act of 1987 and its implementing regulations, as well as the revising regulations of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), as defined by 24 CFR Part 576. Use of ESG program funds must comply with the following additional requirements. All subrecipients shall also comply with all applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR Part 200.

~~42.10(1) *Nondiscrimination and equal opportunity.* All recipients and subrecipients must comply with the following:~~

~~a.—The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).~~

~~b.—Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.~~

~~c.—The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).~~

~~d.—The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.~~

~~e.—The Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR Part 24.~~

~~f.—Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.~~

~~g.—Contracting requirements at 24 CFR Part 24 that prohibit the use of federally disbarred, suspended, or ineligible contractors for expenses related to the ESG program.~~

~~h.—Job training and employment for low-income residents requirements of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR Part 135, except that homeless individuals have priority over other Section 3 residents in accordance with 24 CFR Part 576.405(e).~~

~~i.—The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR Part 35, Subparts A, B, H, J, K, M, and R, which apply to all shelters assisted under the ESG program and all housing occupied by program participants.~~

IOWA FINANCE AUTHORITY[265](cont'd)

~~42.10(2) Auditing. All recipients and subrecipients must comply with auditing requirements as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.~~

ITEM 11. Amend renumbered rule 265—42.11(16) as follows:

265—42.11(16) Administration.

~~42.11(1) Contracts. Upon selection of an application for funding, IFA will either initiate a contract or authorize another entity to initiate a contract on IFA's behalf. If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients covered through the contract shall remain responsible for adherence to the requirements of the ESG program, including the federal ESG program rules and the state program rules as set forth herein. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state or federal agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.~~

~~42.11(2) Record keeping and retention. Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the recipient and the subrecipient. Private, nonprofit recipients and subrecipients covered through an ESG program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their ESG program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must be in accordance with the following:~~

~~a. Records for any assisted activity shall be retained for five years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.~~

~~b. Representatives of the Secretary of the U.S. Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor's office, and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a recipient or subrecipient pertaining to the receipt of assistance under these rules.~~

~~42.11(3) Reporting requirements. Recipients and subrecipients Subrecipients shall submit reports to IFA as prescribed in the contract. Reports include:~~

~~a. HMIS data reports. All recipients and subrecipients of ESG program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA unless a recipient or subrecipient qualifies as a domestic violence shelter, in which case the recipient or subrecipient must submit reports using a comparable database. A comparable database must collect client-level data over time and generate unduplicated aggregate reports based on that data.~~

~~b. Requests for funds. Recipients and subrecipients Subrecipients must submit requests for funds during the contract year period at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient and subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the remedies for noncompliance set forth in 42.12(5) subrule 42.11(5).~~

~~42.11(4) Amendments to contracts. Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IFA. IFA will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.~~

~~42.11(5) Remedies for noncompliance. At any time, IFA may, for cause, find that a recipient or subrecipient is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the recipient's or subrecipient's use of program funds for activities not described in its application, the recipient's or subrecipient's failure to complete approved activities in a timely manner, the recipient's or subrecipient's failure to comply with any applicable state or federal rules or regulations, or the recipient's or subrecipient's lack of continuing capacity to carry out the approved program in a timely manner. At IFA's discretion, remedies for noncompliance may include the following:~~

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- a. Issue a warning letter stating that continued failure to comply with program requirements within a stated period of time will result in a more serious action.
- b. Condition a future award.
- c. Direct the ~~recipient~~ or subrecipient to stop incurring costs with grant funds.
- d. Require that some or all of the awarded funds be remitted to the state.
- e. Reduce the level of funds the ~~recipient~~ or subrecipient would otherwise be entitled to receive.
- f. Elect not to provide future award funds to the ~~recipient~~ or subrecipient until appropriate actions are taken to ensure compliance.

ARC 3279C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455A.5(6)“a,” 481A.38, 481A.39, 481A.67, 481A.76, 483A.6A, and 483A.39, the Natural Resource Commission (Commission) hereby gives Notice of Intended Action to amend Chapter 44, “Special Events and Fireworks Displays,” and Chapter 81, “Fishing Regulations,” Iowa Administrative Code.

The proposed amendments will increase paddlefish angler opportunities and establish better conservation-minded practices during catfish and bass fishing tournaments. Specifically, the proposed amendments make the following changes to Chapter 81: add 39 days to the Missouri and Big Sioux Rivers paddlefish fishing season; allow the purchase of up to two Missouri and Big Sioux Rivers paddlefish fishing licenses instead of only one; authorize the snagging of the fish species listed in subrule 81.2(11) in areas previously limited to snagging of only paddlefish with a valid paddlefish fishing license and unfilled tag; and permit the culling of catfish at Department of Natural Resources (DNR)-permitted catch and release, boat-based catfish fishing tournaments. The proposed amendments to Chapter 44: establish a daily catch limit of five catfish per tournament boat team at DNR-permitted catch and release, boat-based catfish fishing tournaments and a five-fish daily possession limit with no length limit for DNR-permitted catch and release bass fishing tournaments.

Almost 75 percent of the available Missouri and Big Sioux Rivers paddlefish fishing licenses (743 out of 1,000) were purchased in 2015’s inaugural paddlefish season. In 2016, however, only 406 licenses were purchased. In an effort to increase interest, the Commission proposes the following changes: firstly, 39 days are being added to the paddlefish season in the Missouri and Big Sioux Rivers by opening the season earlier (on February 4 instead of March 1) and pushing the closing date later (from April 15 to April 30). Secondly, the proposed amendments authorize anglers to purchase more than one Missouri and Big Sioux Rivers paddlefish license (the current rule limits an angler to only one). The Commission is proposing two separate buying windows (December 15 to December 31 and January 1 to January 7) so that all interested anglers may have an opportunity to buy one paddlefish license before others buy their second. This is necessary because there are only 950 resident and 50 nonresident paddlefish licenses available and they are issued on a first-come, first-served basis. (Note: The 1,000 license quota was based on the number of paddlefish that could be harvested without causing a population decline. Increasing the season’s length will not cause the harvest to exceed the established quota.) Thirdly, the Commission proposes to authorize snagging of the fish species listed in subrule 81.2(11) with a valid paddlefish license and unfulfilled tag in areas previously limited to just paddlefish snagging. Snagging is the practice of jerking any type of hook or lure, whether baited or not, through the water with the intention of foul hooking fish (“[a] fish is foul hooked when caught by a hook in an area other than in the fish’s mouth” pursuant to subrule 81.2(11)). Snagging is a valid method of take for paddlefish, so it is a

NATURAL RESOURCE COMMISSION[571](cont'd)

logical extension to include these other species under the license. Once an angler has caught and tagged a paddlefish, however, no further snagging is permissible.

The proposed amendments also authorize the culling of catfish at catch and release, boat-based catfish fishing tournaments. Culling—that is, to sort, cull, high-grade, or replace a fish already in one's possession for another fish deemed superior—is currently not permitted for catfish fishing tournaments. Thus, anglers are keeping catfish in holding devices (either live tanks, stringers, or baskets) up to the legal daily catch limit (8 in lakes, 15 in streams) while participating in these tournaments, but this practice poses a genuine threat to fish health. When so many catfish are temporarily held in these devices, they are ultimately more susceptible to mortality after release due to the physical stress from crowding and oxygen depletion. Therefore, allowing anglers to cull during these tournaments is better for fish health and will prevent overcrowding of fish in holding devices.

Additionally, the Commission is proposing to amend Chapter 44, “Special Events and Fireworks Displays,” at the request of tournament organizers, by lowering the daily catch limit for catch and release boat-based, catfish fishing tournaments. Lower daily catch limits, in combination with the ability to cull, will address the detrimental overcrowding issue. Tournament organizers have been self-imposing restrictive daily catch limits ranging between three and six fish to sustain fish health. The parties were able to come to a consensus on a new daily catch limit of five per boat regardless of the number of tournament participants on the vessel.

Finally, the proposed amendments provide new required permit conditions for catch and release bass fishing tournaments, including requirements related to fish health and possession and length limits. These permit requirements implement 2017 Iowa Acts, Senate File 257, signed by Governor Branstad on April 12, 2017. Tournament participants will now be allowed to possess five black bass of any species (i.e., Largemouth, Smallmouth, or Spotted) and to possess bass of any length. Currently, the daily bag limit is three bass of any one species, with a cumulative, mixed species bag limit of five, and various length limits apply depending on the water body. The existing possession and length limits remain in effect for all anglers not participating in a DNR-permitted catch and release bass fishing tournament.

Any person may submit written suggestions or comments on the proposed amendments through September 19, 2017. Such written material should be submitted to Joe Larscheid, Fisheries Bureau Chief, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)725-8201; or by e-mail to joe.larscheid@dnr.iowa.gov. Persons who have questions may contact Joe Larscheid by e-mail or at (515)201-3376.

A public hearing at which persons may present their views orally or in writing will be held on September 19, 2017, from 12 noon to 3 p.m. at the Wallace State Office Building, Conference Room 4W, 502 East 9th Street, Des Moines, Iowa. At the public hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Any person who intends to attend the public hearing and has special requirements such as those related to mobility or hearing impairments should contact the DNR to advise of any specific needs.

After analysis and review of this rule making, the Commission anticipates a neutral-to-positive impact on private sector jobs from the proposed amendments. All proposed amendments have the support of recreational anglers and catfish and bass tournament organizers, none of whom receive income directly from their involvement or efforts. That said, the proposed amendments are intended to increase recreational angling opportunity, which could translate to a slight increase in revenue for local tackle shops, convenience stores, and outdoor recreational gear stores.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.67, 481A.76, and 483A.6A, and 2017 Iowa Acts, Senate File 257.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of “Bass fishing tournament” and “Catfish fishing tournament” in rule **571—44.2(321G,321I,461A,462A,481A)**:

“*Bass fishing tournament*” means an event with the purpose of fishing for black bass as defined in 2017 Iowa Acts, Senate File 257. For purposes of this chapter, “bass fishing tournament” is included in the definition of “special event” unless otherwise specified.

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“*Catfish fishing tournament*” means an event with the purpose of fishing for catfish from boats that meets the definition of “fishing tournament.” For purposes of this chapter, “catfish fishing tournament” is included in the definition of “special event” unless otherwise specified.

ITEM 2. Amend rule **571—44.2(321G,321I,461A,462A,481A)**, definition of “Fishing tournament,” as follows:

“*Fishing tournament*” means any organized fishing event, except for department-sponsored fishing events held for educational purposes, involving any of the following: (1) six or more boats or 12 or more participants, except for waters of the Mississippi River, where the number of boats shall be 20 or more and the number of participants shall be 40 or more; (2) an entry fee is charged; ~~and~~ or (3) prizes or other inducements are awarded. For purposes of this chapter, “fishing tournament” is included in the definition of “special event” unless otherwise specified.

ITEM 3. Adopt the following **new** subrule 44.4(3):

44.4(3) *Catfish fishing tournaments*. The daily catch limit for a catch and release catfish fishing tournament permitted under this chapter is five catfish per boat regardless of the number of tournament participants on the boat.

ITEM 4. Adopt the following **new** subrule 44.4(4):

44.4(4) *Bass fishing tournaments*. In addition to permit conditions deemed necessary under the introductory paragraph of rule 571—44.4(321G,321I,461A,462A,481A) or under subrule 44.4(2), the permit conditions for bass fishing tournaments shall:

- a. State the minimum requirements for weigh-in, handling, and release of live bass by tournament participants.
- b. Allow for the measurement of bass to length and release from a vessel.
- c. Allow for the possession of up to five bass for weigh-in during the tournament.
- d. Allow for the possession of bass of any length, so long as the bass are kept alive and are released after weigh-in.
- e. Require the cleaning of vessels, before and after the tournament, in compliance with department guidelines to prevent the transportation of aquatic invasive species.

ITEM 5. Amend paragraph **81.2(4)“b”** as follows:

b. Snagging for paddlefish on the Missouri and Big Sioux Rivers is limited to Iowa waters only, beginning in the Big Sioux River below the Interstate 29 bridge to the Big Sioux River’s confluence with the Missouri River and in the Missouri River, including all backwaters and sloughs and any tributary of the Missouri River at its confluence and extending below its Interstate 29 bridge, beginning at the Big Sioux River confluence and extending to the Hamburg Landing boat ramp.

(1) There shall be an open season from ~~March 4~~ February 4 through April ~~15~~ 30.

(2) and (3) No change.

(4) The paddlefish fishing license quota is 950 for resident anglers and 50 for nonresident anglers. ~~No one shall apply for more than one license per year.~~ Licenses shall be issued on a first-come, first-served basis. ~~The purchase period to obtain a~~ A person may purchase one paddlefish fishing license ~~shall be~~ from December 15 through ~~January 31~~ December 31 and either a first or second license ~~between January 1 and January 7.~~ No duplicate license or transportation tag shall be issued after the start of the season.

(5) Each angler ~~who fishes~~ fishing for paddlefish and any species listed in subrule 81.2(11) on the Missouri and Big Sioux Rivers shall have a valid paddlefish fishing license and unused tag. ~~Anglers possessing a paddlefish fishing license and unused tag shall snag fish for the purpose of catching paddlefish only.~~ All snagged fish except for a species listed in subrule 81.2(11) or a legal paddlefish taken into possession shall immediately be released alive.

(6) to (8) No change.

ITEM 6. Amend subparagraph **81.2(11)“a”(8)** as follows:

(8) Missouri River, any Missouri River tributary beginning at its confluence and extending below its Interstate 29 bridge and the Big Sioux River from the Interstate 29 bridge to the confluence with the

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Missouri River, with the exception of snagging paddlefish ~~and only paddlefish~~ or any of the species listed in subrule 81.2(11) during the paddlefish open season.

ITEM 7. Amend subrule 81.2(13) as follows:

81.2(13) Culling. It is prohibited to sort, cull, high-grade, or replace any fish already in possession. Participants in permitted black bass fishing tournaments are exempted, as are participants in catch and release catfish fishing tournaments if fishing from a boat with a functioning aerated or water-circulated live well. Any fish taken into possession by holding in a live well, on a stringer or in other fish-holding devices is part of the daily bag limit. Once the daily bag limit of a particular species is reached, fishing for that species is permitted as long as all fish of that species caught are immediately released.

ARC 3267C

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD,
IOWA COMPREHENSIVE[591]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455G.4, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to rescind Chapter 5, “Determination or Adjustment of Cost Factor,” Chapter 6, “Administration of the Environmental Protection Charge Imposed upon Petroleum Diminution,” Chapter 10, “Restructuring of Insurance Board and Transfer of Assets and Liabilities of Insurance Fund,” Chapter 12, “Guaranteed Loan Program,” and Chapter 14, “Aboveground Petroleum Storage Tank Fund,” Iowa Administrative Code.

The rescissions of Chapters 5 and 6 implement 2016 Iowa Acts, House File 2464, which removed the authority to collect or administer the environmental protection charge (EPC). Chapters 10, 12 and 14 were created to implement Iowa Code sections 455G.11, 455G.10, and 455G.23, respectively, and each of these sections has since been repealed.

The purpose of these proposed amendments is to rescind rules for which the implementing statutes have been repealed.

Interested persons may submit comments orally or in writing by 4:30 p.m. on September 29, 2017, to the Administrator, Iowa UST Fund, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266; telephone (515)225-9263. Written comments also may be sent by fax to (515)225-9361, by e-mail to dale.cira@aon.com, or via the Iowa administrative rules Web site at <https://rules.iowa.gov>.

The Board does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Board finds that there is no impact on jobs.

These amendments are intended to implement Iowa Code chapter 424 and sections 455G.11, 455G.10, and 455G.23; and 2016 Iowa Acts, House File 2464, sections 6, 7 and 8.

The following amendments are proposed.

- ITEM 1. Rescind and reserve **591—Chapter 5.**
- ITEM 2. Rescind and reserve **591—Chapter 6.**
- ITEM 3. Rescind and reserve **591—Chapter 10.**
- ITEM 4. Rescind and reserve **591—Chapter 12.**
- ITEM 5. Rescind and reserve **591—Chapter 14.**

ARC 3277C**PUBLIC EMPLOYMENT RELATIONS BOARD[621]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby proposes to amend Chapter 1, “General Provisions,” Chapter 2, “General Practice and Hearing Procedures,” and Chapter 4, “Bargaining Unit and Bargaining Representative Determination”; to rescind Chapter 5, “Elections,” and to adopt a new chapter with the same title; and to amend Chapter 6, “Negotiations and Negotiability Disputes,” Chapter 7, “Impasse Procedures,” Chapter 8, “Internal Conduct of Employee Organizations,” Chapter 11, “State Employee Appeals of Grievance Decisions and Disciplinary Actions,” and Chapter 16, “Electronic Document Management System,” Iowa Administrative Code.

The purpose of these amendments is to update the agency’s rules to reflect and implement the provisions of 2017 Iowa Acts, House File 291. A major portion of the amendments involve Chapter 5, “Elections.” Due to the breadth of the amendments to Iowa Code chapter 20, the agency determined that it was impracticable to amend Chapter 5 on a rule-by-rule basis and that a reorganization of the chapter was necessary in order to present the rules in a logical and understandable fashion. Accordingly, Item 13 proposes to rescind existing Chapter 5 and replace it with a reorganized chapter which reflects changes responsive to House File 291, even though many of the rules contained in that chapter are identical, or nearly identical, to those contained in existing Chapter 5. As has been the case in other instances where significant statutory changes are implemented, many of the amendments constitute technical, conforming amendments to other rules which were necessitated by the reorganization of that chapter.

Interested persons may make written comments on the proposed amendments until 4:30 p.m. on September 19, 2017. Comments should be directed to Diana Machir, Iowa Public Employment Relations Board, 510 E. 12th Street, Suite 1B, Des Moines, Iowa 50319. Comments may be personally delivered, submitted by fax to (515)242-6511 or e-mailed to diana.machir@iowa.gov.

Requests for a public hearing must be received by 4:30 p.m. on September 19, 2017.

Although the implementation of 2017 Iowa Acts, House File 291, will cause an increase in the expenditure of funds by the agency and affected persons, due primarily to the need for the agency to contract with a vendor to conduct elections on the agency’s behalf and the requirement that these costs be paid by the employee organizations involved, the agency does not anticipate that these expenditures will exceed \$100,000 per year or \$500,000 within five years.

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).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3278C**. The content of that submission is incorporated by this reference.

After analysis and review of these amendments, and consideration of anecdotal information concerning the effects of the implementation of amendments to public sector collective bargaining in the State of Wisconsin which are similar in many respects to the amendments contained in 2017 Iowa Acts, House File 291, the agency anticipates that the amendments to Iowa Code chapter 20 may reduce the number of private sector jobs or potential job opportunities for individuals in the private sector who provide legal or support services to labor organizations or public employers in Iowa, although the extent of any such reduction cannot be reasonably determined.

These amendments are intended to implement Iowa Code chapter 20 as amended by 2017 Iowa Acts, House File 291.

ARC 3284C**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 421.14, 422.16, and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 46, “Withholding,” Iowa Administrative Code.

In 2016, pursuant to **ARC 2739C**, the Department implemented new filing requirements for W-2 and 1099 forms in order to combat tax refund fraud. The adopted rules phased in the new filing requirements over two years. For tax year 2016, only withholding agents with at least 50 employees were required to electronically file W-2 forms with the Department. For tax year 2016, any withholding agents could voluntarily file 1099 forms and withholding agents with fewer than 50 employees could voluntarily file W-2 forms. For tax year 2017, the rule required all withholding agents to electronically file W-2 and 1099 forms with the Department.

To allow additional time to implement these new requirements, the Department is extending the phase-in for one year as described in the proposed amendment below. As proposed, the amendment will only require withholding agents with at least 50 employees to file W-2 forms electronically for tax years 2016 and 2017. The requirement that all withholding agents file W-2 and 1099 forms electronically will take effect with tax year 2018 rather than 2017.

Interested persons may make written comments on the proposed amendment on or before September 19, 2017. Written comments on the proposed amendment should be directed by mail to Legal Services, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457; or by e-mail to alana.stamas@iowa.gov. Persons who want to convey their views orally should contact the Department of Revenue, by telephone at (515)281-8450, or in person at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 19, 2017.

After analysis and review of this rule making, the Department finds that there is no fiscal impact.

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

After analysis and review of this rule making, the Department finds that the amendment to these rules is not likely to have a significant impact on jobs.

This amendment is intended to implement Iowa Code section 422.16(2)“b.”

The following amendment is proposed.

Amend paragraphs **46.3(3)“f”** and **“g”** as follows:

f. W-2 forms.

(1) Beginning in 2017 for tax year ~~years~~ 2016 and 2017, withholding agents with at least 50 employees are required to electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year. Withholding agents with fewer than 50 employees may, but are not required to, electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year.

(2) Beginning in ~~2018~~ 2019 for tax year ~~2017~~ 2018 and all subsequent tax years, all withholding agents are required to electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year.

REVENUE DEPARTMENT[701](cont'd)

(3) The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the ~~2019~~ 2020 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.

(4) Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

g. 1099 forms and W-2G forms.

(1) Beginning in 2017 for tax ~~year~~ years 2016 and 2017, withholding agents with at least fifty 1099 forms and W-2G forms may file 1099 forms and W-2G forms with the department of revenue on or before the last day of January following the tax year.

(2) Beginning in ~~2018~~ 2019 for tax year ~~2017~~ 2018 and all subsequent tax years, all withholding agents are required to electronically file all 1099 forms and W-2G forms on or before the last day of January following the tax year.

(3) The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the ~~2019~~ 2020 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.

(4) Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

ARC 3285C

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.4, 421.1A(4)“f” and 421.1A(4)“g,” the Property Assessment Appeal Board hereby gives Notice of Intended Action to amend Chapter 126, “Property Assessment Appeal Board,” Iowa Administrative Code.

These amendments are proposed, in part, to bring the Board’s rules into conformance with statutory changes enacted by 2017 Iowa Acts, House File 478.

The proposed amendment in Item 1 clarifies that a party filing with the Board need only file an appeal, specifies the contents of said appeal, and notes the party’s right to make an amendment to the appeal. The amendment also notes that for appeals filed after January 1, 2018, parties may raise new grounds before the Board not previously pleaded to the local board of review. The amendment also clarifies what information a local board of review is required to include in its answer.

The proposed amendment in Item 2 implements a process for an appellant to seek refund or credit if successful in a Board appeal.

The proposed amendment in Item 3 updates an internal cross reference noting that a hearing scheduling and discovery plan is required to be filed in certain cases within 60 days of the board of review’s answer.

The proposed amendment in Item 4 adopts language addressing discovery, including questions of relevancy and admissibility. The amendment addresses the Board’s taking judicial notice of publicly available information identified by the parties in a contested case. The amendment also changes the process for parties to request subpoenas and states when the Board shall refuse to issue a subpoena.

The proposed amendment in Item 5 notes the Board no longer transcribes contested case hearings but rather keeps digital recordings of the hearings.

The proposed amendment in Item 6 makes changes to the process for seeking judicial review of the Board’s final agency action for appeals filed after January 1, 2018.

REVENUE DEPARTMENT[701](cont'd)

The proposed amendment in Item 7 is intended to implement the changes made by 2017 Iowa Acts, House File 478.

Any interested person may make written suggestions or comments on the proposed amendments on or before September 19, 2017. Such written comments should be directed to the Property Assessment Appeal Board, P.O. Box 10486, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Board at (515)725-0338 or at the Board offices at the Hoover State Office Building, Fourth Floor, 1305 East Walnut Street, Des Moines, Iowa.

Requests for a public hearing must be received by September 19, 2017.

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

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

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

These amendments are intended to implement Iowa Code sections 421.1A and 441.37A and 2017 Iowa Acts, House File 478.

The following amendments are proposed.

ITEM 1. Amend rule 701—126.2(421,441) as follows:

701—126.2(421,441) Appeal and certification answer.

126.2(1) *Appeal and jurisdiction.* The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by filing an appeal with the board. The appeal shall ~~include a petition setting set~~ forth the basis of the grounds for appeal and the relief sought. The appeal shall be filed with the board within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed. For an appeal filed through the electronic filing system to be timely, the appeal must be filed by 11:59 p.m. on the last day for filing.

b. The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery.

126.2(2) *Form of appeal.* The appeal shall include:

a. The appellant's name, mailing address, e-mail address, and telephone number;

b. The address of the property being appealed and its parcel number;

c. The grounds for appeal;

~~*d.*~~ *d.* A short and plain statement of the claim;

~~*e.*~~ *e.* The relief sought; and

~~*f.*~~ *f.* If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, e-mail address, and telephone number.

126.2(3) *Amendment of appeal.* The appellant may amend the appeal once as a matter of course within 20 days after it is filed to add or modify the grounds for appeal. Otherwise, the appellant may only amend the appeal by leave of the board or by written consent of the adverse party.

~~**126.2(3)**~~ **126.2(4) *Scope of review.***

a. Grounds for appeal. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. ~~No new grounds in addition to those set out in the protest to the local board of review can be pleaded, but additional evidence to sustain those grounds may be introduced.~~ The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof.

(1) For assessment years prior to January 1, 2018, no new grounds in addition to those set out in the protest to the local board of review can be pleaded but additional evidence to sustain those grounds may be introduced.

(2) For assessment years beginning on or after January 1, 2018, new grounds in addition to those set out in the protest to the local board of review may be pleaded and additional evidence to sustain

REVENUE DEPARTMENT[701](cont'd)

those grounds may be introduced. The board may order the appellant to clarify the grounds on which the appellant seeks relief.

b. Burden of proof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. ~~The~~

(1) For assessment years prior to January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.

(2) For assessment years beginning on or after January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold the valuation.

c. The appeal is a contested case.

~~126.2(4)~~ **126.2(5)** *Notice to local board of review.* The board shall serve, through the electronic filing system, a copy of the appellant's appeal to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is served on the local board of review.

~~126.2(5)~~ **126.2(6)** *Answer and certification by local board of review.* Using the form provided by the board or a conforming document, the local board of review's attorney or representative shall file an answer ~~and certification~~ within ~~21~~ 30 days after service of the notice of appeal, ~~unless the time period is shortened or extended by the board.~~ The answer ~~and certification~~ shall include a statement setting forth the local board of review's position on the appeal and ~~include the following attachments:~~ the subject property's current assessed value.

1. ~~The taxpayer's protest to the local board of review;~~

2. ~~The final decision of the local board of review; and~~

3. ~~The notice of assessment, if any.~~

~~126.2(6)~~ **126.2(7)** *Docketing.* Appeals shall be assigned consecutive docket numbers. Electronic records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the board, as well as all filings made in the appeal.

~~126.2(7)~~ **126.2(8)** *Consolidation and severance.* The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

a. *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more appeal proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. *Severance.* The presiding officer may, for good cause shown, order any appeal proceedings or portions of the proceedings severed.

~~126.2(8)~~ **126.2(9)** *Appearances.* Any party may appear and be heard on its own behalf, or by its attorney or designated representative. Attorneys and designated representatives both shall file a notice of appearance with the board for each appeal. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board's rules.

ITEM 2. Amend rule 701—126.5(421,441) as follows:

701—126.5(421,441) Motions and settlements.

126.5(1) No change.

126.5(2) *Motions.* No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the board and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no

REVENUE DEPARTMENT[701](cont'd)

later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. to c. No change.

d. Motions for refund. For assessment years on or after January 1, 2018, if the board reduces an assessment following a contested case hearing, the appellant shall be notified in the board's final agency action of the appellant's right to elect to be refunded for taxes already paid by filing a motion with the board. Such a motion shall be filed within 10 days of the board's final agency action. If the appellant does not timely file a motion for refund, any change in taxes resulting from the assessment reduction shall be credited toward future tax payments.

126.5(3) Settlements. Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed with the board. The settlement filed with the board shall indicate whether the assessment modification will result in a tax refund or a credit toward future tax payments. The board will not approve ~~settlements~~ a settlement unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

ITEM 3. Amend subrule 126.6(1) as follows:

126.6(1) When required. For appeals involving properties classified commercial, industrial, or multiresidential and assessed at \$2 million or more, the parties shall confer and file a hearing scheduling and discovery plan within 60 days of the notice provided in subrule ~~126.2(4)~~ 126.2(5). In any other appeal, the parties may jointly file a hearing scheduling and discovery plan or the board may, on its own motion, require parties to file a hearing scheduling and discovery plan. The dates established in a hearing scheduling and discovery plan under this rule shall supersede any dates set forth in any other rule in this chapter.

ITEM 4. Amend rule 701—126.7(421,441) as follows:

701—126.7(421,441) Discovery and evidence.

126.7(1) Discovery procedure. The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings. When considering a question of relevancy, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 71, and other applicable law. The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in specific Iowa Rules of Civil Procedure govern those specific procedures, unless lengthened or shortened by the board.

a. to g. No change.

126.7(2) No change.

126.7(3) Evidence.

a. and b. No change.

c. Scope of admissible evidence. Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision in accordance with the provisions of Iowa Code section 441.21, 701—Chapter 71, or other applicable law. ~~Irrelevant~~ Upon an objection pursuant to paragraph 126.7(3) "e," irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

REVENUE DEPARTMENT[701](cont'd)

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer or the parties have filed a hearing scheduling and discovery plan under rule 701—126.6(421,441). Rebuttal evidence need not be exchanged or served on the opposing party prior to the hearing. All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark each exhibit with consecutive numbers. The appellee shall mark each exhibit with consecutive letters. ~~The local board of review's Exhibit A shall be the subject property's property record card or cost report.~~

(1) The local board of review's Exhibit A shall be the subject property's property record card including the cost report.

(2) The local board of review's Exhibit B shall be the final decision of the local board of review.

(3) The local board of review's Exhibit C shall be the appellant's petition to the local board of review.

e. Objections. Any party may object to specific evidence or may request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

g. Judicial notice of property record cards. Without additional notice, the board may take judicial notice of the property record card or cost report of the subject property if electronically available to the public through the assessor's Web site. At its discretion, the board may take judicial notice of property record cards or cost reports of comparable properties identified by the parties as provided under Iowa Code section 17A.14(4) if electronically available to the public through the assessor's Web site. If the board takes judicial notice of any property record card or cost report, such card or report shall become part of the board's official agency record for the appeal.

126.7(4) Subpoenas.

a. Issuance of subpoena for witness.

(1) ~~A Pursuant to Iowa Code section 17A.13(1), a subpoena shall be issued to a party on request, unless otherwise excluded pursuant to this subrule. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.~~

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

(3) The board shall refuse to issue a subpoena when there is reasonable ground to believe the subpoena is requested for the purpose of harassment; may seek irrelevant information as provided under Iowa Code section 441.21, 701—Chapter 71, or other applicable law; or is untimely. If the board refuses to issue a subpoena, the board shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing before the board regarding the refusal by filing with the board and serving on all parties a written request for hearing.

b. Issuance of subpoena for production of documents.

~~(1) A subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.~~

~~(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas.~~

REVENUE DEPARTMENT[701](cont'd)

e. b. *Motion to quash or modify.* Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure or pursuant to this subrule.

ITEM 5. Amend subrule 126.8(8) as follows:

126.8(8) *Transcript of hearing Hearing recordings.* All hearings shall be electronically recorded. Any party may request a copy of the hearing recording and pay a fee associated with preparing the copy. Any party may provide a certified court reporter at the party's own expense. ~~Any party may request a transcription of the hearing. The board reserves the right to impose a charge for copies and transcripts.~~

ITEM 6. Amend rule 701—126.10(17A,441) as follows:

701—126.10(17A,441) Judicial review.

126.10(1) *Appeals of board decisions.* A party may seek judicial review of a decision rendered by the board by ~~filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the board's final agency action is postmarked to the appellant or the final agency action is filed in the board's electronic filing system. Iowa Code chapter 17A applies to judicial review of the board's final decision.~~ The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

a. For assessment years prior to January 1, 2018, a party may seek judicial review by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the board's final agency action is postmarked to the appellant or the final agency action is filed in the board's electronic filing system. Iowa Code chapter 17A applies to judicial review of the board's final decision.

b. For assessment years beginning on or after January 1, 2018, a party may seek judicial review of a decision rendered by the board by filing a petition for judicial review with the clerk of the district court where the property is located within 30 days after the board's action pursuant to Iowa Code chapter 17A.

126.10(2) No change.

ITEM 7. Amend **701—Chapter 126**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapters 17A and 22 and 2017 Iowa Acts, House File 478.

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SECRETARY OF STATE[721]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 17A.4 and 2017 Iowa Acts, House File 516, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Chapter 22, “Voting Systems,” Chapter 26, “Counting Votes,” and Chapter 28, “Voter Registration File (I-Voters) Management,” Iowa Administrative Code.

These proposed amendments are necessary because the General Assembly has enacted 2017 Iowa Acts, House File 516. The Secretary of State has determined that as a result of this newly enacted law, the following amendments are necessary to keep the administrative rules in compliance with the Iowa Code. House File 516 makes significant changes to elections in the state of Iowa, creating the need to update Chapters 21, 22, 26, and 28, which are chapters that contain elections rules in the Iowa Administrative Code.

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Any interested person may make written suggestions or comments on the proposed amendments on or before September 19, 2017. Written suggestions or comments should be directed to Eric R. Gookin, Election Administrator, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office by telephone at (515)281-0145 or in person at the Secretary of State's office on the first floor of the Lucas State Office Building.

A public hearing will be held on October 16, 2017, at 3 p.m. at the Secretary of State's office on the first floor of the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa.

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

These amendments are intended to implement 2017 Iowa Acts, House File 516.

The following amendments are proposed.

ITEM 1. Amend subrule 21.2(2) as follows:

21.2(2) Original absentee ballot applications. The original absentee ballot application submitted electronically shall also be mailed or delivered to the commissioner. If mailed, the envelope bearing the original absentee ballot application shall be postmarked not later than the ~~Friday before the election~~ voter registration deadline provided in Iowa Code section 48A.9 for the election for which the ballot is requested. This subrule shall not apply to documents submitted electronically by UOCAVA voters pursuant to rule 721—21.320(53).

a. The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the original absentee ballot application which was filed electronically is not received by the time the polls close on election day.

b. The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the postmark or Intelligent Mail barcode (IMb) on the envelope containing the original absentee ballot application is either illegible or later than the ~~Friday before the election~~ voter registration deadline provided in Iowa Code section 48A.9 for the election for which the ballot is requested.

ITEM 2. Amend rule 721—21.3(49,48A) as follows:

721—21.3(49,48A) Voter identification documents.

21.3(1) Identification documents for persons other than election day registrants.

a. Unless the person is registering to vote at the polls on election day, precinct election officials shall accept the identification documents listed in Iowa Code section 48A.8 and 2017 Iowa Acts, House File 516, section 27, from any person who is asked or required to present identification pursuant to Iowa Code section 49.77.

b. Current and valid identification. "Current and valid" or "identification," for persons other than election day registrants, means identification that meets the following criteria:

(1) Iowa driver's licenses and nonoperator's identification cards used to establish identity pursuant to 2017 Iowa Acts, House File 516, section 27, shall be accepted up to 90 days after the expiration date listed on the license. It is still acceptable on the ninetieth day. An Iowa nonoperator's identification card that does not expire shall be considered current and valid.

(2) Veterans and military identification cards that do not contain an expiration date or that do not expire and voter identification cards issued pursuant to 2017 Iowa Acts, House File 516, section 18, shall be considered current and valid.

(3) For registration pursuant to Iowa Code section 48A.8, the proof of residence must be dated, or describe terms of residency current to, within 45 days prior to submission.

(4) All other forms of identification used to establish identity pursuant to 2017 Iowa Acts, House File 516, section 27, shall not be expired. An identification is still valid on the expiration date.

c. A current and valid identification may include a former address, when used for identification purposes only.

21.3(2) Identification for election day registrants.

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a. A person who applies to register to vote on election day shall provide proof of identity and residence pursuant to Iowa Code section 48A.7A and 2017 Iowa Acts, House File 516, section 27, in the precinct where the person is applying to register and vote.

b. Any registered voter who attests for another person registering to vote at the polls on election day shall ~~be a registered voter of the same precinct~~ meet the requirements in Iowa Code section 48A.7A. The registered voter may be a precinct election official or a pollwatcher, but may not attest for more than one person applying to register at the same election.

c. Current and valid identification. “Current and valid” or “identification,” for the purposes of election day registration, means identification that meets the following criteria:

(1) The expiration date on the identification card has not passed. An identification is still valid on the expiration date. An Iowa nonoperator’s identification card that does not expire shall be considered current and valid.

(2) Veterans and military identification cards that do not contain an expiration date or that do not expire and voter identification cards issued pursuant to 2017 Iowa Acts, House File 516, section 18, shall be considered current and valid.

d. A current and valid identification may include a former address, when used for identification purposes only.

~~**21.3(3) Current and valid identification.**~~

~~*a.* “Current and valid” or “identification,” for the purposes of this rule, means identification that meets the following criteria:~~

~~(1) The expiration date on the identification has not passed. An identification is still valid on the expiration date. An Iowa nonoperator’s identification that shows “none” as the expiration date shall be considered current and valid.~~

~~(2) The identification has not been revoked or suspended.~~

~~*b.* A current and valid identification may include a former address.~~

21.3(3) Proof of residence standards for all voters. Any person required to present proof of residence pursuant to Iowa Code sections 48A.7A and 48A.8 shall provide documentation that meets the following requirements:

a. The proof of residence document must be listed in Iowa Code section 48A.7A or 48A.8.

b. The document must be current within 45 days of election day, unless otherwise provided by law.

c. A residential lease’s stated term must include election day.

d. Property tax statements are current within 45 days of March 31 or the final payment date, if the final payment date is stated in the document.

21.3(4) Identification not provided. After January 1, 2019, a person who has been requested is required to provide identification and does not provide it shall vote only by provisional ballot pursuant to Iowa Code section 49.81. However, a person who is registering to vote on election day pursuant to Iowa Code section 48A.7A may establish identity and residency in the precinct by written oath of a person who is registered to vote in the precinct. A registered voter may only attest for one election day registrant.

21.3(5) Attesting to identity by signing oath. A person who cannot show proof of identity at the polls may swear to the oath appearing in 2017 Iowa Acts, House File 516, section 27(8). This provision is repealed effective January 1, 2019.

21.3(6) Determination of identity and residency. Proof of identity and residence of persons offering to vote is presumed valid unless the precinct election official determines the proof offered does not match the voter. In determining whether a person offering to vote is eligible under Iowa Code section 48A.7A and Iowa Code chapter 49, precinct election officials shall consider all of the information presented by the person offering to vote prior to determining that the person is not eligible. The following are factors that shall be considered by precinct election officials in making the determination:

a. Changes to the physical appearance or signatures that are caused by age, disability, or medical conditions, except that a precinct election official’s perception of a person’s mental capacity shall not be

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considered unless there is documented proof that the person has been adjudged mentally incompetent to vote.

b. Time elapsed since the proof was generated, subject to the Iowa Code sections that govern the validity and expiration timelines of the proof.

c. Other documentation allowable under Iowa Code chapter 48A to prove the facts in question.

21.3(7) Post-election day proof of identity or residency. As of January 1, 2019, a person required to cast a provisional ballot under this rule may submit proof of identity or residence after election day. The proof must be received by the commissioner not later than 12 noon on the Monday following the election, or if the law authorizing the election specifies that the supervisors canvass the votes earlier than the Monday following the election, it must be received by the commissioner before the canvass for that election by the board of supervisors. Defects may be cured through the use of documentation as permitted under Iowa Code section 48A.7A or 2017 Iowa Acts, House File 516, section 27. If such defects are cured, the voter's ballot shall be counted.

This rule is intended to implement Iowa Code sections 48A.7A and 49.77, 2017 Iowa Acts, House File 516, section 27, and P.L. 107-252, Section 303 the Help America Vote Act.

ITEM 3. Amend subrule 21.4(1) as follows:

21.4(1) To qualify to vote in the election being held that day, the voter shall:

- a. Go to the polling place for the precinct where the voter lives on election day.
- b. Complete a registration form showing the person's current address in the precinct.
- c. Present proof of residence and identity as required by ~~subrule~~ subrules 21.3(1) and 21.3(4).

ITEM 4. Amend rule 721—21.5(49) as follows:

721—21.5(49) Eligibility declarations in the election register. To compensate for the absence of a separate declaration of eligibility form, the commissioner shall provide to each precinct a voter roster with space for each person who appears at the precinct to vote to print the following information: first and last name, address, date of birth, and, at the voter's option, telephone number, and, in primary elections, political party affiliation.

The roster forms shall include the name and date of the election and the name of the precinct, and may be provided on paper that makes carbonless copies. If a multicopy form is used, the commissioner shall retain the original copy of the voter roster with other records of the election.

This rule is intended to implement Iowa Code section 49.77.

ITEM 5. Amend rule 721—21.7(48A) as follows:

721—21.7(48A) Election day registration. In addition to complying with the identification provisions in rule 721—21.3(49,48A), precinct election officials shall comply with the following requirements:

21.7(1) Precinct election officials shall inspect the identification documents presented by election day registrants to verify the following:

- a. The photograph shows the person who is registering to vote, and the document has not expired.
- b. The name on the identification document is the same as the name of the applicant.
- c. The address on the ~~identification~~ proof of residence document is in the precinct where the person is registering to vote and is current within 45 days.

21.7(2) Precinct election officials shall verify that each person who attempts to attest to the identity and residence of a person who is registering to vote on election day is a registered voter in the precinct and has not attested for any other voter in the election. The officials shall note in the election register that the person has attested for an election day registrant.

21.7(3) Precinct election officials shall permit any person who is in line to vote at the time the polls close to register and vote on election day if the person otherwise meets all of the election day registration requirements.

21.7(4) In precincts where an electronic program is not used to check the name of an election day registrant against the statewide list of felons who have had their right to vote revoked, ~~preempt~~ the voter shall be required to cast a provisional ballot. The voter shall be allowed to present evidence of the

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person's right to vote until 12 noon on the Monday following the election, or if the law authorizing the election specifies that the supervisors canvass the votes earlier than the Monday following the election, the evidence must be received by the commissioner before the canvass for that election by the board of supervisors. Precinct election officials shall provide each election day registrant with a "Notice to Election Day Registrants" prepared by the state commissioner before allowing the voter to register and vote on election day. The "Notice to Election Day Registrants" prepared by the state commissioner will be posted on the state commissioner's Web site.

This rule is intended to implement Iowa Code section 48A.7A.

ITEM 6. Adopt the following **new** rule 721—21.15(49):

721—21.15(49) Proof of residence or identification after casting provisional ballot. If a voter casts a provisional ballot pursuant to Iowa Code section 49.81 or 2017 Iowa Acts, House File 516, section 27, the voter must offer the required proof of residency or identification to vote in the polling place before the polls close on election day, or to the commissioner's office in order for the ballot to be counted. The proof must be received by the commissioner not later than 12 noon on the Monday following the election, or if the law authorizing the election specifies that the supervisors canvass the votes earlier than the Monday following the election, the proof must be received by the commissioner before the canvass for that election by the board of supervisors.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 27, and Iowa Code section 49.81 as amended by 2017 Iowa Acts, House File 516.

ITEM 7. Adopt the following **new** rule 721—21.52(48A):

721—21.52(48A) Request for new voter identification card.

21.52(1) If a voter's identification card is lost or damaged, the registered voter may request a new card in person at the commissioner's office by showing identification, or by a written, signed request to the commissioner's office. Upon receiving the request, the commissioner shall print and mail a new voter identification card.

21.52(2) If the voter appears in person but does not have the correct form of identification, the commissioner shall verify the voter's identity by asking the voter to provide at least two of the following personal facts:

- a. Date of birth;
- b. Last four digits of the voter's social security number (if the number is stored within I-Voters);
- c. Driver's license or nonoperator's identification card number (if the number is stored within I-Voters);
- d. Address;
- e. Middle name;
- f. Voter verification number pursuant to Iowa Code section 53.2(4).

Upon the successful verification of the voter, the commissioner shall issue a new copy of the voter identification card over the counter. If the voter is unable to respond correctly to at least two of the questions in this subrule, the commissioner shall not issue a copy of the voter identification to the voter.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 18.

ITEM 8. Adopt the following **new** rule 721—21.76(48A):

721—21.76(48A) Electronic poll book training for poll workers. The state commissioner shall create and maintain training materials for poll workers relating to voter identification and the use of electronic poll books. The training materials shall be available from the state commissioner's Web site.

This rule is intended to implement Iowa Code section 48A.7A as amended by 2017 Iowa Acts, House File 516, section 16.

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ITEM 9. Adopt the following new rule 721—21.77(49):

721—21.77(49) Photographing ballots. A voter may not use a photographic device to display a voted ballot if doing so interferes with other voters or the orderly operation of the polling location or violates any part of Iowa Code chapter 39A. The display shall only include the voter and the voter's ballot.

"Interferes," for purposes of this rule, means loitering, congregating, interrupting, or hindering a voter from approaching the poll booth for the purpose of voting, or while the voter is inside the enclosed voting space when marking a ballot.

This rule is intended to implement Iowa Code section 49.88 as amended by 2017 Iowa Acts, House File 516, section 38.

ITEM 10. Adopt the following new rule 721—21.101(47):

721—21.101(47) State commissioner's review of complaints. Upon receiving credible information that a commissioner may have violated a provision in Iowa Code chapters 39 through 52, the state commissioner shall require the commissioner to provide more information, or certification that the commissioner complied with the relevant law. The determination of credibility is solely at the discretion of the state commissioner. The state commissioner may require a complaining party to provide more information. The state commissioner may reject anonymous complaints without any additional inquiry. If it appears that the complaint originated from the commissioner's office, the state commissioner shall consult with the attorney general before proceeding.

If the state commissioner determines that a commissioner has not sufficiently responded to the inquiry, the state commissioner may issue a notice of infraction pursuant to Iowa Code chapter 39A, or refer the matter to the appropriate law enforcement agency, or both.

This rule is intended to implement Iowa Code section 47.1 as amended by 2017 Iowa Acts, House File 516, section 41.

ITEM 11. Adopt the following new rule 721—21.102(49):

721—21.102(49) Commissioner's filings and notifications to state commissioner.

21.102(1) The commissioner shall certify to the state commissioner that all relevant election laws and requirements were followed as required by Iowa law. A form for the certification shall be published to the state commissioner's Web site, pursuant to 2017 Iowa Acts, House File 516, section 41.

21.102(2) The commissioner shall report each suspected incidence of election misconduct to the state commissioner regardless of proximity to any election, pursuant to 2017 Iowa Acts, House File 516, section 41(4). The commissioner shall provide to the state commissioner all updates as they are received by the commissioner from law enforcement.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 41.

ITEM 12. Amend subrule 21.203(1) as follows:

21.203(1) Required information. In addition to other requirements listed in the Iowa Code, general election ballots shall also include the following information:

- a. The name of the election.
- b. The name of the county.
- c. Instructions for how to mark the ballot, including instructions for voting on judicial retentions and constitutional amendments or public measures ~~and instructions for straight-party voting.~~
- d. Ballot location of the judges' names and any constitutional amendment(s).

ITEM 13. Amend subrule 21.301(3) as follows:

21.301(3) Absentee ballots received from a voter subsequently assigned "inactive" status.

a. The commissioner shall mail an absentee ballot to a voter if a voter's status is changed to "inactive" between the time the voter requested an absentee ballot and the time the absentee ballots are ready to mail. The commissioner shall also separately notify the voter of the requirement to provide identification and proof of residence before the ballot can be counted pursuant to paragraph 21.301(3)"c."

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b. The commissioner shall set aside the absentee ballot of a voter whose status is changed to “inactive” pursuant to Iowa Code section 48A.26, subsection 6, after the voter has submitted the voter’s absentee ballot.

c. Pursuant to Iowa Code section 53.31, the commissioner shall notify any voter assigned an “inactive” status subsequent to requesting or returning an absentee ballot that the voter’s absentee ballot has been challenged and may be counted only if the voter personally delivers or mails a copy of the voter’s identification and proof of residence as listed in Iowa Code section 48A.8 to the commissioner’s office before the absentee and special voters precinct board convenes to count absentee ballots, or reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22. If the commissioner does not receive a copy of the voter’s identification before the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the absentee and special voters precinct board shall reject the absentee ballot.

ITEM 14. Adopt the following **new** rule 721—21.306(53):

721—21.306(53) Incomplete absentee ballot applications. If the commissioner receives an absentee ballot request lacking any of the information required by 2017 Iowa Acts, House File 516, section 6(4)(a), the commissioner shall obtain the necessary information by the best means available pursuant to 2017 Iowa Acts, House File 516, section 6(4)(a). “Best means available,” for the purposes of this rule, means contacting the voter directly by mail, e-mail, or telephone or in person. Commissioners may not use the voter registration system to obtain the information.

21.306(1) If the voter does not have current access to the voter identification card, the commissioner shall verify the voter’s identity by asking the voter to provide at least two of the following facts about the voter:

- a.* Date of birth;
- b.* Last four digits of the voter’s social security number (if the number is stored within I-Voters);
- c.* Driver’s license or nonoperator’s identification card number (if the number is stored within I-Voters);
- d.* Address;
- e.* Middle name;
- f.* Voter verification number pursuant to Iowa Code section 53.2(4).

21.306(2) If an unregistered person offering to vote an absentee ballot pursuant to Iowa Code section 53.10 or 53.11 prior to the pre-registration deadline does not have an Iowa-issued driver’s license, a nonoperator’s identification card, or a voter identification card, the person may satisfy residence and identity requirements in the manner described by 2017 Iowa Acts, House File 516, section 27. This section shall also apply to a registered voter casting a ballot pursuant to Iowa Code section 53.10 or 53.11 who has not yet received a voter verification number.

21.306(3) This provision shall not apply to the absence of a preferred political party ballot for primaries held pursuant to Iowa Code section 53.2(5).

This rule is intended to implement Iowa Code section 53.2 as amended by 2017 Iowa Acts, House File 516, section 6.

ITEM 15. Adopt the following **new** rule 721—21.307(49,53):

721—21.307(49,53) Updating signatures on file. A registered voter may update the signature on record with the commissioner at any time. A commissioner shall not require a reason from the voter for the change. The state commissioner shall prescribe a form for the signature update. The form must include the voter’s name and the voter’s verification number. The form shall be published on the state commissioner’s Web site. A written request with the required information shall not require the form. Upon receiving the signature update request, the commissioner shall verify the information on the form. If the required information is valid, the commissioner shall scan the form into I-Voters. This action shall be processed as a ministerial update and shall not be processed as a change to the voter

SECRETARY OF STATE[721](cont'd)

registration record. If the registrant is attempting to vote pursuant to Iowa Code section 53.10 or 53.11, the registrant shall provide proof of identity prior to submitting the update.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 27, and Iowa Code section 53.18 as amended by 2017 Iowa Acts, House File 516, section 31.

ITEM 16. Amend paragraph **21.359(5)“a”** as follows:

a. The process shall be witnessed by observers appointed by the county chairperson of each of the political parties referred to in Iowa Code section 49.13, subsection 2. If, after receiving notice from the commissioner pursuant to Iowa Code section 53.23, subsection 3, paragraph “a,” ~~either or both~~ any of the political parties fail to appoint an observer observers, the commissioner may continue with the proceedings.

ITEM 17. Rescind and reserve subrule **22.11(4)**.

ITEM 18. Rescind paragraph **22.41(1)“f.”**

ITEM 19. Amend rule 721—22.42(52) as follows:

721—22.42(52) Preparing test decks. The commissioner shall prepare test decks from all ballots printed for use in the election, including those for use at the polling places and for absentee balloting. Each of the following test decks shall be prepared for every precinct and ballot style in the election. Commissioners may use additional test methods to supplement the process described in this rule.

22.42(1) Requirements for all test decks prepared by the commissioner and used in public testing. The commissioner shall:

- a. Replace ballots spoiled during the marking process instead of attempting to correct errors.
- b. Fill in each oval completely using the recommended pen, pencil or ~~AutoMARK-VAT~~ voter assist terminal.
- c. Mark each ballot “Test Ballot.”
- d. Mark at least one valid vote for each candidate and question on the ballot using the OVI unit (if applicable). The ballots marked by the OVI unit may be used as part of the systematic ~~or straight party~~ test deck (if applicable).
- e. Mark at least one valid vote for each candidate and question on the ballot using the ImageCast Evolution or ImageCast Precinct with audio and printer (if applicable). The ballots marked by one of these units may be used as part of the systematic ~~or straight party~~ test deck (if applicable).

22.42(2) Required test method. The commissioner shall:

- a. Prepare a test plan showing the planned number of votes, including undervotes and overvotes for each oval on the ballot. Follow the instructions in subrules 22.42(3) through 22.42(5) in preparing the test decks.
- b. Mark the test ballots according to the test plan.
- c. Print a zero totals report from the optical scan tabulator before inserting any ballots.
- d. Insert the ballots into the optical scan tabulator and print a report showing the number of votes recorded for all offices, questions and judges, including undervotes and overvotes.
- e. Compare the printed report with the test plan to ensure that the correct number of votes was counted for each oval.

f. If the commissioner finds errors, the commissioner shall identify and correct them. The commissioner shall repeat the testing process until the printed results from the tabulator match the test plan. If the commissioner cannot produce an errorless test, the equipment shall not be used in the election.

22.42(3) Systematic test deck. The commissioner shall determine a unique number of votes for each candidate in each office, such as one vote for each write-in oval for the office, two votes for the first candidate listed (or “NO” votes on public measures and judges), three votes for the second candidate, etc. It is not necessary to have a different number of votes for each write-in oval for offices for which the voter may select more than one candidate. However, the write-in oval shall have a different number of votes marked than any candidate for the office. The commissioner shall:

- a. ~~On general election ballots, leave the straight party choice blank.~~

SECRETARY OF STATE[721](cont'd)

~~b. a.~~ For offices without candidates, mark all of the write-in ovals for that office.
~~e. b.~~ For offices in which the voter may vote for more than one candidate, vote for the maximum allowed on at least one ballot.

~~d. c.~~ On a ballot that contains at least one valid vote, overvote one other office or question.

22.42(4) *System-specific testing requirements.* Separate tests are prescribed for each certified voting system.

a. Election Systems & Software, Unisyn OpenElect and Dominion Democracy Suite—overvote and blank ballot test. For an overvote and blank ballot test, the commissioner shall:

(1) Overvote all offices and questions (including judges) on one ballot, by marking one more vote than permitted. Do not mark the write-in ovals for any offices for which there are no candidates' names on the ballot.

~~(2) If the test is for ballots that will be used in a general election, mark two straight party votes on one ballot. Do not mark any other ovals. In the test plan, this ballot should be tallied to show that the straight party selection was overvoted, and to show undervotes for all other offices and questions on the ballot.~~

~~(3)~~ (2) When the overvoted ballots are rejected by the optical scan tabulator, override the rejection and include the ballot in the tally. Add to the manual tally the number of overvotes in this test. The tally for this part of the test deck will show no votes for any candidate.

(4) (3) Insert a blank ballot. When the blank ballot is rejected by the optical scan tabulator, override the rejection and include the ballot in the tally. This is a very important test of the accuracy of ballot printing. Printing errors sometimes put readable marks in the voting target area.

~~(5)~~ (4) Orientation test. Mark the maximum number of choices for each office and question on one ballot.

Scan this ballot in each of the four possible orientations:

- Face up, head first.
- Face down, head first.
- Face up, feet first.
- Face down, feet first.

b. Premier Election Solutions.

(1) Blank and fully voted test. The commissioner shall use two ballots for this test.

1. Leave one ballot completely blank.

2. On the second ballot, mark every oval on both sides of the ballot.

3. Select "Test Blank Ballots" and insert the blank ballot in all four orientations:

- Face up, head first.
- Face down, head first.
- Face up, feet first.
- Face down, feet first.

4. Select "Test Fully Voted Ballots" and insert the second ballot in each of the four orientations listed in numbered paragraph "3" above.

5. Reinsert the blank ballot and the fully voted ballot and override the rejection feature.

(2) Overvote. Overvote all offices and questions (including judges) on one ballot, by marking one more vote than permitted. Do not mark the write-in ovals for any offices for which there are no candidates' names on the ballot.

22.42(5) *Straight party test for general elections.* For a straight party test, the commissioner shall:

~~a.~~ For each set of ballots:

~~(1) Mark straight party votes in a pattern, such as one vote for the first straight party choice, two votes for the second, and so on, and tally the expected results. Do not mark anything else on this group of ballots.~~

~~(2) On a second set of ballots containing as many ballots as there are straight party choices, mark the straight party option and, for each office affected by the straight party vote, mark the write-in oval, and tally the expected results.~~

SECRETARY OF STATE[721](cont'd)

~~(3) If the election includes an at-large county supervisor race with more than one person to be elected, mark a ballot with only a straight party vote and then vote for one candidate from the same political party as the straight party vote. Only this separately marked candidate should receive a vote.~~

~~b. Compile the results of the straight party test deck.~~

ITEM 20. Amend paragraph **22.261(4)“b”** as follows:

b. Instructions for voters. The following instructions shall be printed on ballots:

(1) Voting mark. “To vote, fill in the oval next to your choice.”

~~(2) Straight party voting. “To vote for all candidates from a single party, fill in the oval in front of the party name. Not all parties have nominated candidates for all offices. Marking a straight party vote does not include votes for nonpartisan offices, judges or questions.”~~

~~(3) (2) Public measures. “Notice to voters. To vote to approve any question on this ballot, fill in the oval in front of the word ‘Yes’. To vote against a question, fill in the oval in front of the word ‘No’.”~~

ITEM 21. Amend subrule 22.262(2) as follows:

22.262(2) Configuration choices. The following selections are mandatory for all elections:

a. Reject settings shall be configured as follows:

(1) Return to voters ballots that include one or more overvoted races and blank-voted ballots. Include on the override log the number of times the override option was used for overvoted and blank-voted ballots.

(2) Divert to the write-in ballot bin only ballots with write-in votes.

~~(3) Do not include reject settings for blank voted races, undervoted races, straight party overvotes, multiparty overvotes or duplicate votes.~~

b. Tally settings shall be as follows:

~~(1) The straight party shall be “Exclusive.”~~

~~(2) The write-in setting shall be “Combined.”~~

ITEM 22. Amend paragraph **22.264(3)“b”** as follows:

b. Instructions for voters. The ballots shall contain instructions for voters, including:

(1) How to mark the ballot;

~~(2) Straight party voting instructions in general elections as required by Iowa Code section 49.37;~~

~~(3) (2) Where to find the judicial ballot (if any); and~~

~~(4) (3) Constitutional amendment (if any) as required by Iowa Code section 49.48 and notices to voters on ballots with public measures (if any) as required by Iowa Code section 49.47.~~

ITEM 23. Amend paragraph **22.266(4)“b”** as follows:

b. Instructions for voters. The ballots shall contain instructions for voters, including:

(1) How to mark the ballot;

~~(2) Straight party voting instructions in general elections as required by Iowa Code section 49.37;~~

~~(3) (2) Where to find the judicial ballot (if any); and~~

~~(4) (3) Constitutional amendment (if any) as required by Iowa Code section 49.48 and notices to voters on ballots with public measures (if any) as required by Iowa Code section 49.47.~~

ITEM 24. Rescind and reserve rule **721—26.19(49)**.

ITEM 25. Adopt the following **new** rule 721—28.6(48A):

721—28.6(48A) Cancellations and restorations of voter registration due to jury declination.

28.6(1) Based upon information provided to the state registrar by the state or federal judicial branch, the list of likely matches of ineligible voters shall be produced for each county and provided to each county registrar.

28.6(2) On a monthly basis, the state registrar shall, using predetermined search criteria, compare the list of declined jurors against the list of registered voters.

28.6(3) Within 15 days of the receipt of the list produced by the state registrar in accordance with 28.6(2), the county registrar shall review the list of likely matches, determine the accuracy of the search results and cancel the registrations of those voters found to be ineligible to vote. Notice shall be sent to

SECRETARY OF STATE[721](cont'd)

the voter at the voter's address in the voter registration file pursuant to Iowa Code section 48A.30(2). The notice shall provide the voter an opportunity to have the county registrar review any relevant information that establishes the voter's eligibility to vote. When inclusion of a voter's name on the list of likely matches is found to be inaccurate, the registrar shall mark the record as a "no match" and provide that information to the state registrar.

This rule is intended to implement Iowa Code section 48A.30 as amended by 2017 Iowa Acts, House File 516, section 4.

ARC 3269C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2, and 314.1A, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 180, "Public Improvement Quotation Process for Governmental Entities," Iowa Administrative Code.

The proposed amendments make the following changes to Chapter 180:

- Item 1 updates the title of Chapter 180 to add reference to vertical infrastructure. Item 2 makes changes to the rule explaining the purpose of the chapter to more accurately correspond to the content in Chapter 180. Items 1 and 2 clarify that the chapter affects competitive quotations for public improvement contracts for vertical infrastructure.

- Item 3 updates the contact information to correct the name of the office responsible for this chapter and to add a telephone number for the Office of Support Services.

- Item 4 adds a reference to Iowa Code chapter 26, Public Construction Bidding, to a parenthetical implementation statute and revises the definitions of "estimated total cost of a public improvement," "governmental entity," "public improvement," and "repair or maintenance work" to refer to the definitions in Iowa Code section 26.2. The definitions within Iowa Code section 26.2 will be the definitions the Department uses in these rules for these specific terms.

- Item 5 updates the Department's Web site reference. The Department's main Web site address is used instead of a more specific link that may change. This Web site reference is consistent with changes made in other Department chapters.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@iowadot.us.

5. Be received by the Department's rules administrator no later than September 19, 2017.

A meeting to hear requested oral presentations is scheduled for Thursday, September 21, 2017, at 10 a.m. in the Administration Building, First Floor, South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

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

TRANSPORTATION DEPARTMENT[761](cont'd)

After analysis and review of this rule making, no impact on jobs has been found. These amendments are intended to implement Iowa Code sections 26.2, 26.14, 314.1A and 314.1B. The following amendments are proposed.

ITEM 1. Amend **761—Chapter 180**, title, as follows:
PUBLIC IMPROVEMENT QUOTATION PROCESS FOR GOVERNMENTAL ENTITIES FOR
VERTICAL INFRASTRUCTURE

ITEM 2. Amend rule 761—180.1(314) as follows:

761—180.1(314) Purpose. The purpose of these rules is to prescribe the manner by which governmental entities shall administer competitive quotations for public improvement contracts for vertical infrastructure, in accordance with Iowa Code section 26.14.

ITEM 3. Amend rule 761—180.2(314) as follows:

761—180.2(314) Contact information. Questions regarding this chapter may be directed to the Office of Facilities Support Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1299.

ITEM 4. Amend rule 761—180.3(314) as follows:

761—180.3(314) Definitions.

“Estimated total cost of a public improvement” means ~~the estimated total cost to the governmental entity to construct a public improvement, including the cost of labor, materials, equipment, and supplies, but excluding the cost of architectural or engineering design services and inspection as defined in Iowa Code section 26.2.~~

“Governmental entity” means ~~the state, political subdivisions of the state, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements, excluding the state board of regents and the state department of transportation as defined in Iowa Code section 26.2.~~

“Public improvement” means ~~a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of the governmental entity, including a building or improvement constructed or operated jointly with any other public or private agency, but excluding urban renewal demolition and low-rent housing projects, industrial aid projects authorized under Iowa Code chapter 419, emergency work or repair or maintenance work performed by employees of a governmental entity, and excluding a highway, bridge, or culvert project, and excluding construction or repair or maintenance work performed for a city utility under Iowa Code chapter 388 by its employees or performed for a rural water district under Iowa Code chapter 357A by its employees as defined in Iowa Code section 26.2.~~

“Repair or maintenance work” means ~~the preservation of a road, street, bridge, culvert, storm sewer, sanitary sewer, or other public facility (vertical infrastructure) so that it remains in sound or proper condition, including minor replacements and additions as necessary to restore the public facility to its original condition with the same design as defined in Iowa Code section 26.2.~~

“Responsible quotation” means a quotation submitted by a contractor who is capable of performing the work. To be considered responsible, the contractor must possess the necessary financial and technical capability to perform the work, as well as the ability to complete the work as demonstrated by past performance or other appropriate considerations.

“Responsive quotation” means a quotation in which the contractor agrees to do everything required by the governmental entity’s solicitation of quotations and by the plans and specifications and other related documents, without any conditions, qualifications or exclusions.

“Vertical infrastructure” means buildings, all appurtenant structures, utilities, incidental street improvements including sidewalks, site development features, recreational trails, and parking facilities. Vertical infrastructure does not include any work constructed in conjunction with or ancillary to highway, street, bridge or culvert projects, including but not limited to utilities and sidewalks.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 5. Amend subrule 180.5(1) as follows:

180.5(1) A governmental entity shall solicit competitive quotations for a public improvement when the estimated total cost of the public improvement exceeds the competitive quotation threshold established in Iowa Code section 26.14, as adjusted pursuant to Iowa Code section 314.1B, but is less than the competitive bid threshold established in Iowa Code section 26.3, as adjusted pursuant to Iowa Code section 314.1B. The adjusted thresholds are published on the following Web site: ~~http://www.iowadot.gov/local_systems/publications/bid_limits.htm~~ department's Web site at www.iowadot.gov.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Ronald L. Hansen, and Auditor of State Mary Mosiman has established today the following rates of interest for public obligations and special assessments. The usury rate for August is 4.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective August 10, 2017, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .10%
One year to 397 days	Minimum .15%
More than 397 days	Minimum .50%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

September 1, 2016 — September 30, 2016	3.50%
October 1, 2016 — October 31, 2016	3.50%
November 1, 2016 — November 30, 2016	3.75%
December 1, 2016 — December 31, 2016	3.75%
January 1, 2017 — January 31, 2017	4.25%
February 1, 2017 — February 28, 2017	4.50%
March 1, 2017 — March 31, 2017	4.50%
April 1, 2017 — April 30, 2017	4.50%
May 1, 2017 — May 31, 2017	4.50%
June 1, 2017 — June 30, 2017	4.25%
July 1, 2017 — July 31, 2017	4.25%
August 1, 2017 — August 31, 2017	4.25%
September 1, 2017 — September 30, 2017	4.25%

ARC 3283C

VOTER REGISTRATION COMMISSION[821]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 17A.4 and 2017 Iowa Acts, House File 516, the Voter Registration Commission hereby gives Notice of Intended Action to amend Chapter 2, “Voter Registration Forms, Acceptability, Registration Dates, and Effective Dates,” Chapter 3, “Lists of Registered Voters,” Chapter 5, “Election Registers,” and Chapter 7, “Voter Registration Mailing Address Maintenance,” Iowa Administrative Code.

These proposed amendments are necessary because of the enactment of 2017 Iowa Acts, House File 516, by the General Assembly. The Commission has determined that because of this newly enacted law, the following amendments are necessary to keep the administrative rules in compliance with the Iowa Code. House File 516 makes significant changes to elections in the state of Iowa, creating the need to update Chapters 2, 3, 5, and 7, which are chapters that contain voter registration rules of the Iowa Administrative Code.

Any interested person may make written suggestions or comments on the proposed amendments on or before September 19, 2017. Written suggestions or comments should be directed to Eric R. Gookin, Election Administrator, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-0145 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

VOTER REGISTRATION COMMISSION[821](cont'd)

A public hearing will be held on October 16, 2017, at 3 p.m. at the Secretary of State's office, on the first floor of the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa.

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

These amendments are intended to implement 2017 Iowa Acts, House File 516.

The following amendments are proposed.

ITEM 1. Amend subrule 2.8(3) as follows:

2.8(3) If the application does not include the applicant's Iowa driver's license number, Iowa department of transportation-issued nonoperator's identification card number, or the last four digits of the applicant's social security number, and the applicant has not indicated that the applicant does not have any of these numbers, the notice described in subrule 2.8(2) shall also include the following statement:

“Your voter registration application cannot be accepted because it does not include an Iowa driver's license number, an Iowa nonoperator's identification number or the last four numbers of your social security number. You must submit a new voter registration form before you can be registered to vote in this county.

“If you have an Iowa driver's license, you must write that number on your voter registration form. If you do not have an Iowa driver's license, use the number from your Iowa nonoperator's identification card. If you do not have an identification card issued by the state of Iowa, write the last four numbers of your social security number on the form. If you don't have any of these identification numbers, please check the box next to 'NONE' on the form. Failure to provide any of the three forms of identification will require you to register to vote on election day. Please note it is a Class “D” felony to provide false information on a voter registration application.”

ITEM 2. Amend rule 821—2.10(48A) as follows:

821—2.10(48A) Alternate (nonmailable) registration forms. An alternate registration form is authorized for the use of voter registration agencies ~~and nongovernmental organizations engaging in registration programs and registration drives.~~ The form shall contain spaces for all of the required and optional information solicited by the standard form, a list of the qualifications to register to vote, a statement to be signed by the applicant that the applicant is eligible to register to vote, and a statement of the penalty for submission of a false voter registration form. The face of the form shall contain spaces for all the personal information asked of the applicant, along with the attestation and warning. The reverse of the form may contain the list of qualifications, and may contain space for the county commissioner's notations. The form may be printed as a detachable part of a larger piece or may be printed by itself. Because registration forms are ~~frequently~~ generally kept for many years, registration forms shall be printed on paper at least as thick as 20-pound xerographic paper.

~~The intent of this rule is to make available a mechanism for individuals, groups and organizations to conduct registration drives without requiring individuals, groups and organizations to purchase registration forms. To that end, the state registrar shall make available, without charge, a limited quantity of forms as determined by the voter registration commission, and PDF versions of a form meeting the requirements of this rule.~~

ITEM 3. Amend subrule 2.14(2) as follows:

2.14(2) Inactive. If either an acknowledgment mailed to the registrant pursuant to Iowa Code section 48A.26 ~~as amended by 2009 Iowa Acts, House File 475, section 17,~~ a notice mailed to the registrant pursuant to Iowa Code section 48A.27 ~~as amended by 2009 Iowa Acts, House File 475, section 18,~~ a notice mailed to the registrant pursuant to Iowa Code section 48A.28, ~~or~~ an absentee ballot mailed to the registrant pursuant to Iowa Code section 53.8, or a voter identification card issued pursuant to 2017 Iowa Acts, House File 516, section 18, is returned to the commissioner by the United States Postal Service as undeliverable, the registrant's status shall be changed to “inactive” status. In addition, a voter registration record shall be made “inactive” pursuant to Iowa Code section 48A.27, subsection 4, paragraph “c,” ~~as amended by 2009 Iowa Acts, House File 475, section 18,~~ during the annual NCOA process. Inactive

VOTER REGISTRATION COMMISSION[821](cont'd)

registrations will be deleted after two general elections unless the registrant responds to a confirmation mailing pursuant to Iowa Code section 48A.27 ~~as amended by 2009 Iowa Acts, House File 475, section 17, 48A.28, 48A.29 or 48A.30,~~ requests an absentee ballot, votes in an election or submits a registration form updating the registration. Inactive registrants shall show identification when voting in person at the polling place, pursuant to Iowa Code section 49.77(3) ~~as amended by 2009 Iowa Acts, House File 475, section 33,~~ or shall restore their voter registration to “active” status pursuant to 721—21.301(53) when voting by absentee ballot.

ITEM 4. Amend paragraph **2.14(3)“c”** as follows:

c. An applicant assigned a status of “pending” shall not be activated until the applicant provides identification and proof of residence pursuant to ~~721—21.3(49,48A)~~ Iowa Code section 48A.8.

ITEM 5. Amend subrule 2.15(3) as follows:

2.15(3) If all three required elements do not match, the applicant shall be assigned a status of “pending” with reason “DL or SSN Not Verified.” The applicant shall be notified that the applicant’s voter registration is in pending status and the applicant will be required to show identification and proof of residence pursuant to ~~721—21.3(49,48A)~~ before voting in the county. The notice shall include the following statement:

“Your voter registration application is pending because the information you provided on your application could not be verified. Your name, date of birth and identification number were compared to the Iowa driver’s license records and your identification number cannot be verified.

~~“Before voting for the first time in this county, you will be required to show identification. “Any voter with a ‘pending’ registration status is required to present an acceptable photo identification and proof of residence pursuant to Iowa Code section 48A.8 in person before their ballot will be counted. You may submit identification either by showing your identification in person when you vote or by mailing a photocopy of your identification to the county auditor’s commissioner’s office.”~~

ITEM 6. Adopt the following **new** subrule 2.15(5):

2.15(5) If the application is verified, but the registered voter’s name does not appear in the department of transportation-issued driver’s license and nonoperator’s identification card files, the commissioner shall issue a voter identification card to the registered voter’s address on file pursuant to 2017 Iowa Acts, House File 516, section 18.

ITEM 7. Amend rule 821—3.10(48A) as follows:

821—3.10(48A) Driver’s license numbers. The county commissioner of registration and the state registrar of voters shall remove a voter’s department of transportation-issued driver’s license number, Iowa department of transportation-issued nonoperator’s identification card number, voter identification number, or whole or partial social security number from a voter registration list prepared pursuant to Iowa Code section 48A.38.

ITEM 8. Amend subrule 5.1(1) as follows:

5.1(1) Election registers shall contain at least the following information:

- a. Full name.
- b. Address.
- c. Date of birth.
- d. Registration status if it is ~~not “active.”~~ “pending.”
- e. Political affiliation (for partisan primary elections only).

ITEM 9. Amend rule 821—7.2(48A) as follows:

821—7.2(48A) Voter registration acknowledgment card returned from mailing address as undeliverable. If a voter registration acknowledgment card or voter identification card issued pursuant to 2017 Iowa Acts, House File 516, section 18, is mailed to the mailing address listed on a voter’s

VOTER REGISTRATION COMMISSION[821](cont'd)

registration record and the acknowledgment is returned to the county registrar as undeliverable by the United States Post Office, the county registrar shall leave the voter's status as active or pending, remove the mailing address from the voter's registration record, and mail another registration acknowledgment or voter identification card to the voter's residential address. If the acknowledgment or voter identification card mailed to the voter's residential address is also returned as undeliverable by the United States Post Office, the voter's registration record shall be made inactive, and the voter shall be mailed a notice as required by Iowa Code section 48A.29, subsection 1.

ARC 3280C**WORKFORCE DEVELOPMENT DEPARTMENT[871]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 96.11, the Director of Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 23, “Employer’s Contribution and Charges,” and Chapter 24, “Claims and Benefits,” Iowa Administrative Code.

These proposed amendments update, clarify and simplify the procedures by which claimants and employers interact with Iowa Workforce Development. The amendments also bring the rules up to date by reflecting changes in technology and efficiencies developed within the agency since the affected rules were adopted. The agency needs to have administrative rules that address these changes.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before September 19, 2017, by sending them to David J. Steen, Attorney, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to david.steen@iwd.iowa.gov.

These amendments do not have any fiscal impact on the State of Iowa.

Waiver provisions do not apply to this rule making.

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

These amendments are intended to implement Iowa Code chapter 96.

The following amendments are proposed.

ITEM 1. Amend rule 871—23.69(96), catchwords, as follows:

871—23.69(96) Injunction for nonpayment or failure to ~~report~~ provide required information.

ITEM 2. Amend subrule 23.69(1) as follows:

23.69(1) In addition or as an alternative to any other remedy provided in Iowa Code chapter 96 and this rule, the department may proceed to enjoin an employer who has refused or failed to pay any contributions, interest, or penalty or who has failed to file ~~any reports~~ provide any information required by the department.

ITEM 3. Amend paragraph **23.69(3)“b”** as follows:

b. The period(s) for which there are delinquent contributions, interest, and penalty due or for which ~~returns have not been filed~~ required information has not been provided.

ITEM 4. Amend subrule 23.69(6) as follows:

23.69(6) Upon payment in full of the delinquent contributions, interest, and penalty, and the filing of all delinquent ~~reports~~ wage detail, the department shall have the injunction dissolved.

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ITEM 5. Amend subrule 23.70(1) as follows:

23.70(1) Any nonprofit organization can be considered eligible to reimburse the Iowa unemployment compensation fund in lieu of paying contributions. Any nonprofit organization wishing to be considered as a reimbursable employer shall file as provided under Iowa Code section 96.7 the election to reimburse the fund on ~~Form 68-0463, Election to Make Payments in Lieu of Contributions~~, with the department for its consideration.

ITEM 6. Amend subrule 23.70(2), introductory paragraph, as follows:

23.70(2) ~~Election to Make Payments in Lieu of Contributions, Form 68-0463~~, The election to reimburse must be signed by an authorized official of the nonprofit organization and shall be accompanied by:

ITEM 7. Amend subrule 23.72(1), introductory paragraph, as follows:

23.72(1) Any governmental entity may elect to be a governmental contributory employer by filing a ~~written application known as "Election to Pay Contributions as a Government Contributory Employer," Form 68-0053~~, for elective coverage as a governmental contributory employer. The rules governing the selection of coverage status for governmental entities shall apply to Indian tribes. Any governmental entity failing to file such an election will be considered as a governmental reimbursable employer. The ~~Form 68-0053~~ application must be signed by a duly constituted governmental official. The election shall be approved if the department finds that:

ITEM 8. Rescind and reserve subparagraph **24.1(25)"b"(20)**.

ITEM 9. Rescind subrule 24.1(26) and adopt the following new subrule in lieu thereof:

24.1(26) Claimant.

- a. An individual who has filed a request for determination of insured status or a new claim, or
- b. An individual who has filed an initial claim unless the claim is found to be invalid or the benefit year has expired.

ITEM 10. Rescind and reserve subrule **24.1(121)**.

ITEM 11. Rescind and reserve subrule **24.1(127)**.

ITEM 12. Rescind rule 871—24.39(96) and adopt the following new rule in lieu thereof:

871—24.39(96) Department-approved training. The intent of department-approved training is to allow for claimants to return to the labor market after attending vocational training while being paid unemployment insurance benefits. Vocational training is nonacademic, skill-oriented training that provides the student with job tools and skills that can be used in the workplace. Vocational training includes technical, skill-based, or job readiness training intended for pursuing a career. Upon approval from the department, the claimant shall be exempt from the work search requirement for continued eligibility for benefits. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

24.39(1) The claimant must make application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The date the training will be complete or the degree will be obtained.
- d. The occupation which the training is allowing the claimant to maintain or pursue.
- e. The training plan, indicating the requirements which must be met in order to complete the certification or degree.

24.39(2) A claimant may receive unemployment insurance while attending a training course approved by the department, under the following conditions:

- a. The educational establishment must be a college, university or technical training institution.
- b. The training must be completed 104 weeks or less from the start date.
- c. The individual must be enrolled and attending the training program as a full-time student.

While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training, the claimant must, in order to continue

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, be available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

24.39(3) The claimant must show satisfactory attendance and progress in the training course prior to being considered for a subsequent approval and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

ITEM 13. Amend subrule 24.40(3), introductory paragraph, as follows:

24.40(3) The course or courses must be full-time enrollment for a high-demand or high-technology occupation. The department will make available to serve as a guide a list of high-demand, high-technology, and declining occupations. The lists shall be available on the department's Web site and at workforce centers.

ITEM 14. Amend subrule 24.40(4) as follows:

~~**24.40(4)** The individual must be enrolled in the training no later than the end of the benefit year which included the separation which made the individual eligible for training benefits or the week in which any federal benefit program based upon that benefit year is exhausted. Enrolled before the end of the benefit year means the individual has taken all steps available for entry into the training and has secured a reserved position in the training class. The individual has paid tuition or will pay tuition when the training starts. The training class may begin after the end of the benefit year. The application for training benefits must be received 30 days after the end of the benefit year or within 30 days after state or federal benefits are exhausted. The individual must be enrolled and making satisfactory progress to complete the training program in order to continue to be eligible for training extension benefits.~~

ITEM 15. Amend subrule 24.40(5) as follows:

24.40(5) Training benefits shall cease to be available if the training is completed; the individual quits the training course; the individual exhausts the training extension maximum benefit amount; or the individual fails to make satisfactory progress; and benefits shall cease no later than ~~one calendar year following~~ the end of the benefit year in which the individual became eligible for the benefits. Individuals must file and receive benefits under any federal or state unemployment insurance benefit program until the ~~claim has expired or has~~ benefits have been exhausted, in order to maintain eligibility for training extension benefits.

ARC 3281C

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code chapters 505, 513C, and 514E, the Insurance Division hereby adopts Chapter 82, "Iowa Stopgap Measure," Iowa Administrative Code.

The rules in Chapter 82 are intended to implement a program developed by the Insurance Division, the Iowa Stopgap Measure, which was designed to provide an innovative solution to temporarily stabilize Iowa's individual health insurance market. The Iowa Stopgap Measure was first submitted by the Insurance Division on June 7, 2017, to the Centers for Medicare and Medicaid Services (CMS) as a waiver application under Section 1332 of the Patient Protection and Affordable Care Act (ACA) (42 U.S.C. Section 18052). The Insurance Division continues to work with CMS to develop the waiver application and will be finalizing the application for submittal by the end of August 2017.

The instability of Iowa's individual ACA-compliant market was first marked with the liquidation of CoOpportunity Health, Inc., which began with an order of rehabilitation on December 23, 2014, and the market has seen continued instability. On April 25, 2016, UnitedHealthcare notified the Insurance Division that it would not offer individual ACA-compliant plans in 2017. Then, on March 30, 2017, Wellmark, Inc. and Wellmark Health Plan of Iowa, Inc. notified the Insurance Division that they would not offer individual ACA-compliant plans in 2018. On April 6, 2017, Aetna, Inc. notified the Insurance Division that it would not offer individual ACA-compliant plans in 2018. Finally, before Iowa's rate filing deadline, June 19, 2017, Wellmark Value Health, Wellmark Synergy Health and Gundersen Health Plan, Inc. informed the Insurance Division that they will not offer individual ACA-compliant plans in 2018.

On June 19, 2017, Medica, a Minnesota-based health insurance company that first sold individual health insurance policies in Iowa in 2016, filed ACA-compliant plans for approval by the Insurance Division to be available on the ACA-compliant individual health insurance marketplace in 2018 in all of Iowa's 99 counties. The premium rates that Medica filed with the Insurance Division have an average increase of 43.5 percent over Medica's 2017 rates. No other carriers filed rates for the ACA-compliant individual health insurance marketplace for 2018.

The premium rates filed by Medica will drive healthier, younger, and middle-aged individuals out of the market, which will sink Iowa's market further into collapse. This dramatic proposed premium rate increase will mean that, for some consumers, premiums will increase almost 100 percent from their current 2017 premium rates. It is likely that many individuals who are not currently receiving federal subsidies (those whose household income is above 400 percent of federal poverty level) will be unable to afford the cost of the Medica rates as filed and thus will drop from the market. The Insurance Division estimates that the health insurance premium costs for a family of four with a total household income at this federal poverty level (which is approximately \$98,000) would be almost \$24,000 under the rates filed by Medica for 2018. These rates simply are not affordable for a working class family or small business owner. It is plausible that individuals could refuse a promotion, quit a primary or secondary job, or take other steps to lower their household income in order to be eligible for federal subsidies. These rates will directly impact the ability of small business owners, the majority of whom participate in the individual commercial health insurance market, to continue to sustain and grow their own businesses.

Governor Kim Reynolds asked the Insurance Division to develop a solution to provide temporary stability to the individual health insurance market and ensure that the approximately 72,000 Iowans currently covered through the individual health insurance market would have coverage options for 2018. The Insurance Division, in response to its directive from the Governor and under the authority of Iowa Code chapters 505, 513C and 514E, developed the Iowa Stopgap Measure as a proposed Section 1332 application to CMS and the Department of the Treasury to waive certain provisions of the ACA.

The federal government, through CMS and the Department of the Treasury, has the authority under Section 1332 of the ACA to grant to a state a waiver to implement innovative strategies to provide the state's residents with access to high-quality, affordable health coverage. These waivers allow states to

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implement innovative ways to provide access to quality health care that: (1) are at least as comprehensive and affordable as would be provided absent a waiver; (2) provide coverage to a comparable number of residents of the state as would be provided coverage absent a waiver; and (3) do not increase the federal deficit.

The Iowa Stopgap Measure is designed to facilitate the implementation of a reinsurance program, a per-member, per-month premium credit mechanism, and a standardized health benefits plan to be offered to all eligible Iowa consumers for the plan year 2018. Iowa's waiver application asks CMS to use the Insurance Division and the existing Iowa Individual Health Benefit Reinsurance Association (IIHBRA) as administrators of a pass-through of the federal funding that would be allocated to Iowa consumers via the existing Advanced Premium Tax Credit (APTC) and Cost-Sharing Reduction (CSR) funding under the ACA to be used by Iowa for a reinsurance program and per-member, per-month premium credits. That is, federal funds allocated by CMS would be paid to the Insurance Division or IIHBRA, and the Insurance Division would, in compliance with the Iowa Stopgap Measure, disburse the funds accordingly. The Insurance Division intends that this program will be completely funded by the federal funds allocated to Iowa.

The Insurance Division has been working diligently with CMS to develop and finalize the waiver application, which will be submitted in mid-August. The Insurance Division developed the Iowa Stopgap Measure, with advice and support from several insurance companies and other entities, to establish conditions which would support reentry of insurance carriers into the individual health insurance market and at rates that are affordable to consumers. The Iowa Stopgap Measure has three primary means of doing this.

First, it implements a reinsurance program under the IIHBRA to support the costs associated with consumers enrolled in the Iowa Stopgap Measure who have annual claims costs of over \$100,000. Providing support for these high-cost claimants will help the carriers keep monthly premium rates down for all consumers under the Iowa Stopgap Measure.

Second, the Iowa Stopgap Measure will replace the current premium subsidy structure with a per-member, per-month premium credit that will be available for all eligible Iowa consumers based on their age and income. These credits will be paid directly to the carriers via funds paid by the federal government and passed through the Insurance Division or the Iowa Comprehensive Health Association (HIPIOWA), and are intended to keep monthly costs low to entice young and healthy individuals back into the market.

Third, the Iowa Stopgap Measure would allow for a single, standard health benefits plan to be offered to all eligible Iowa consumers for the plan year 2018. Having a single, standard health benefits plan that provides coverage for all of the essential health benefits defined by the ACA as well as all Iowa-mandated benefits ensures that consumers will be able to purchase coverage as comprehensive as that which is currently offered in the individual health insurance market. The use of a single plan also provides administrative simplicity, which, given the implementation timeline, is critical to entice health insurance carriers back to the market.

In compliance with Iowa Code section 17A.4(3), these rules are filed emergency because immediate adoption of the rules is necessary to implement the Iowa Stopgap Measure in time for the 2018 open enrollment period beginning on November 1, 2017, and delays caused by the notice and public participation requirements of Iowa Code section 17A.4 would be contrary to public interest. The Insurance Division finds that the availability and affordability of individual commercial health insurance is critical for the greater public interest, and the necessity of ensuring that coverage will be available in 2018 requires these rules to be immediately implemented.

Insurance carriers who will participate in the Iowa Stopgap Measure will need several months to prepare the application procedures and internal processes necessary to facilitate the purchase of coverage for all enrollees prior to the open enrollment date of November 1, 2017. The insurance carriers also need to prepare plan documents, develop the electronic application, finalize coverage networks, and file the rates and forms for Insurance Division review and approval. The Insurance Division needs to work with various entities to coordinate the eligibility verification process, develop a consumer education program, coordinate funding mechanisms with the federal government, and review and approve all rate and form

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filings made by carriers who want to participate in the program. Review of filings by the staff at the Insurance Division is a process that takes several weeks to complete for each carrier and filing.

The Insurance Division made its proposal for the Iowa Stopgap Measure public on June 12, 2017, opened a formal public and tribal comment period on July 13, 2017, and accepted public comments on the Iowa Stopgap Measure in writing by mail and through a Web form through August 14, 2017. These materials are all available on the Insurance Division's Web site at <https://iid.iowa.gov/press-releases/iowa-seeks-federal-approval-of-health-insurance-stopgap-measure> and <https://iid.iowa.gov/press-releases/notice-of-public-hearings-for-iowa-stopgap-measure>. As part of the formal public comment period, the Insurance Division held three public hearings on the Iowa Stopgap Measure (in Council Bluffs on July 19, 2017; in Des Moines on August 2, 2017; and in Cedar Rapids on August 10, 2017).

The Insurance Division submitted these rules to the Administrative Rules Review Committee, seeking its approval that the situation described above constitutes good cause that notice and publication would be unnecessary, impracticable, or contrary to public interest, as required by Iowa Code section 17A.4(3)"a," such that the provisions of Iowa Code section 17A.4(1) would be inapplicable. In compliance with Iowa Code section 17A.4(3), the Administrative Rules Review Committee at its August 4, 2017, meeting reviewed the Insurance Division's findings and the rules and approved the emergency adoption.

The Insurance Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the situation described above proves (as required by section 17A.5(2)"b"(2)) that, because of imminent peril to the public health, safety, or welfare (as required by section 17A.5(2)"b"(1)(c)), the normal effective date of the rules, 35 days after publication, should be waived and these rules should be made effective on August 4, 2017, to allow for the Insurance Division to move forward and implement the Iowa Stopgap Measure in order to allow interested insurance carriers sufficient time to set up and prepare the Iowa Stopgap Measure and allow consumers to purchase the standard plan during the open enrollment period to have coverage starting January 1, 2018.

As the Iowa Stopgap Measure, upon approval by CMS, would utilize federal funding that would be allocated to Iowa consumers via the premium tax credit mechanism of the ACA, no state moneys will be used for the premium credits or reinsurance program. If the Iowa Stopgap Measure is not approved by CMS, the Iowa Stopgap Measure will not be implemented. The Insurance Division, and several other state agencies, may use existing state resources for implementation of the Iowa Stopgap Measure should it be approved.

The Insurance Division adopted these rules on August 4, 2017.

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

These rules do not include a provision for the waiver of the rules because the Insurance Division's general waiver provisions in 191—Chapter 4 apply.

These rules are intended primarily to allow for implementation of the Iowa Stopgap Measure that has been developed by the Insurance Division upon request by the Governor. The Insurance Commissioner has filed these rules under his rule-making authority of Iowa Code chapters 505, 513C, and 514E.

These rules became effective on August 4, 2017. If CMS does not approve the Iowa Stopgap Measure, it will not be funded and there will be no coverage available under these rules.

These rules are intended to implement Iowa Code chapters 505, 513C, and 514E.

The following amendment is adopted.

Adopt the following new 191—Chapter 82:

CHAPTER 82 IOWA STOPGAP MEASURE

191—82.1(505,513C,514E) Purpose. This chapter is intended to establish a temporary health program providing for a single, standard individual health insurance plan available to eligible residents, premium credits based on age and income, and a reinsurance program to support the costs of high-cost claimants. The operations of this Iowa Stopgap Measure shall be facilitated by the Iowa Individual Health Benefit

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Reinsurance Association (IIHBRA) and the Iowa Comprehensive Health Association (HIPIOWA) pursuant to the powers and authority afforded to the associations and the insurance commissioner under Iowa Code sections 513C.10 and 514E.2.

191—82.2(505,513C,514E) Authority to request waiver. The insurance commissioner may, on behalf of the state of Iowa, apply to the United States Secretary of Health and Human Services and the United States Secretary of the Treasury under 42 U.S.C. Section 18052 for the waiver of applicable provisions of P.L. 111-148 (Patient Protection and Affordable Care Act) with respect to health insurance coverage for a plan year beginning on or after January 1, 2018. The insurance commissioner may implement a state plan meeting the waiver requirements in a manner consistent with state and federal law and as approved by the United States Secretary of Health and Human Services and the United States Secretary of the Treasury.

191—82.3(505,513C,514E) Funding. The Iowa Stopgap Measure shall be funded by the Centers for Medicare and Medicaid Services (CMS). If no funding or an insufficient amount of funding is received from CMS, the Iowa Stopgap Measure shall not be established. If funding for the Iowa Stopgap Measure is insufficient to completely fund all premium credits and the reinsurance program, a carrier participating in the Iowa Stopgap Measure may cancel and nonrenew a standard individual health insurance plan issued thereunder by giving 30 days' written notice of cancellation to the consumer.

191—82.4(505,513C,514E) Authority. These rules are adopted pursuant to the general rule-making authority of the insurance commissioner in Iowa Code chapters 505, 513C, and 514E to establish the Iowa Stopgap Measure.

191—82.5(505,513C,514E) Scope. This chapter and the definitions and rules set forth herein shall apply only to the Iowa Stopgap Measure.

191—82.6(505,513C,514E) Duties of IIHBRA and HIPIOWA to amend their plans of operation.

82.6(1) Pursuant to Iowa Code sections 513C.10 and 514E.2(3), the IIHBRA and the HIPIOWA shall develop amendments to their plans of operation that:

- a. Establish a procedure for implementation of the Iowa Stopgap Measure as set forth in the State of Iowa's Section 1332 waiver;
- b. Set forth the benefits, the deductible, and the cost-sharing amounts to be offered in the standard individual health insurance plan; and
- c. Undertake, directly or through contracts with other persons, the procedure for implementation of the Iowa Stopgap Measure.

82.6(2) The amendments to the plans of operation are subject to review and approval by the insurance commissioner.

These rules are intended to implement Iowa Code chapters 505, 513C, and 514E.

[Filed Emergency 8/4/17, effective 8/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3278C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby amends Chapter 1, "General Provisions," Chapter 2, "General Practice and Hearing Procedures," and Chapter 4, "Bargaining Unit and Bargaining Representative Determination"; rescinds Chapter 5, "Elections," and adopts a new chapter with the same title; and amends Chapter 6, "Negotiations and

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Negotiability Disputes,” Chapter 7, “Impasse Procedures,” Chapter 8, “Internal Conduct of Employee Organizations,” Chapter 11, “State Employee Appeals of Grievance Decisions and Disciplinary Actions,” and Chapter 16, “Electronic Document Management System,” Iowa Administrative Code.

These amendments are in response to the sweeping changes in public sector collective bargaining under Iowa Code chapter 20 contained in 2017 Iowa Acts, House File 291, which became effective upon the bill’s enactment on February 17, 2017. House File 291 introduced many concepts and requirements which are completely new to the preexisting Iowa Code chapter 20 processes, including the requirement that the agency conduct “retention and recertification” elections among employees in represented bargaining units as early as June 1 but not later than November 1, 2017; the requirement that employee organizations pay fees to cover the cost of certification, decertification, and retention and recertification elections; the authority of the agency to contract with a vendor to conduct certification, decertification, and retention and recertification elections on behalf of the agency; the distinction between bargaining units in which 30 percent or more of the employees are “public safety employees” and other bargaining units; the limitation on the ability of Iowa Code section 20.22 arbitrators to award “base wage” increases in excess of amounts specified in House File 291; and the requirement that the agency appoint a certified shorthand reporter to report state employee grievance and discipline resolution proceedings and to tax to a party the cost of the reporter’s services and a transcript requested by the agency. House File 291 also altered many aspects of concepts and requirements which previously existed, including changes to the scope of bargaining applicable to both public safety and non-public safety bargaining units; changes concerning when petitions seeking the decertification of a certified employee organization may be filed and the timelines for the conduct of decertification elections, and changes to the criteria Iowa Code section 20.22 arbitrators must and cannot consider in resolving bargaining impasses involving non-public safety bargaining units.

The purpose of these amendments is to update the agency’s rules to reflect and implement the provisions of House File 291. A major portion of the amendments involve Chapter 5, “Elections.” Due to the breadth of the amendments to Iowa Code chapter 20, the agency determined that it was impracticable to amend Chapter 5 on a rule-by-rule basis and that a reorganization of the chapter was necessary in order to present the rules in a logical and understandable fashion. Accordingly, Item 13 rescinds existing Chapter 5 and replaces it with a reorganized chapter which reflects the changes responsive to House File 291, even though many of the rules contained in that chapter are identical, or nearly identical, to those contained in existing Chapter 5. As has been the case in other instances where significant statutory changes are implemented, many of the amendments constitute technical, conforming amendments to other rules which were necessitated by the reorganization of the chapter.

Pursuant to Iowa Code section 17A.4(3), the Public Employment Relations Board finds that notice and public participation are impracticable and contrary to the public interest because there are currently no processes in place through which the agency can, among other things, conduct the required retention and recertification elections, impose or collect election fees from the employee organizations involved, resolve disputes as to whether a given bargaining unit is a public safety unit or not, or tax the cost of certified shorthand reporters and transcripts in state employee grievance and disciplinary action proceedings. Because House File 291 potentially requires that retention and recertification elections for over 600 bargaining units be conducted between June 1, 2017, and November 1, 2017, insufficient time exists for rule making to be completed pursuant to the normal rule-making process prior to the date upon which retention and recertification election proceedings must be commenced and elections conducted.

In compliance with Iowa Code section 17A.4(3)“a,” the Administrative Rules Review Committee, at its August 4, 2017, meeting, reviewed the agency’s determination and this rule making and approved emergency adoption.

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the agency also finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective August 10, 2017, because the rules confer a benefit to members of the public by establishing procedures which implement the requirements of 2017 Iowa Acts, House File 291, consistent with the time periods contemplated by that legislation.

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Although a draft of these amendments was posted on the agency's Web site and distributed by e-mail for the information of the regulated community, and a number of changes to that draft were made in response to comments received from representatives of both labor and management, these amendments are also published herein under Notice of Intended Action as **ARC 3277C** to allow for further public comment.

Although the implementation of 2017 Iowa Acts, House File 291, will cause an increase in the expenditure of funds by the agency and affected persons, due primarily to the need for the agency to contract with a vendor to conduct elections on the agency's behalf and the requirement that these costs be paid by the employee organizations involved, the agency does not anticipate that these expenditures will exceed \$100,000 per year or \$500,000 within five years.

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).

The Public Employment Relations Board adopted these amendments on August 10, 2017.

After analysis and review of these amendments, and consideration of anecdotal information concerning the effects of the implementation of amendments to public sector collective bargaining in the State of Wisconsin which are similar in many respects to the amendments contained in 2017 Iowa Acts, House File 291, the agency anticipates that the amendments to Iowa Code chapter 20 may reduce the number of private sector jobs or potential job opportunities for individuals in the private sector who provide legal or support services to labor organizations or public employers in Iowa, although the extent of any such reduction cannot be reasonably determined.

These amendments are intended to implement Iowa Code chapter 20 as amended by 2017 Iowa Acts, House File 291.

These amendments became effective August 10, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 1.6(12):

1.6(12) "*Public safety employee*" means a public employee who is employed as one of the following:

- a. A sheriff's regular deputy.
- b. A marshal or police officer of a city, township, or special-purpose district or authority who is a member of a paid police department.
- c. A member, except a non-peace officer member, of the division of state patrol, narcotics enforcement, state fire marshal, or criminal investigation, including but not limited to a gaming enforcement officer, who has been duly appointed by the department of public safety in accordance with Iowa Code section 80.15.
- d. A conservation officer or park ranger as authorized by Iowa Code section 456A.13.
- e. A permanent or full-time fire fighter of a city, township, or special-purpose district or authority who is a member of a paid fire department.
- f. A peace officer designated by the department of transportation under Iowa Code section 321.477 who is subject to mandated law enforcement training.

ITEM 2. Adopt the following **new** subrule 1.6(13):

1.6(13) "*Public safety unit*" means a bargaining unit with at least 30 percent of employees in the unit who are public safety employees or as required by 2017 Iowa Acts, House File 291, section 18, for certain transit employees.

ITEM 3. Adopt the following **new** subrule 1.6(14):

1.6(14) "*Supplemental pay*" means a payment of moneys or other thing of value that is in addition to compensation received pursuant to any other permitted subject of negotiation specified in Iowa Code section 20.9 as amended by 2017 Iowa Acts, House File 291, section 6, and is related to the employment relationship.

ITEM 4. 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, ~~the rules set forth in 621—subrules 4.3(2), 4.4(4) and 5.1(4), 5.1(2), 5.5(2), and 5.5(3) 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 5. Amend subrule 2.15(2) as follows:

2.15(2) Service—how made. Except as provided in rules rule 621—3.4(20) and 621—5.7(20) and subrule 2.12(3) and 621—subrule 4.2(2), whenever nonelectronic service of any document is permitted or required by these rules, the service shall be sufficient if made by ordinary mail. If the document served is an initial filing in a proceeding, the serving party shall also serve with the document an agency-approved information sheet regarding mandatory electronic filing.

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

4.1(3) Withdrawal of petitions. ~~Petitions may be withdrawn only with the consent of the board. Petitions withdrawn after the commencement of a hearing, or withdrawn after direction of an election where no hearing was conducted, may not be refiled by the withdrawing party for a period of six months following the board order permitting withdrawal.~~

ITEM 7. 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 ~~a form provided by the board~~ an agency-prescribed form and shall be filed ~~by delivery to~~ with the board agency. The petition shall contain an identification and description of the proposed unit.

4.2(2) Notice to parties. Upon ~~receipt~~ the filing of a proper petition, the ~~board agency~~ shall serve copies thereof upon other interested parties by certified mail, return receipt requested. ~~Upon the filing of a petition for unit determination, the board~~ The agency shall furnish to the employer file a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under the Act. ~~Notices shall be posted by the public employer in conspicuous places customarily used for the posting of notices to employees.~~ 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 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 ~~issue~~ file a notice of hearing ~~by ordinary mail to all interested parties~~ setting forth the time, date and place of the hearing and any other relevant information. ~~The board or administrative law judge shall provide additional copies of the notice of hearing to the public employer, which shall be posted by the public employer in conspicuous places~~ 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 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 elections. ~~If~~ Should the agency determine, in any case, ~~the board should determine that professional employees and nonprofessional employees could be represented in a single~~ are appropriately included in the same bargaining unit, the ~~board agency shall direct and supervise an election among such employees~~ file an order directing that an election be conducted to determine whether they the professional and nonprofessional employees wish to be represented in a single or in separate bargaining units unit. ~~The election shall be by secret ballot under conditions as the board may prescribe. Absentee ballots shall be as provided for in 5.2(5). The elections~~

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~~may, in the discretion of the board, be conducted in whole or in part by mail ballots provided for in 5.1(3). A majority affirmative vote of those voting in each category shall be necessary to include professional and nonprofessional employees within the same bargaining unit. The rules concerning voting lists, as set forth in 5.1(2), shall apply. 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 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 ~~representative~~ representatives of the parties involved and shall be ~~forwarded to~~ filed with the ~~board~~ board agency for informal review and tentative approval. In the event the parties agree to a combined unit of professional and nonprofessional employees, the stipulation shall set forth both those job classifications included within the professional category and those job classifications included within the nonprofessional category. If the ~~board~~ board agency fails to tentatively approve the stipulation, the ~~board~~ board agency shall notify the parties and, unless the parties amend the stipulation in a manner to gain tentative approval of the ~~board~~ board agency, the matter shall proceed to hearing. If the ~~board~~ board agency tentatively approves the stipulation, the ~~board~~ board agency shall ~~prepare~~ file a public notice of proposed decision ~~and shall deliver copies to the parties.~~ 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 ~~eonspicious places customarily used for the posting of information to employees~~ 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 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 notice~~ notice available for distribution to the public upon request.

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

c. Objections to the proposed decision must be filed with the ~~board~~ board 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 telephone number. The ~~board~~ board agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the ~~board~~ board agency deems the objections to be of substance, the parties may, with ~~board~~ board agency approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the ~~board~~ board agency of the amendment. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.

d. and *e.* No change.

ITEM 8. Amend rule 621—4.3(20) as follows:

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

4.3(1) *Form of petition.* ~~A petition~~ Petitions for bargaining representative determination (election petition) shall be on a ~~form provided by the board~~ an agency-prescribed form and shall be filed by ~~delivery to with the board 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 ~~in~~ 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 employee requesting an election to determine whether a ~~certified bargaining representative does, in fact, represent~~ a majority of the employees in the bargaining unit, ~~and wish to continue to be represented by a certified employee organization.~~

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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, ~~therewith~~ by ordinary mail or personal delivery, evidence that the petition or application for intervention is supported by ~~employees in the unit in the following percentages: Thirty percent for certification or decertification and 10 percent for intervention in election proceedings~~ 30 percent of the employees in the bargaining unit. In petitions for certification or applications for intervention, such interest showing 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 appropriate cases, an authenticated dues checkoff list may be used for this purpose.~~ In petitions for decertification, evidence of interest shall be as provided above ~~and shall further~~, 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 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 the ~~board~~ 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 ~~board~~ 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 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 ~~board~~ agency shall determine the sufficiency of the showing of interest by whatever means it deems appropriate. ~~In election proceedings where the petitioner withdraws its petition pursuant to subrule 4.1(3), in the presence of an intervenor, the election shall not be conducted unless the intervenor produces a 30 percent showing of interest within a time period determined by the board.~~

4.3(4) *Notice.* Upon the filing of a petition for certification, decertification or representation, the ~~board~~ agency shall ~~furnish to the employer~~ file a notice to employees, giving notice to employees that an election petition has been filed and setting forth the rights of employees under the Act. ~~Such notices shall be posted by the public employer in conspicuous places customarily used for the posting of information to employees~~ 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 or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.3(5) and 4.3(6) No change.

ITEM 9. Amend rule 621—4.5(20) as follows:

621—4.5(20) *Unit reconsideration.* A petition for reconsideration of a ~~board-established~~ 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 ~~an election~~ a certification petition. ~~The rules set forth in Rules 621—4.1(20), 621—4.2(20), 621—4.3(20) and 621—4.4(20) shall apply, except that the board may investigate the petition and, if it determines that the petitioner has not established grounds that the previous board determination of the bargaining unit is inappropriate, the board may dismiss the petition.~~ A petition for reconsideration of a ~~board-established~~ an agency-established bargaining unit covering state employees may not be filed ~~until after~~ for at least one year of after the initial unit determination.

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ITEM 10. Amend rule 621—4.6(20) as follows:

621—4.6(20) Amendment of unit.

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

a. ~~Name and address~~ The names, addresses, telephone numbers and e-mail addresses of the public employer, and the employee organization, and 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, ~~and~~ 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.

e. 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, ~~the rules set forth in rule 621—4.2(20)~~ shall apply, ~~except that the board may conduct an investigation and issue a decision and order without hearing.~~

4.6(3) *Elections; when required.* ~~A~~ When a question of representation exists, and the board agency will conduct a representation an amendment of unit election, if 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 11. 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 a ~~board-determined~~ agency-determined bargaining unit may be filed by the public employer, an affected public employee, or the certified employee organization. Such petition must be in the absence of a question of representation. Insofar as applicable, the procedures for such filing shall be as provided in ~~subrules~~ subrule 4.6(1) and 4.6(2).

ITEM 12. Amend rule 621—4.8(20) as follows:

621—4.8(20) Amendment of certification.

4.8(1) *Petitions.* A petition for the amendment of a certified employee organization's certification may be filed by the certified employee organization, the public employer or the agency to reflect an act or occurrence affecting the organization or the public employer, such as a name change or merger, ~~must be accompanied by affidavit(s) establishing that:~~

a. ~~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~~

b. ~~Substantial continuity of representation has been maintained.~~

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.

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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.

(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.

4.8(3) Public employer. The public employer must file its petition with an affidavit, affidavits or other documents, such as board minutes, establishing a change in the name of the public employer.

4.8(4) Agency. The agency may, at any time, file a petition with a document or documents establishing the basis for the amendment.

4.8(2) 4.8(5) Public employer posting, decisions and objection period. When a petition for amendment of certification is filed pursuant to which the agency deems sufficient to fulfill the requirements of this rule, the board agency shall mail copies of 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 conspicuous places customarily used for the posting of information to employees 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 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. Notice The notice of the proposed decision shall identify the parties; specify the terms of the proposed decision; list the names, addresses and telephone numbers of the parties or their authorized representatives to whom inquiries by the public should be directed; and state the date by which written objection to the proposed decision must be filed with the board and the address to which the objections should be sent.

b. Objections to the proposed decision must be filed with the board agency, electronically, by ordinary mail or by personal delivery, by the date posted specified 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 telephone number and e-mail address. The board agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. When an objection is raised, the board agency may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.

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

ITEM 13. Rescind 621—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
ELECTIONS

621—5.1(20) General procedures. The agency shall determine the date of the election or election period, and the place, method, and other procedural aspects of conducting an election held pursuant to Iowa Code chapter 20. Elections shall be conducted under the direction and supervision of the agency or its election agent and shall be by secret ballot.

5.1(1) Election types. There are five types of elections:

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- a. Certification election.
- b. Retention and recertification election.
- c. Decertification election.
- d. Professional and nonprofessional election.
- e. Amendment of unit election.

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 written request to the agency for an extension of time in which to pay its election fees. The employee organization may make 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 election. For a retention and recertification election, a certified employee organization may make a request after the agency's filing of its intent to conduct an election, but no later than 30 days prior to the commencement of the election period. 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 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.

d. 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." When the list contains 10 or fewer eligible voters, the election fee is \$10.00. When the list contains more than 10 eligible voters, the election fee is \$1.00 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" 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.

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

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

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

- a. Were employed in the bargaining unit during the payroll period immediately preceding the direction of election unless another date is agreed upon by the parties and the agency, and
- b. Are employed in the bargaining unit on the date of the election.

5.2(2) Eligible voter list.

a. When the agency files a notice of intent to conduct a retention and recertification election or an order that an election be conducted, the employer shall, within seven days of the notice or order, e-mail to the agency an alphabetical list of the names, addresses, e-mail addresses, and job classifications of the employees eligible to vote, except as provided in subrule 5.6(8). Where 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.

b. 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 shall e-mail additions

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or deletions of employees' names, changes in job classifications or addresses to the agency to reflect the current status of eligible voters. The parties may further amend the list by agreement.

5.2(3) Challenges. 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. Whenever challenged ballots are determinative of the outcome of an election, a hearing shall be scheduled.

621—5.3(20) Method of voting.

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

5.3(2) 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. 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. 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 ballot must be in the possession of the election agent prior to the close of the in-person election in order to be counted and shall be contained in the official envelopes provided for this purpose.

a. 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. 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.

c. Challenges and 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 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 file the tally of ballots after the close of the election.

5.3(3) Mail ballot election. When conducting a 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 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 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 voter's outer envelope shall be opened and the secret envelope containing the voter's ballot shall be deposited in the ballot box. The agency shall file the tally of ballots after the close of the election.

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

a. Notice of election. When conducting a 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 address for Web-based voting, as well as the script of the ballot.

b. 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

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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.

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

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 to an election must be filed within ten days of the filing of the tally of ballots, even when challenged ballots are determinative of the outcome of the election, and must contain a statement of facts upon which the objections are based. The objections shall be electronically filed with the agency.

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 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 to assembled groups of employees during working hours within the 24-hour period before the opening of the polls, mailing of ballots, or commencement of the telephonic/Web-based election period;
- 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.

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 a list of eligible voters pursuant to rule 621—5.2(20).

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. 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

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organization's failure to pay the applicable election fee in a timely manner will result in the agency's dismissal of the certification petition.

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) *Time for intervention.* 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.

5.5(4) *Withdrawal from ballot.* An intervening employee organization may, upon its 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 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 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 fails to comply with the provisions of Iowa Code section 20.25 within 90 days of the completion of a valid 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.

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

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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.

d. If the certified employee organization has paid the applicable election fee in a timely manner as provided in subrule 5.6(4), 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 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, 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. 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 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.

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; 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 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.

c. 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 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 may deem appropriate.

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

a. The 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

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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.

a. The public employer shall submit 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 addresses, job classifications, dates of birth, the last four digits of the employees' social security numbers, and any other information required by the agency. 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 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.

b. If the public employer fails to submit the list of eligible voters to the agency in a timely fashion, the agency will refrain from conducting the election, 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 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 agency may grant a certified employee organization's written request for an extension of time to pay the fee if the request is filed at least 30 days prior to the commencement of the election period. 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 shall result in revocation of the organization's certification.

5.6(6) 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(7) 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) Elections for 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, 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.

621—5.7(20) Decertification election.

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

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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).

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 fee.* 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 certified 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. A certified employee organization's failure to pay the applicable election fee in a timely manner shall result in the revocation of the employee organization's certification.

5.7(3) *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) *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) *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 schedule a decertification election within one year of a prior certification, retention and recertification, or decertification election involving the bargaining unit.

621—5.8(20) Professional and nonprofessional election.

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 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

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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 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 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) 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) Certification of results.

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

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 employer shall submit by e-mail 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.

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.

c. No election fee is assessed for an election held pursuant to this rule.

5.9(2) 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) 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.

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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.

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.

These rules are intended to implement Iowa Code chapter 20 as amended by 2017 Iowa Acts, House File 291.

ITEM 14. Renumber rules **621—6.4(20)** and **621—6.5(20)** as **621—6.5(20)** and **621—6.6(20)**.

ITEM 15. Adopt the following new rule 621—6.4(20):

621—6.4(20) Public safety unit determination.

6.4(1) Applicability. This rule applies only to bargaining units which include at least one public safety employee, as defined in 621—subrule 1.6(12) or as required by 2017 Iowa Acts, House File 291, section 18, concerning certain transit employees.

6.4(2) Defined. A public safety unit is a bargaining unit in which at least 30 percent of the employees are public safety employees.

6.4(3) Determination of public safety unit status. A bargaining unit will constitute a public safety unit if at least 30 percent of the employees in the unit were public safety employees at any one time in the six months preceding the applicable date identified in subrule 6.4(7).

6.4(4) Identification of public safety or non-public safety unit. Parties engaging in negotiations for a collective bargaining agreement shall endeavor to agree upon and stipulate to the public safety or non-public safety status of the unit at issue.

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, ordinary mail, or personal delivery.

6.4(6) Petition, response and hearing for determination of public safety or non-public safety unit status.

a. If the parties fail to reach agreement, the party asserting public safety unit status shall file a petition for determination of the unit status on or before the applicable date identified in subrule 6.4(7). The petition shall be on an agency-prescribed form and electronically filed. The petitioning party 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).

b. The non-petitioning party shall, within ten days following the filing of the petition with the agency, file a response asserting its basis for identifying the unit as a non-public safety unit.

c. Hearings on the petition shall be conducted pursuant to 621—Chapter 2. The public employer shall present its evidence first.

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

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

ITEM 16. Amend renumbered rule 621—6.6(20) as follows:

621—6.6(20) Filing of agreement. ~~Not later than 60 days after ratification and acceptance of a tentative agreement or the issuance of an interest arbitration award, the public employer shall submit the collective~~

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

bargaining agreement to the agency. A copy of the collective bargaining agreement entered into between a 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 within ten days of the date on which the agreement is entered into.

ITEM 17. Amend subrule 7.3(1) as follows:

7.3(1) Request for mediation. Either party to an impasse may request the board in writing to appoint a mediator to the impasse.

An original and one copy of the request for mediation shall be filed with the board and shall, in addition to the request for mediation, contain:

a. The name, address, and telephone number of the requesting party, and the name, address, and telephone number, and e-mail address of its bargaining representative or of the chairperson of its bargaining team.

b. The name, address, and telephone number of the opposing party to the impasse, and the name, address, and telephone number, and e-mail address of its bargaining representative or of the chairperson of its bargaining team.

c. A description of the collective bargaining unit involved and the approximate number of employees in the unit.

d. A statement indicating whether the public employer of the unit involved is subject to the budget certification requirements of Iowa Code section 24.17 and, if the public employer is not subject to those requirements, a statement of the date upon which the public employer's next fiscal or budget year commences.

e. A statement indicating whether the bargaining unit is a public safety or non-public safety unit as specified by Iowa Code section 20.3 as amended by 2017 Iowa Acts, House File 291, section 1, and rule 621—6.4(20).

e. f. A concise and specific listing of the negotiated items upon which the parties have reached impasse.

ITEM 18. Amend subrule 7.5(6) as follows:

7.5(6) Date and conduct of hearings.

a. Impasse items are deemed submitted to binding arbitration on the date of the commencement of the arbitration hearing, regardless of its duration. In disputes where the public employer is a community college, or where all or a portion of the public employees in the bargaining unit are teachers licensed under Iowa Code chapter 272 and the public employer is a school district or area education agency, the submission of impasse items to binding arbitration shall occur not later than May 13 of the year when the resulting collective bargaining agreement is to become effective.

b. Arbitration hearings shall be open to the public and shall be recorded either by mechanized means or by a certified shorthand reporter.

c. The arbitration hearing shall be limited to those factors listed in Iowa Code ~~section 20.22(9)~~ section 20.22 as amended by 2017 Iowa Acts, House File 291, sections 12 and 13, and subrules 7.5(7) and 7.5(8), and such other relevant factors as may enable the arbitrator to select the most reasonable offer, in the arbitrator's judgment, of the final offers submitted by the parties on each impasse item. Arbitrators appointed pursuant to impasse procedures agreed upon by the parties shall likewise consider ~~the factors listed in Iowa Code section 20.22(9)~~ these same factors.

During the hearing, the parties shall not introduce, and the arbitrator shall not accept or consider, any direct or indirect evidence regarding any subject excluded from negotiations pursuant to Iowa Code

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section 20.9 as amended by 2017 Iowa Acts, House File 291, section 6, except as required for purposes of the consideration of the factors specified in subrule 7.5(7) and paragraph 7.5(8) "a."

ITEM 19. Renumber subrules **7.5(7)** to **7.5(10)** as **7.5(9)** to **7.5(12)**.

ITEM 20. Adopt the following **new** subrules 7.5(7) and 7.5(8):

7.5(7) *Arbitration involving a bargaining unit that has at least 30 percent of members who are public safety employees.* The arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

7.5(8) *Arbitration involving a bargaining unit that does not have at least 30 percent of members who are public safety employees.*

a. The arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:

(1) Comparison of base wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved. To the extent adequate, applicable data is available, the arbitrator shall also compare base wages, hours, and conditions of employment of the involved public employees with those of private sector employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

(2) The interests and welfare of the public.

(3) The financial ability of the employer to meet the cost of an offer in light of the current economic conditions of the public employer. The arbitrator shall give substantial weight to evidence that the public employer's authority to utilize funds is restricted to special purposes or circumstances by state or federal law, rules, regulations, or grant requirements.

b. The arbitrator shall not consider the following factors:

(1) Past collective bargaining agreements between the parties or bargaining that led to such agreements.

(2) The public employer's ability to fund an award through the increase or imposition of new taxes, fees, or charges or to develop other sources of revenue.

c. The arbitrator's award on the impasse item of base wages shall not exceed the lesser of the following percentages in any one-year period in the duration of the bargaining agreement:

(1) Three percent.

(2) A percentage equal to the increase in the consumer price index for all urban consumers for the Midwest region, if any, as provided by the agency.

d. Should the final offers of both parties on the impasse item of base wages exceed the lesser of the percentages specified in paragraph 7.5(8) "c," the arbitrator shall select neither of the parties' offers, but shall instead award the lesser of the amounts listed in that paragraph.

ITEM 21. Amend renumbered subrule 7.5(10) as follows:

7.5(10) *Report of the arbitrator.* With respect to each impasse item, the arbitrator's award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitrator, except as provided in paragraph 7.5(8) "c." Within 15 days after the arbitration hearing, the arbitrator shall issue a written award specifying and explaining the arbitrator's selections and serve each party and the board with a copy by ordinary mail or by e-mail.

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ITEM 22. Amend renumbered subrule 7.5(11) as follows:

7.5(11) Dismissal of arbitrator. In the event of a failure of the arbitrator to issue an award within 15 days after the arbitration hearing, the arbitrator shall notify the board and the parties of this failure. Either party may thereafter request a new arbitrator. Unless the parties agree otherwise, the procedures in ~~subrules 7.5(1) to 7.5(5)~~ this rule shall apply; provided, however, that the parties may submit new final offers. No arbitrator shall issue a partial award except by mutual consent of the parties.

ITEM 23. Rescind rules **621—7.8(20)** to **621—7.10(20)**.

ITEM 24. Amend subrule 8.4(1) as follows:

8.4(1) Time of filing. An employee organization shall file a complete annual report:

- a. Before the employee organization may be certified as the exclusive representative of a bargaining unit ~~in which case the report may be filed concurrently with an election petition~~; and
- b. Once the employee organization is certified, within 90 days following the certified employee organization's fiscal year end; and
- c. When the certified employee organization files a petition to amend its certification.

ITEM 25. Amend subrule 8.7(1) as follows:

8.7(1) Upon completion of a valid certification election. If an employee organization fails to file a registration report, constitution and bylaws, or annual report or otherwise comply with these rules or Iowa Code section 20.25 within 90 days following the completion of a valid certification election, the agency will not certify the employee organization and will serve notice of noncertification. The agency may grant extensions of time for good cause.

ITEM 26. Renumber rule **621—11.9(8A,20)** as **621—11.10(8A,20)**.

ITEM 27. Adopt the following new rule 621—11.9(8A,20):

621—11.9(8A,20) Costs of certified shorthand reporters and transcripts.

11.9(1) Initial payment. The agency will arrange for a certified shorthand reporter to report the contested case hearing and request that an original transcript of the hearing be prepared by the reporter for the agency's use. The agency initially shall pay the reporter's reasonable compensation for reporting the hearing and producing the agency-requested transcript.

11.9(2) Taxation as costs. The cost of reporting and of the agency-requested transcript shall be taxed as costs against the nonprevailing party or parties although the presiding officer, or the board on appeal or review of a proposed decision and order, may apportion such costs in another manner if appropriate under the circumstances.

11.9(3) Payment of taxed costs. Following final agency action in a case, the agency will prepare and serve a bill of costs upon the party or parties against whom the costs have been taxed. Those parties shall, within 30 days of such service, remit to the agency the amount specified in the bill of costs. Sums remitted to the agency shall be considered repayment receipts as defined in Iowa Code section 8.2.

ITEM 28. Amend subrule 16.4(2) as follows:

16.4(2) Exceptions.

- a. A show of interest submitted in a representative certification, combined bargaining unit determination or reconsideration/representative certification, or decertification proceeding shall not be filed electronically.
- b. Any item that is not capable of being filed in an electronic format shall be filed in a nonelectronic format.
- c. Upon a showing of exceptional circumstances that it is not feasible for an individual to file documents by electronic means, the board may excuse the individual from electronic filing in a particular proceeding.
- d. A voter eligibility list submitted by an employer shall be e-mailed to the agency as provided in 621—subrule 5.2(2).

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~~*e.*~~ All filings in proceedings initially filed prior to January 1, 2015, unless converted to an electronic proceeding by board order, shall not be filed electronically.

[Filed Emergency 8/10/17, effective 8/11/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3287C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services hereby amends Chapter 100, "Capitol Complex Operations," Iowa Administrative Code.

These amendments address the possession of pistols and revolvers and the use of fireworks on the Capitol Complex in relation to 2017 Iowa Acts, House File 517 and Senate File 489.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3177C** on July 5, 2017. These amendments were also Adopted and Filed Emergency and published as **ARC 3179C** on July 5, 2017. A public hearing was held on July 25, 2017. No comments from the public were received. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Department of Administrative Services will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

The Department of Administrative Services adopted these amendments on August 9, 2017.

After analysis and review of this rule making, it is undeterminable how rules that implement 2017 Iowa Acts, House File 517, section 33, would affect jobs in the private sector. It is undeterminable how rules that implement Iowa Code section 8A.322(3) in relationship to 2017 Iowa Acts, Senate File 489, would affect jobs in the private sector.

These amendments are intended to implement Iowa Code section 8A.322 as amended by 2017 Iowa Acts, House File 517, and the provisions resulting from 2017 Iowa Acts, Senate File 489.

These amendments will become effective October 4, 2017, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

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

11—100.1(8A) Definitions. The definitions contained in ~~2003~~ Iowa Code Supplement 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.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

“*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 modular office systems*” means office systems that do not meet standards set by the department of administrative services.

“*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.

ITEM 2. Amend rule 11—100.2(8A) as follows:

11—100.2(8A) Security.

100.2(1) *Dangerous weapons.* No member of the public shall carry a dangerous weapon in state buildings on the capitol complex except as otherwise provided in subrule 100.2(2). This provision applies to any member of the public whether or not the individual possesses a valid Iowa permit to carry weapons. This provision does not apply to:

a. A peace officer as defined in Iowa Code section 801.4 or a member of the armed forces of the United States or of the national guard, when the person’s duties or lawful activities require or permit possession of a dangerous weapon.

b. A person possessing a valid Iowa professional permit to carry a weapon whose duties require that person to carry a dangerous weapon.

c. A person who possesses a dangerous weapon for any purpose authorized by a state agency to further the statutory or regulatory responsibilities of that agency. An authorization issued pursuant to this paragraph shall not become effective until it has been issued in writing to the person or persons to whom it applies and until copies of the authorization have been received by the director and by the commissioner of public safety.

d. Members of recognized military veterans organizations performing honor guard service as provided in ~~2001 Iowa Acts, chapter 96, section 1~~ Iowa Code section 35A.12.

Violation of this subrule is a simple misdemeanor, pursuant to ~~2003 Iowa Code Supplement~~ section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of any individual who knowingly violates the subrule. In addition, any weapon found in possession of a member of the public in violation of this subrule may be confiscated. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

100.2(2) *Pistols and revolvers.* No person, other than a peace officer, may openly carry a pistol or revolver in the capitol building and on the grounds surrounding the capitol building including state parking lots and parking garages. This provision does not preclude the lawful carrying, transportation, or possession of a pistol or revolver in the capitol building and on the grounds surrounding the capitol

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

building including the state parking lots and parking garages by a person who displays to capitol security personnel a valid permit to carry weapons upon request.

Violation of this subrule is a simple misdemeanor, pursuant to Iowa Code section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of any individual who knowingly violates the subrule. In addition, any weapon found in possession of a member of the public in violation of this subrule may be confiscated. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

~~100.2(2)~~ **100.2(3)** *Building access and security.* The department of administrative services and the department of public safety shall take reasonable and appropriate measures to ensure the safety of persons and property on the capitol complex. These measures may include, but are not limited to, the following:

a. Requiring any member of the public entering a state building on the capitol complex to (1) provide identification upon request; (2) allow the member of the public to be scanned with metal detecting equipment; and (3) allow any parcel, package, luggage, purse, or briefcase that the person is bringing into the building to be examined with X-ray equipment or to have the contents thereof examined, or both.

b. Requiring any member of the public who is inside a state building on the capitol complex outside normal business hours, other than when the building or portion of the building is open to the public during a scheduled event, to provide identification and to state the nature of the person's business in the building. A member of the public who is in a state building on the capitol complex outside normal business hours, other than during a scheduled event, and who does not have authorization to be on the premises may be required to exit the building and be escorted from the building.

c. Limiting public access to state buildings on the capitol complex to selected entrances. Access to each building through at least one entrance accessible to persons with disabilities shall be maintained.

d. Limiting hours during which public access is allowed to state buildings on the capitol complex. Hours during which public access is allowed shall be posted at each entrance to a building through which public access is allowed.

e. Confiscating any container including, but not limited to, packages, bags, briefcases, or boxes that are left in public areas when the state building is not open to the public. Any confiscated container may be searched or destroyed, or both, or may be returned to the owner. Any container that is left unattended in a public area during hours in which the state building is open to the public may be examined.

Violation of this subrule is a simple misdemeanor, pursuant to ~~2003~~ Iowa Code ~~Supplement~~ section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of the individual who knowingly violates the subrule. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

100.2(4) *Fireworks.* No person shall use or explode consumer fireworks, display fireworks, or novelties, as those terms are defined in Iowa Code section 727.2, on the capitol complex without the director's advanced written approval.

~~100.2(3)~~ **100.2(5)** *Access barriers.* The director may cause the temporary or permanent placement of barricades, ropes, signs, or other barriers to access certain parts of state buildings or grounds.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Unauthorized persons beyond the barriers may be removed with the assistance of officers of the department of public safety or charged with a criminal offense if appropriate, or both.

[Filed 8/11/17, effective 10/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3286C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 199.11, the Department of Agriculture and Land Stewardship hereby amends Chapter 40, "Agricultural Seeds," Iowa Administrative Code.

This amendment updates the federal code reference for agricultural seeds.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3152C** on July 5, 2017. No comments were received from the public. The adopted amendment is identical to the noticed amendment.

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

This amendment is intended to implement Iowa Code chapter 199.

This amendment will become effective October 4, 2017.

The following amendment is adopted.

Amend rule 21—40.15(199) as follows:

21—40.15(199) Federal regulations adopted. Title 7, C.F.R., Subchapter K—Federal Seed Act—Parts 201, 202 revised as of January 1, 1982, and the Federal Seed Act, 7 U.S.C., Section 1551 et seq., amended as of ~~December 22, 1981~~ April 1998, are hereby adopted by this reference in their entirety.

[Filed 8/9/17, effective 10/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3288C**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 21, "Community Colleges," Iowa Administrative Code.

The amendments to Chapter 21 incorporate changes to the rules which establish basic requirements for certificate, diploma, and degree programs and instructional courses for drinking drivers, both offered by community colleges. Regarding subrule 21.2(9), changes include updating terminology from technical "specialty component" to technical "core" and establishing a minimum technical core course requirement for diplomas. Regarding rule 281—21.32(321J), changes include an increase in tuition fees for an instructional course for drinking drivers offered by community colleges to \$140 and an increase in the administrative fee collected by the Department to \$15 for individuals enrolled in an Iowa instructional course for drinking drivers and to \$37.50 for individuals enrolled in an out-of-state instructional course for drinking drivers. The fee adjustments reflect the recommendation of a drinking drivers instruction course advisory committee and reflect the cost of providing such courses.

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

Notice of Intended Action was published in the June 7, 2017, Iowa Administrative Bulletin as **ARC 3087C**. Public comments were allowed until 4:30 p.m. on June 27, 2017. A public hearing was held on

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that date. No one attended the public hearing. One letter in support of the amendments was received. These amendments are identical to those published under Notice.

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

These amendments are intended to implement Iowa Code chapter 260C.

These amendments will become effective October 4, 2017.

The following amendments are adopted.

ITEM 1. Amend paragraph **21.2(9)“d”** as follows:

d. Associate of applied science (AAS). The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for entry-level career and technical occupations. An associate of applied science degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied science degree program shall consist of a minimum of 12 semester (18 quarter) credit hours of general education and shall include at least one course from each of the following areas: communications, social science or humanities, and mathematics or science. The technical ~~specialty component~~ core of the associate of applied science degree shall constitute a minimum of 50 percent of the course credits.

ITEM 2. Amend paragraph **21.2(9)“e”** as follows:

e. Associate of applied arts (AAA). The degree is awarded upon completion of a state-approved program of study that is primarily intended for career training in providing students with professional skills for employment in a specific field of work such as arts, humanities, or graphic design. An associate of applied arts degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied arts degree program shall consist of a minimum of 12 semester (18 quarter) credit hours of general education and shall include at least one course from each of the following: communications, social science or humanities, and mathematics or science. The technical ~~specialty component~~ core of the associate of applied arts degree shall constitute a minimum of 50 percent of the course credits.

ITEM 3. Amend subparagraph **21.2(9)“f”(3)** as follows:

(3) An associate of professional studies degree shall consist of a minimum of 62 semester (93 quarter) credit hours and a maximum of 68 semester (102 quarter) credit hours. The general education component of the associate of professional studies degree shall consist of a minimum of 30 semester (45 quarter) credit hours of general education including 3 semester (4.5 quarter) credit hours of each of the following: speech, mathematics, humanities, social and behavioral sciences, science; 6 semester (9 quarter) credit hours of writing; and 9 semester (13.5 quarter) credit hours distributed among mathematics, social and behavioral sciences, humanities, and science. The technical ~~specialty component~~ core of the associate of professional studies degree shall consist of a minimum of 16 semester (24 quarter) credit hours of career and technical coursework accepted by a receiving baccalaureate degree-granting institution with an aligned program as applying toward a specific major or program of study. The technical ~~specialty component~~ core of the degree shall also consist of a minimum of 16 additional semester (24 quarter) credit hours of career and technical coursework accepted by the receiving institution as electives.

ITEM 4. Amend paragraph **21.2(9)“g”** as follows:

g. Diploma. The diploma is awarded upon completion of a state-approved program of study that is a coherent sequence of courses consisting of a minimum of 15 semester (22.5 quarter) credit hours and a maximum of 48 semester (72 quarter) credit hours including at least 3 semester (4.5 quarter) credit hours of general education. The general education component shall be from any of the following areas: communications, social science or humanities, and mathematics or science. The technical core of the diploma shall constitute a minimum of 70 percent of the course credits. A diploma may be a component of and apply toward subsequent completion of an associate of applied science or associate of applied arts degree.

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ITEM 5. Amend subrule 21.32(1) as follows:

21.32(1) Each person enrolled in an instructional course for drinking drivers shall pay to the community college or a substance abuse treatment program licensed under Iowa Code chapter 125 a tuition fee of ~~\$85~~ \$140 for the approved 12-hour course, plus a reasonable book fee. The court may allow an offender to combine the required course with a program that incorporates jail time. Reasonable fees may be assessed for costs associated with lodging, meals, and security.

ITEM 6. Amend rule 281—21.33(321J) as follows:

281—21.33(321J) Administrative fee established.

21.33(1) *Students enrolled in Iowa.* Each person enrolled in Iowa in an instructional course for drinking drivers under this chapter shall be charged an administrative fee of ~~\$10~~ \$15. This fee is in addition to tuition and shall be collected by the provider of the instructional course in conjunction with the tuition fee established under 281—21.32(321J). The administrative fee shall be forwarded to the department of education on a quarterly basis as prescribed by the department. If a student has been declared by the court as indigent, no administrative fee will be charged to that student.

21.33(2) *Students enrolled in another state.* Each person enrolled outside the state of Iowa in an instructional course for drinking drivers under this chapter shall be charged an administrative fee of ~~\$25~~ \$37.50. This fee is in addition to tuition and shall be paid directly to the department of education by the student. Upon payment of the fee, the department of education shall review the educational component of the course taken by the student and shall inform the department of transportation whether the educational component is approved by the department of education.

[Filed 8/4/17, effective 10/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3289C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 33, "Educating the Homeless," Iowa Administrative Code.

The revised Chapter 33 incorporates changes to the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.), as reauthorized in December 2015 by the Every Student Succeeds Act (ESSA). The amendments as a result of ESSA include modifying the requirements of the State Plan to include procedures that ensure that homeless students have equal access to the same free, appropriate public education, including a public preschool education, as provided to other students. This equal access includes removing barriers that prevent students from accessing academic or extracurricular activities because of their homelessness. Other amendments include removal of "awaiting foster care placement" from the definition of "homeless child or youth," revisions to the definition of "school of origin," and clarifications regarding required transportation for the school of origin.

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

Notice of Intended Action was published in the June 7, 2017, Iowa Administrative Bulletin as **ARC 3089C**. Public comments were allowed until 4:30 p.m. on June 27, 2017. A public hearing was held on that date. No one attended the public hearing, and no comments were received. These amendments are identical to those published under Notice.

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

These amendments are intended to implement the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.), as reauthorized in December 2015 by the Every Student Succeeds Act (ESSA).

These amendments will become effective October 4, 2017.

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The following amendments are adopted.

ITEM 1. Amend **281—Chapter 33**, title, as follows:

EDUCATING THE HOMELESS CHILDREN AND YOUTH

ITEM 2. Amend rule 281—33.2(256) as follows:

281—33.2(256) Definitions.

“District of origin” is defined as the public school district in Iowa in which the child was last enrolled or which the child last attended when permanently housed.

“Guardian” is defined as a person of majority age with whom a homeless child or youth of school age is living or a person of majority age who has accepted responsibility for the homeless child or youth, whether or not the person has legal guardianship over the child or youth.

“Homeless child or youth” is defined as a child or youth from the age of 3 years through 21 years who lacks a fixed, regular, and adequate nighttime residence and includes the following:

1. A child or youth who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; is living in a motel, hotel, trailer park, or camping grounds due to the lack of alternative adequate accommodations; is living in an emergency or transitional shelter; or is abandoned in a hospital; or is awaiting foster care placement;
2. A child or youth who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
3. A child or youth who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting; or
4. A migratory child or youth who qualifies as homeless because the child or youth is living in circumstances described in paragraphs “1” through “3” above.

“Preschool child” is defined as a child who is three, four, or five years of age before September 15.

“School of origin” is defined as the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool. When the child or youth completes the final grade level served by the school of origin, the term “school of origin” shall include the designated receiving school at the next grade level for all feeder schools.

“Unaccompanied youth” is defined as a youth not in the physical custody of a parent or guardian.

ITEM 3. Amend subrule 33.3(3) as follows:

33.3(3) The board shall examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of homeless children or youth, consistent with these rules. Examination and revision include identifying and removing barriers that prevent such children and youth from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with state, local, and school policies. Examination and revision also include ensuring that homeless children and youth who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the state and local levels. School districts are encouraged to cooperate with agencies and organizations for the homeless to explore comprehensive, equivalent alternative educational programs and support services for homeless children and youth when necessary to implement the intent of these rules.

ITEM 4. Amend subrule 33.3(7) as follows:

33.3(7) The board shall designate ~~an appropriate staff person~~ as the district’s local educational agency liaison for homeless children and youth an appropriate staff person who is able to and has been trained to carry out the following duties:

- a. Ensure that a homeless child or youth is identified by school personnel ~~and~~ through outreach and coordination activities with other entities and agencies;
- b. Ensure that a homeless ~~child or children~~ and youth is are enrolled in, and ~~has~~ have a full and equal opportunity to succeed in, schools of the district;

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c. Ensure that homeless families, and homeless children, and youth receive educational services for which such families, children, and youth are eligible, including services through Head Start and Even Start programs (including Early Head Start programs) under the Head Start Act (42 U.S.C. Section 9831, et seq.), early intervention services under Part C of the Individuals with Disabilities Education Act (20 U.S.C. Section 1431, et seq.), ~~tuition-free and other~~ preschool programs administered by the district, and referrals to health care services, dental services, mental health services, and other appropriate services;

d. Ensure that homeless families and homeless children and youth receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;

~~*e.*~~ *e.* Ensure that the parents or guardians of homeless children and youth are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;

~~*f.*~~ *f.* Ensure that public notice of the educational rights of homeless children and youth is disseminated ~~where such children and youth receive services under the federal McKinney-Vento Homeless Assistance Act, such as in~~ locations frequented by parents or guardians of such children and youth, and unaccompanied youth, including schools, family shelters, public libraries, and soup kitchens, in a manner and form understandable to the parents and guardians of homeless children and youth, and unaccompanied youth;

~~*g.*~~ *g.* Ensure that enrollment disputes are mediated in accordance with 42 U.S.C. Section 11432(g)(3)(E), which requires the following:

(1) The child or youth shall be immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute (which must be either the local attendance center or the school of origin);

(2) The parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision;

(3) The child, youth, parent, or guardian shall be referred to the local educational agency liaison designated under this subrule, who shall carry out the dispute resolution process set forth in rule 281—33.9(256);

(4) In the case of an unaccompanied youth, the local educational agency liaison shall ensure that the youth is immediately enrolled in the school in which enrollment is sought pending resolution of the dispute;

~~*h.*~~ *h.* Ensure that the parent or guardian of a homeless child or youth, or the unaccompanied youth, is fully informed of all transportation services and is assisted in accessing transportation to the school of enrollment;

i. Ensure that school personnel providing services under this chapter receive professional development and other support;

j. Ensure that unaccompanied homeless youth:

(1) Are enrolled in school;

(2) Have opportunities to meet the same challenging academic standards as are established for other children and youth, including through implementation of the procedures under the Every Student Succeeds Act; and

(3) Are informed of their status as independent students under Section 480 of the Higher Education Act of 1965 (20 U.S.C. 1087vv) and that the youth may obtain assistance from the local educational agency liaison to receive verification of such status for the purposes of the Free Application for Federal Student Aid described in Section 483 of such Act (20 U.S.C. 1090); and

~~*k.*~~ *k.* Coordinate and collaborate with state coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth.

ITEM 5. Amend subrule 33.9(1) as follows:

33.9(1) If the child is identified as a special education student under Iowa Code chapter 256B, the manner of appeal shall be by letter from the homeless child or youth, or the homeless ~~child~~ child's or

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youth's parent or guardian, to the department of education as established in Iowa Code section 256B.6 and ~~Iowa Administrative Code 281—41.32(17A,256B,290)~~ rule 281—41.508(256B,34CFR300). The letter shall not be rejected for lack of notarization, however. Representatives of the public school district where the child or youth desires to attend and of the corresponding area education agency, as well as the child, youth, or parent or guardian of the child or youth, shall present themselves at the time and place designated by the department of education for hearing on the issue. The hearing shall be held in accordance with ~~the rules established in 281—41.32(17A,256B,290)~~ rule 281—41.508(256B,34CFR300).

ITEM 6. Amend rule 281—33.11(256) as follows:

281—33.11(256) School services.

33.11(1) The school district designated for the homeless child's or youth's enrollment shall make available to the child or youth all services and assistance, including but not limited to the following services, on the same basis as those services and assistance are provided to resident pupils:

- a. Compensatory education;
- b. Special education;
- c. English as a Second Language;
- d. ~~Vocational~~ Career and technical education courses or programs;
- e. Programs for gifted and talented pupils;
- f. Health services;
- g. Preschool (including Head Start ~~and Even Start~~);
- h. ~~Before~~ Before- and ~~after-school~~ after-school child care;
- i. Food and nutrition programs;
- j. School counseling services to advise homeless students and prepare and improve the readiness of such students for college.

33.11(2) A district must include homeless students in its academic assessment and accountability system under the federal ~~No Child Left Behind Act, P.L. 107-110~~ Every Student Succeeds Act, P.L. 114-95. ~~Assessments should be included in the economically disadvantaged category for reporting purposes. Schools are not required to disaggregate information regarding homeless students as a separate category, but may be asked to do so in accordance with the duties of the United States Secretary of Education and the Office of the State Coordinator. A district must report disaggregated data regarding the academic achievement and graduation rates for homeless children, as required by Section 1111 of the Every Student Succeeds Act.~~

ITEM 7. Amend **281—Chapter 33**, implementation sentence, as follows:

These rules are intended to implement the provisions of the ~~Stewart B. McKinney Homeless Assistance Act, as reauthorized in January 2002 as the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.),~~ as reauthorized December 10, 2015, by Title IX, Part A, of the Every Student Succeeds Act.

[Filed 8/4/17, effective 10/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3290C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 61, "Iowa Reading Research Center," Iowa Administrative Code.

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The Iowa Reading Research Center had been charged with adopting program criteria and guidelines for an intensive summer literacy program required by Iowa Code section 279.68. 2017 Iowa Acts, House File 642, enacted during the 2017 session of the General Assembly and signed into law by the Governor, repealed Iowa Code sections 279.68(1)“c” and 279.68(2)“e,” thereby eliminating the requirement that school districts offer an intensive summer literacy program. This amendment reflects the statutory change that school districts are no longer required to offer an intensive summer literacy program, but maintains certain program criteria and guidelines for voluntary intensive summer literacy programs that school districts may choose to offer in meeting the requirements of Iowa Code section 279.68(2)“a”(6).

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

Notice of Intended Action was published in the July 5, 2017, Iowa Administrative Bulletin as **ARC 3148C**. Public comments were allowed until 4:30 p.m. on July 25, 2017. A public hearing was held on that date. No one attended the public hearing, and no public comments were received. This amendment is identical to that published under Notice of Intended Action.

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

This amendment is intended to implement Iowa Code sections 256.7(31) and 256.9(49)“c” and Iowa Code section 279.68 as amended by 2017 Iowa Acts, House File 642.

This amendment will become effective October 4, 2017.

The following amendment is adopted.

Amend rule 281—61.3(256) as follows:

281—61.3(256) Intensive summer literacy program. The center ~~shall establish~~ hereby establishes program criteria and guidelines for voluntary implementation of the program by school districts, ~~under rules adopted by the state board of education.~~

61.3(1) Program criteria: *summer reading programs pursuant to Iowa Code section 279.68 as amended by 2017 Iowa Acts, House File 642.* Each district that chooses to implement a summer reading program as part of its implementation of Iowa Code section 279.68(2)“a”(6) shall comply with the requirements of that section and 281—Chapter 62, including a recommendation to use an evidence-based curriculum, the requirement to employ appropriately licensed and supervised teachers and paraprofessionals, and the requirement to monitor student progress.

61.3(1) 61.3(2) Program Additional voluntary program criteria: *intensive summer literacy program.* Each district’s voluntary intensive summer literacy program ~~shall be implemented consistent with 281—Chapter 62 and shall~~ is encouraged to meet, in addition to the requirements of subrule 61.3(1), the following program criteria.

a. Criterion 1. Each district ~~shall~~ is encouraged to adopt instructional practices or programs that have ~~demonstrated some evidence of~~ success and that include explicit and systematic instruction in foundational reading skills based on student need, consistent with Iowa Code section 279.68. ~~Those instructional practices or programs shall incorporate the requirements of Iowa Code section 279.68, subsection 2, paragraph “d,” subparagraph (3), subparagraph division (a). To meet this criterion, each district must:~~

(1) ~~Adopt an instructional program from the department’s review of evidence-based early literacy interventions, or~~

(2) ~~Adopt instructional practices or programs that have been empirically shown to increase student literacy achievement.~~

b. Criterion 2. Each district shall ~~employ~~ ensure that its program employs skilled, high-quality instructors or ~~provide instructors with required training, or do both.~~ To meet this criterion, a district must hire instructors whose qualifications and training meet the requirements of the evidence-based intervention chosen. In the absence of specifications from the intervention chosen, a district must hire instructors who, at a minimum, hold a current Iowa teaching license with an endorsement in elementary education or in reading (K-8) or as a reading specialist. For the purposes of this paragraph, 61.3(1)“b,” a district may “hire” or “employ” personnel directly, through an agreement with one or more other districts, through an agreement with one or more accredited nonpublic schools, through an agreement with one

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or more state agencies or governmental subdivisions, through an agreement with one or more private not-for-profit community agencies, or some combination thereof.

c. Criterion 3. Each district shall is encouraged to allow sufficient time for intensive meaningful reading instruction and student learning. ~~To meet this criterion, a district must implement, at a minimum, the total number of hours of instructional time described by the evidenced-based intervention chosen. In the absence of specifications from the intervention chosen, a district must provide a minimum of 70 hours of intensive reading instruction.~~

d. Criterion 4. Each district shall is encouraged to provide intensive instruction in small classes and small groups. To meet this criterion, a district must is encouraged to employ the same instructional grouping formats described in the evidence-based intervention chosen. In the absence of specifications from the intervention chosen, a district must is encouraged to ensure that it delivers whole-class instruction in class sizes of 15 or fewer students and that it delivers targeted intervention based on student need in small groups of 5 or fewer students. A district may elect to provide class and group sizes smaller than specified in this criterion.

e. Criterion 5. Each district shall is encouraged to monitor and promote student attendance. To meet this criterion, each district must adhere to an attendance policy that requires 85 percent attendance by each student.

f. Criterion 6. Each district shall is encouraged to evaluate student outcomes and the quality of program implementation, including implementation of these voluntary criteria. Evaluation of student outcomes includes attendance data and student achievement data. On a weekly basis, each district shall use the department-approved literacy assessment used during the school year to evaluate student progress toward end-of-third-grade proficiency. Evaluation of program implementation shall align with the district's plan to address reading proficiency in its comprehensive school improvement plan, as required by rule 281—62.9(256,279). Program evaluation shall also include a measure of fidelity in implementing, at a minimum, the following requirements: instructor qualifications, amount of instructional time, group size, attendance data, and progress-monitoring data.

~~*g. Criterion 7.* Each district shall identify whether each student successfully completes the program. Each student who successfully completes the program is eligible for promotion to grade four. Each district shall provide to the parents or legal guardians of each student written notice about whether the student successfully completed the program. The notice shall include information about attendance, academic performance, additional or continuing areas of need and whether the child is eligible for promotion. Successful completion shall be defined as meeting either of the following standards:~~

~~(1) Consistent attainment of an end-of-third-grade proficiency standard pursuant to paragraph 61.3(1)“f,” or~~

~~(2) Attendance at no less than 85 percent of the program's sessions.~~

h. g. Criterion 8 7. Each program shall be under the leadership and supervision of at least one appropriately licensed teacher, as described in paragraph 61.3(1)“b,” and at least one appropriately licensed administrator. The two roles may be filled by the same individual. Either Nonlicensed personnel shall be supervised by an appropriately licensed teacher. It is encouraged that either the teacher or the administrator shall hold a reading (K-8) endorsement or a reading specialist endorsement. Leadership and supervision under paragraph 61.3(1)“h” shall include monitoring the program for compliance with the program criteria in subrule 61.3(1).

i. h. Option to use private providers. A district may enter into an agreement with a private provider that uses evidence-based instructional strategies to provide intensive summer literacy instruction required by under this chapter and 281—Chapter 62, at the election of a parent and in lieu of programming provided by the district. Any election under this paragraph shall be at the parent's sole cost. The private provider shall use evidence-based instructional strategies. If a child successfully completes a private program, as defined in paragraph 61.3(1)“g,” the child shall be eligible for promotion to fourth grade.

61.3(2) 61.3(3) *Guidelines for implementation by school districts.* The center shall periodically publish guidelines to assist school districts in applying the program criteria contained in subrule 61.3(1)

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and the voluntary criteria contained in subrule 61.3(2) and in improving the performance of intensive summer literacy programs. The center shall make such guidelines available on its Web site.

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[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3291C**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 62, "State Standards for Progression in Reading," Iowa Administrative Code.

Iowa Code section 279.68, regarding the successful progression for early readers, was amended substantially by 2017 Iowa Acts, House File 642, during the 2017 Legislative Session of the Iowa General Assembly.

Item 1 of the amendments is a technical change not brought about by 2017 Iowa Acts, House File 642. This change to Chapter 62 is necessary because the alternate assessment currently available is not also suitable for universal screening or progress monitoring.

Iowa Code section 279.68(1)"a" is amended by 2017 Iowa Acts, House File 642, section 27, to ensure that school districts continue to provide intensive reading instruction beyond grade three until the student is reading at grade level. Item 2 of the amendments reflects that statutory change.

Iowa Code sections 279.68(1)"c" and 279.68(2)"e," which would have required school districts, beginning May 1, 2018, to offer an intensive summer reading program for students persistently at risk in reading by the end of grade three, are repealed by 2017 Iowa Acts, House File 642, sections 28 and 29. Item 3 of the amendments reflects that statutory change.

Iowa Code sections 279.68(3) and 279.68(5), regarding the promotion to grade four of students persistently at risk in reading by the end of grade three, are repealed by 2017 Iowa Acts, House File 642, section 30. Item 4 of the amendments reflects that statutory change.

Items 5 and 6 of the amendments make clarifying changes based upon the amendments to Iowa Code section 279.68 made by 2017 Iowa Acts, House File 642.

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

Notice of Intended Action was published in the July 5, 2017, Iowa Administrative Bulletin as **ARC 3149C**. Public comments were allowed until 4:30 p.m. on July 25, 2017. A public hearing was held on that date. No one attended the public hearing, and no public comments were received. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code section 279.68 as amended by 2017 Iowa Acts, House File 642.

These amendments will become effective October 4, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 62.3(6) as follows:

62.3(6) *Alternate assessment.* If an individual with a disability has been determined to require an alternate assessment aligned to alternate academic achievement standards in reading, pursuant to rule 281—41.320(256B,34CFR300), that individual shall receive such alternate assessment, as well as alternate universal screening and progress monitoring required by this chapter on instruments approved by the department. ~~The progress monitoring required by the alternate assessment in reading required for such an individual shall be deemed to satisfy the universal screening and progress monitoring requirements of rule 281—62.2(256,279).~~

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ITEM 2. Amend subrule 62.4(3) as follows:

62.4(3) *Services offered to all students who are persistently at risk in reading.* A school district shall provide intensive reading instruction to any student who is persistently at risk in reading, as defined in subrule 62.4(1). A school district shall continue to provide the student with intensive reading instruction until the student is reading at grade level, at grade levels beyond grade three if necessary, as determined by the student's consistently proficient performance on valid and reliable measures of reading ability that meet the requirements of rule 281—62.2(256,279). All services provided under this subrule shall comply with rule 281—62.6(256,279).

ITEM 3. Rescind and reserve rule **281—62.5(256,279)**.

ITEM 4. Rescind and reserve rules **281—62.7(256,279)** and **281—62.8(256,279)**.

ITEM 5. Amend subrule 62.10(1) as follows:

62.10(1) *Services beyond third grade.* Students who are identified as persistently at risk in reading at the end of third grade remain entitled to intensive reading instruction. ~~Nothing in this chapter shall be construed to prevent a school district from offering scientific research-based instruction in reading to students above third grade.~~ Nothing in this chapter shall be construed to prohibit a school district from determining a student above third grade is persistently at risk in reading or from providing services to a student so identified.

ITEM 6. Amend **281—Chapter 62**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~256.7(31) as amended by 2016 Iowa Acts, chapter 1123, and section 279.68 as amended by 2014 Iowa Acts, chapter 1077, and 2016 Iowa Acts, chapter 1123~~ 2017 Iowa Acts, House File 642, sections 27 through 30.

[Filed 8/9/17, effective 10/4/17]

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ARC 3292C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(5), the Department of Human Services hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments implement the cost-containment strategy to adjust the Iowa Medicaid anesthesia conversion factor to be equal to the calendar year 2017 Medicare anesthesia conversion factor as adjusted for the state, and converted to a per-minute amount. Each January 1, thereafter, the Department shall apply the applicable Medicare anesthesia conversion factor as adjusted for the state, and converted to a per-minute amount.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3164C** on July 5, 2017. These amendments were also Adopted and Filed Emergency and published as **ARC 3158C** on the same date and became effective July 1, 2017. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on August 9, 2017.

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

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

These amendments are intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(5).

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These amendments will become effective October 4, 2017, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)**, provider category “Physicians (doctors of medicine or osteopathy),” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7)“a”	Fee schedule in effect 6/30/13 plus 1%.
Anesthesia services	Fee schedule. See 79.1(7)“d”	Fee schedule in effect 6/30/13 plus 1% 7/1/17. See 79.1(7)“d.”
Physician-administered drugs	No change.	
Qualified primary care services	No change.	

ITEM 2. Adopt the following **new** paragraph **79.1(7)“d”**:

d. Payment for anesthesia services. Anesthesia services are paid pursuant to this paragraph and the Iowa Medicaid fee schedule published by the department pursuant to paragraph 79.1(1)“c.” Anesthesia procedures listed in the fee schedule with a factor code of “F” are paid at the dollar amount of the factor listed for the procedure in the fee schedule. Anesthesia procedures listed in the fee schedule with a factor code of “A” are paid a dollar amount equal to the Iowa Medicaid anesthesia conversion factor multiplied by the sum of the minutes of service provided and the factor listed for the procedure in the fee schedule. Beginning July 1, 2017, the Iowa Medicaid anesthesia conversion factor is the current Medicare anesthesia conversion factor for Iowa, converted to a per-minute amount. For 2017, that amount is \$1.40, which will be updated annually on January 1.

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ARC 3293C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(4), the Department of Human Services hereby amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment implements the cost-containment strategy to adjust the inpatient diagnostic related group (DRG) cost outlier threshold formula to be the greater of two times the statewide average DRG payment for that case, or the hospital’s individual DRG payment for that case plus \$75,000. The current formula is the greater of two times the statewide average DRG payment for the case, or the hospital’s individual DRG payment for the case plus \$16,000.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3166C** on July 5, 2017. This amendment was also Adopted and Filed Emergency and published as **ARC 3161C** on the same date and became effective July 1, 2017. The Department received comments from one respondent. A summary of the respondent’s comments and the Department’s responses are shown in the paragraphs below. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

Comment 1: The respondent stated that while the public notice and the informational letter state that this change in reimbursement for DRG cost outlier payments will be effective July 1, 2017, the proposed

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effective date does not align with the language approved by the Legislature in 2017 Iowa Acts, House File (HF) 653.

Department response 1: Pursuant to HF 653, section 12(15)(b), the effective date of these changes is July 1, 2017. While section 12(15)(b) also provides that “[i]f federal approval is required, the strategy shall be implemented effective upon receipt of federal approval,” such does not affect the intended July 1, 2017, effective date specified by the Legislature. This is because the State Plan Amendment (SPA) submitted to the federal Centers for Medicare and Medicaid Services (CMS) requested a July 1, 2017, effective date, consistent with the Legislature’s directive in HF 653. Once approved by CMS, the changes in the SPA would be effective back to the requested July 1, 2017, effective date. Finally, section 12(15)(c) of HF 653 provides authorization for the Department to adopt emergency rules to implement this change, relative to the July 1, 2017, effective date, as specified by the Legislature. The Department is unable to change the amendment based on the respondent’s comment.

Comment 2: The respondent stated that the legislation requests federal approval of the \$75,000 threshold amount for these outlier claims and that this is a far higher threshold to obtain than the current \$16,000 amount and will result in hospitals treating the most complex Medicaid patients in the state not being adequately compensated for the care that is provided. The respondent requested that CMS consider a more reasonable outlier threshold, similar to that of Medicare.

Department response 2: These changes were enacted during the 87th Session of the Iowa General Assembly in HF 653, section 12(15)(a)(4), which specifies a cost outlier threshold of \$75,000. The Department is unable to change the amendment based on the respondent’s comment.

The Council on Human Services adopted this amendment on August 9, 2017.

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

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

This amendment is intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(4).

This amendment will become effective October 4, 2017, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend subparagraph **79.1(5)“f”(3)** as follows:

(3) Cost outliers. Cases qualify as cost outliers when costs of service in a given case, not including any add-on amounts for direct or indirect medical education or disproportionate share costs exceed the cost threshold. This cost threshold is determined to be the greater of two times the statewide average DRG payment for that case or the hospital’s individual DRG payment for that case plus ~~\$16,000~~ \$75,000. Costs are calculated using hospital-specific cost-to-charge ratios determined in the base-year cost reports. Additional payment for cost outliers is 80 percent of the excess between the hospital’s cost for the discharge and the cost threshold established to define cost outliers. Payment of cost outlier amounts shall be paid at 100 percent of the calculated amount and made at the time the claim is paid.

Those hospitals that are notified of any outlier review initiated by the QIO must submit all requested supporting data to the QIO within 60 days of the receipt of outlier review notification, or outlier payment will be forfeited and recouped. In addition, any hospital may request a review for outlier payment by submitting documentation to the QIO within 365 days of receipt of the outlier payment. If requests are not filed within 365 days, the provider loses the right to appeal or contest that payment.

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ARC 3294C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(3), the Department of Human Services hereby amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment reimplements the cost-containment strategy to adjust Medicaid reimbursement rates for physician services rendered in facility settings (e.g., hospitals), by applying a “site of service” differential to reflect the difference between the cost of physician services when provided in a health facility setting and the cost of physician services when provided in a physician’s office. It should be noted that the strategy in this amendment was originally legislatively mandated in 2011 as a directed/mandated cost-containment strategy at that time. However, the Legislature “nullified” the original mandate in 2012, based on provider complaints about reduced payments in facility settings.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3165C** on July 5, 2017. This amendment was also Adopted and Filed Emergency and published as **ARC 3162C** on the same date and became effective July 1, 2017. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The Department received comments from a total of 17 respondents. All, with one exception, were from community mental health centers (CMHCs), staff from CMHCs, and associations representing CMHCs and various practitioners who practice/work at CMHCs. The only non-CMHC-affiliated comment received was from the father of a 27-year-old man who has been a patient at one of the main CMHCs that submitted comments. The father did not specify any particular proposed rule provision or request a change thereto but, instead, spoke generally about the potential impact the site of service (SoS) rule change could have on already scarce psychiatric services in the state. Generally speaking, the comments from the respondents all identified the same issues and concerns related to this amendment. At this time, the Department will not change the amendment based on the public comments received from the respondents.

Comment 1: A respondent stated that paragraph 79.1(7)“b” specifies that the Department intends to apply an SoS differential to physician services and asked the Department to clarify that this is being applied to physician services only and not to services provided by mid-level practitioners, such as physician assistants (PAs) and advanced registered nurse practitioners (ARNPs).

Department response 1: To the extent subrule 79.1(7) is limited to “physicians,” new paragraph “b” would also be limited to physicians and would not be applied to mid-level practitioners, such as PAs and/or ARNPs. The only exceptions would be the following:

1. Since PAs are not able to bill and be paid directly for services under Iowa Medicaid, any services rendered by PAs would be billed under their supervising/employing physician or clinic. Therefore, to the extent a PA service rendered in a facility setting is billed by the supervising/employing physician or clinic, and since the physician or clinic would be a “physician” provider type, such service would be subject to the SoS differential.

2. The only circumstance where services rendered by an ARNP in a facility setting would be subject to the SoS reduction would be if the ARNP was not otherwise separately enrolled (i.e., as an ARNP provider type) and such services were billed by the ARNP’s employing physician or clinic. Under both federal and state laws and regulations, ARNPs are able to enroll and bill as independent practitioners, so most ARNPs do enroll and bill under their own provider numbers. Where that is the case, the ARNP would not be subject to the SoS reductions for services rendered in a facility setting.

Comment 2: A respondent commented that the Department is referencing place of service (POS) codes in paragraph 79.1(7)“b” that match Medicare’s list of “facilities” and expressed concern about the inclusion of code POS 53 – community mental health center. The respondent stated that under Medicare definitions, Iowa CHMCs are not considered facilities, do not use POS 53 as the billing code for Medicare, and are not subject to Medicare.

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Department response 2: CMHCs billing for services under the CMHC provider category will not have payments cut back for the SoS differential in cases where the service is provided at place of service 53 (CMHC). In these cases, under Medicaid, there is no separate facility bill-to account for the overhead, and therefore no SoS differential will be applied, consistent with the intent of the policy.

Comment 3: Noting that, for Iowa Medicaid, accredited CMHCs do use code 53 in box 24 of the CMS-1500 claim form, a respondent expressed concern that with Iowa's adoption of the Medicare facilities list, CMHCs in Iowa will be subject to an SoS differential for Medicaid purposes that they are not subject to for Medicare and stated that, should this be the case, Iowa CMHCs will experience reductions in payments that do not occur with Medicare and that will result in reduction to access of psychiatric services, which are already in short supply in Iowa. The respondent requested that POS 53 be removed from Iowa Medicaid's facilities list for the purpose of applying SoS differentials and that Iowa CMHCs be treated by Medicaid as they are by Medicare for the purpose of this policy change.

Department response 3: CMHCs billing for services under the CMHC provider category will not have payments cut back for the SoS differential in cases where the service is provided at place of service 53 (CMHC). In these cases, under Medicaid, there is no separate facility bill-to account for the overhead, and therefore no SoS differential will be applied, consistent with the intent of the policy.

Comment 4: A respondent commented that for the entities defined as "facilities" under Medicare, there are methods for them to recoup some of the SoS differential as bad debt through cost reporting but that Iowa's CMHCs are not defined as a "facility" by Medicare and do not have this option and will, therefore, be put at an extreme financial disadvantage should the SoS differential be applied. The respondent stated that this will only serve to further limit timely access to mental health services for Iowa's Medicaid population.

Department response 4: Please refer to Department responses 2 and 3.

Comment 5: A respondent commented that the POS code list in paragraph 79.1(7)"b" is the same as the Medicare list of "facilities," that POS 53 is for CMHCs, and that, according to Medicare definitions, Iowa CMHCs are not considered a "facility" (unless the CMHC is hospital-based or meets a different set of criteria than Iowa requires) and do not use POS 53 as the POS billing code for Medicare and are not subject to the SoS differential under Medicare. The respondent explained that the respondent's CMHC is not eligible to bill a "facility" fee and a professional fee, as is the case with Medicare-defined facilities and that, for Iowa Medicaid, POS 53 is used in box 24b on the CMS-1500 claim form for CMHCs that are accredited and established by Iowa Code definitions for CMHCs.

Department response 5: Please refer to Department responses 2 and 3.

Comment 6: A respondent commented that based on experience with Medicare and SoS codes for telehealth, CMHC providers have experienced a 25 to 30 percent rate reduction for these services and that, should POS 53 become subject to the SoS differential, Iowa CMHCs could experience a significant reduction in payment for services, thus resulting in reducing staff psychiatry time and a reduction of access to psychiatric services, which are already in short supply in Iowa. The respondent requested that POS 53 (CMHC) be removed from the list of facility codes for the purposes of applying the SoS differential.

Department response 6: Please refer to Department responses 2 and 3.

Comment 7: A respondent commented that information on proposed paragraph 79.1(7)"b" indicates that the intent was to decrease rates for physicians that provide services in a "facility," as defined as a (facility) POS by Medicare and that CMHCs are defined under Medicare as a "group practice," not a facility (unless the CMHC meets a different set of criteria than Iowa requires). The respondent further commented that the respondent's CMHC does not use POS 53 when it bills Medicare, that the respondent does not bill a separate facility fee and is not subject to the SoS differential payment under Medicare, and that, under Iowa Medicaid, CMHCs are categorized as a POS 53 (different than under Medicare). The respondent believes that the POS 53 (CMHC) should not be included as an SoS that is subject to the decreased physician rates under Iowa Medicaid rules and stated that the respondent's CMHC does not have the ability to charge additional fees as a Medicare-defined "facility" would.

Department response 7: Please refer to Department responses 2 and 3.

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Comment 8: A respondent stated the belief that there would be serious unintended consequences to penalizing CMHCs by making them subject to the proposed SoS rule, that CMHCs already serve a high percentage of individuals on Medicaid, and that, with the tremendous need to have outpatient mental health services available to individuals in our communities, this SoS differential for CMHCs would drastically reduce the availability of psychiatric services. The respondent commented further that the availability of outpatient mental health care (through CMHCs) is essential in keeping individuals out of higher cost services, such as the emergency room or inpatient care settings.

Department response 8: Please refer to Department responses 2 and 3.

Comment 9: A respondent expressed concern that the proposed rule is an unintended consequence of using the Medicare list of facilities to include CMHCs (POS 53). The respondent commented that according to Medicare definitions, Iowa CMHCs are not considered a “facility” (unless the CMHC is a hospital-based CMHC or meets a different set of criteria than Iowa requires), do not use 53 as the POS billing code for Medicare and are not subject to the SoS differential, and that the respondent is not eligible to bill a “facility” fee and a professional fee as is the case with Medicare-defined facilities. The respondent also pointed out that for Iowa Medicaid, code 53 is used in box 24b of the CMS-1500 claim for CMHCs that are accredited and established by Iowa Administrative Code definitions for CMHCs (Chapter 24).

Department response 9: Please refer to Department responses 2 and 3.

Comment 10: A respondent commented that for entities that are “facilities” under Medicare, there is a method for them to recoup some of this rate through a cost report reconciliation process but that Iowa CMHCs do not have that option as they are not a “facility” as defined by Medicare. The respondent commented that by using the facility list from Medicare, Iowa CMHCs are put in a category that does not apply and for which the rule should not apply.

Department response 10: Please refer to Department responses 2 and 3.

Comment 11: A respondent commented that based on the respondent’s experience with Medicare and the SoS code for telehealth, providers have experienced a 25 to 30 percent rate reduction for these services and that, should SoS code 53 become an SoS differential, Iowa’s CMHCs could experience a significant reduction in payment for these services, thus resulting in their having to reduce staff and reduce access to psychiatric services, which are already a critical shortage area in Iowa.

Department response 11: Please refer to Department responses 2 and 3.

Comment 12: A respondent commented that the respondent’s organization has worked diligently to “expand” access to psychiatric services via telehealth in response to the growing demand for these services and that the proposed rule would severely limit the ability of the respondent’s organization to provide this crucial service, resulting in longer waiting lists for psychiatric services with negative consequences to clients and their families, not to mention a likely increased reliance upon hospital emergency departments and mental health units, the most costly services in Iowa’s system of care.

Department response 12: Code POS 02 is defined as “the location where health services and health related services are provided or received, through a telecommunication system.” POS 02 is used to report that a billed service was furnished as a telehealth service from a distant site. The only portion that is considered telehealth services is when the patient was present and interacting with the distant site’s physician or practitioner. An originating site is the location of a Medicaid member at the time the telehealth service is furnished. Originating sites can include physician offices, hospitals, critical access hospitals (CAHs), rural health clinics, federally qualified health centers, hospital-based or CAH-based renal dialysis centers, skilled nursing facilities, and CMHCs. The “telehealth” POS code (i.e., “02”) would not be used by an originating site that can bill a facility fee; instead, the originating site would continue to use the POS code that applies to the type of facility where the patient is located.

Beyond the foregoing, it is noted that Iowa Medicaid does not reimburse telehealth services in the same way as Medicare. In fact, Iowa Medicaid does not allow separate or additional payment for the various telehealth “technical” component-type services. Instead, Iowa Medicaid reimburses telehealth services the same as if the service were rendered in a face-to-face setting. Iowa Medicaid policy regarding telehealth is addressed in the Department’s rule 441—78.55(249A), which provides as follows:

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441—78.55(249A) Services rendered via telehealth. An in-person contact between a health care professional and a patient is not required as a prerequisite for payment for otherwise-covered services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided, as well as being in accordance with provisions under rule 653—13.11(147,148,272C). Health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.

It is important to emphasize that CMHCs billing for services under the CMHC provider category will not have payments cut back for the SoS differential, in cases where the service is provided at POS 02 (telehealth). In these cases, under Medicaid, there is no separate facility bill-to account for the overhead, and therefore no SoS cut would be taken, consistent with the intent of this policy.

Comment 13: A respondent noted that one of the SoS codes referenced in the informational letter for this rule is 02, telehealth, and commented that telehealth services at CMHCs are provided by either employees or contract staff, that those services are billed by the CMHC (which is the same as a physician office), with the CMHC tax ID, as part of the CMHC services, that thus the CMHC incurs all cost associated with delivery of the physician services, and that the services are not billed as a separate physician practice. The respondent commented that a reduction in reimbursement for telehealth services at CMHCs will likely result in the reduction of providing telehealth service, which will reduce access for patients, primarily in rural areas. The respondent also commented that if telehealth services are reduced due to this cost-containment strategy, the result will be longer wait times for patients to see an on-site psychiatrist, of which there is a short supply, and requested that the Department not require CMHCs to use 02, telehealth, as an SoS.

Department response 13: Please refer to Department response 12. In addition, it is noted that there will be no reduction in reimbursement for services rendered via telehealth, since the services are already paid at the same reimbursement rate as if the services were rendered face to face.

Comment 14: A respondent commented that CMHCs have begun to use telehealth services out of necessity to keep up with the demand for outpatient psychiatry over the past two years, that the cost of providing telehealth services is higher than having an on-site provider, and that, if CMHCs are required to use a POS 02 for telehealth services in their outpatient setting and be subject to the rate reduction under this cost-containment measure, it will make telehealth services unaffordable for CMHCs to provide. The respondent also commented that since telehealth is used in mostly rural areas, it may eliminate the ability to see a medication provider close to home. The respondent stated that if this is implemented, CMHCs will be forced to reduce their telehealth services, reducing capacity for individuals to receive care in the most cost-effective setting, and will likely result in increased use of emergency rooms. The respondent commented that when providing telehealth services, the CMHC pays for the provider and all of the costs associated with the service and that the CMHC “owns” the service. The respondent expressed the understanding that independent telehealth providers should be reimbursed less if they were “owning” the service, but that such is not the case for CMHCs in Iowa. The respondent commented that this could be clarified by not requiring CMHCs to use the POS 02 for their telehealth services.

Department response 14: Please refer to Department responses 12 and 13.

Comment 15: A respondent commented that the cost-containment strategy that the respondent is most concerned with is the SoS differential payment, which would reduce Medicaid payments for physician services provided in a “facility setting.” The respondent commented that while CMHCs are not considered “facilities” by Medicare, they have been included in Iowa’s list of facilities that will receive reduced Medicaid payments for physician services and that mental health centers are not allowed to recoup this reduction in payment by charging a facility fee, however. With regard to POS 53 (CMHC), the respondent noted that, according to Medicare definitions, Iowa CMHCs are not considered a “facility” and do not use POS 53 as the POS billing code for Medicare and are not subject to the SoS differential and that, since Iowa CMHCs are not a facility with Medicare, they do not bill a facility fee. The respondent commented that it appears as though CMHCs should not appear

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on this list and that, should the rule be implemented and the SoS differential be imposed, CMHCs could experience a significant reduction in payment for services, which in turn could result in reducing psychiatry time, which in turn reduces access to psychiatric services, which are already in short supply in Iowa, particularly in rural Iowa. The respondent requested that POS 53 be removed from the list of facility site codes for the purpose of applying SoS differential.

Department response 15: Please refer to Department responses 2 and 3.

The Council on Human Services adopted this amendment on August 9, 2017.

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

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

This amendment is intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(3).

This amendment will become effective October 4, 2017, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Adopt the following **new** paragraph **79.1(7)“b”**:

b. Payment reduction for services rendered in facility settings. The fee schedule amount paid to physicians based on paragraph 79.1(7) “a” shall be reduced by an adjustment factor, as determined by the department and published with the Iowa Medicaid fee schedule, to reflect the lower cost of providing physician services in a facility setting, as opposed to the physician's office. For the purpose of this provision, a “facility” place of service (POS) is defined as any of the following (consistent with “POS” definitions under Medicare, per the Medicare Claims Processing Manual, Chapter 12, Section 20.4.2, revised as of May 2017):

- (1) Telehealth (POS 02).
- (2) Outpatient hospital-off campus (POS 19).
- (3) Inpatient hospital (POS 21).
- (4) Outpatient hospital-on campus (POS 22).
- (5) Emergency room-hospital (POS 23).
- (6) Ambulatory surgical center (POS 24).
- (7) Military treatment center (POS 26).
- (8) Skilled nursing facility (POS 31).
- (9) Hospice-for inpatient care (POS 34).
- (10) Ambulance-land (POS 41).
- (11) Ambulance-air or water (POS 42).
- (12) Inpatient psychiatric facility (POS 51).
- (13) Psychiatric facility-partial hospitalization (POS 52).
- (14) Community mental health center (POS 53).
- (15) Psychiatric residential treatment center (POS 56).
- (16) Comprehensive inpatient rehabilitation (POS 61).

[Filed 8/9/17, effective 10/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3295C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(1), the Department of Human Services hereby amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment implements a cost-containment strategy to adjust the reimbursement policy in order to eliminate the primary care physician rate increase originally authorized by the federal Health Care and Education Reconciliation Act of 2010, Section 1202, Pub. L. No. 111-152, 42 U.S.C. §1396a(a)(13)(C), that allows qualified primary care physicians to receive the greater of the Medicare rate or Medicaid rate for a specified set of “primary care” current procedural terminology (CPT) procedure codes.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3167C** on July 5, 2017. This amendment was also Adopted and Filed Emergency and published as **ARC 3160C** on the same date and became effective July 1, 2017. The Department received no comments during the public comment period. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on August 9, 2017.

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

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

This amendment is intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(1).

This amendment will become effective October 4, 2017, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend paragraph **79.1(7)“c,”** introductory paragraph, as follows:

c. Payment for primary care services. To the extent required by 42 U.S.C. § 1396a(a)(13)(C), primary care services furnished in calendar year 2013 or 2014 by a qualified primary care physician or under the supervision of a qualified primary care physician shall be paid as provided pursuant to subparagraphs (1) to (4) and (6) of this paragraph (79.1(7)“c”). Primary care services furnished ~~on~~ ~~or~~ after January 1, 2015, through June 30, 2017, by a qualified primary care physician or under the supervision of a qualified primary care physician shall be paid as provided pursuant to subparagraphs (1) to (3), (5), and (7) of this paragraph (79.1(7)“c”).

[Filed 8/9/17, effective 10/4/17]

[Published 8/30/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3296C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(2), the Department of Human Services hereby amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

These amendments implement the cost-containment strategy to ensure that total reimbursement for Medicare Part A and Part B crossover claims is limited to the Medicaid reimbursement rate.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3163C** on July 5, 2017. These amendments were also Adopted and Filed Emergency and published as **ARC 3159C** on the same date and became effective July 1, 2017.

The Department received comments from seven respondents during the public comment period. The comments from the respondents and responses to the comments from the Department are as follows:

Comment 1: Six respondents asked that the Department exempt behavioral health services from this policy change. Two of the respondents also specifically requested to exempt community mental health centers (CMHCs).

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Department response 1: The Department was unable to make changes to these amendments based on the comments of the respondents. These amendments are required by 2017 Iowa Acts, House File (HF) 653, enacted during the 87th Session of the Iowa General Assembly. The enacted legislation does not exempt behavioral health services or CMHCs.

Comment 2: One respondent did not believe the proposed effective date aligns with the language approved by the Legislature in HF 653.

Department response 2: The Department was unable to make changes to these amendments based on the comment of the respondent. The effective date of the Adopted and Filed Emergency amendments is July 1, 2017, and must be approved by the Centers for Medicare and Medicaid Services (CMS).

Comment 3: A respondent noted that the Department's informational letter states that "Iowa Medicaid will calculate the Medicaid fee at 50 percent of the Medicare allowed amount for the [noncovered] service." The respondent is seeking additional information about the 50 percent rate selection made by the Department.

Department response 3: The Department was unable to make changes to these amendments based on the comment of the respondent. The 50 percent rate is similar to how other state Medicaid agencies calculate a Medicaid allowed amount for noncovered Medicaid services.

Comment 4: One respondent requested clarification as to whether affected providers are allowed to bill the client the amount that will no longer be paid by Medicaid.

Department response 4: The Department was unable to make changes to these amendments based on the comment of the respondent. Section 4714 of the Balanced Budget Act of 1997 bars Medicare providers from billing a qualified Medicare beneficiary (QMB) under any circumstances. Medicare providers must accept the Medicare payment and Medicaid payment (if any) as payment in full for services rendered to a QMB.

Comment 5: A respondent commented that federal authority allows state Medicaid programs the option to use "lesser of" payment policies to pay for the patient liabilities for dual eligible, as it is proposed in this amended rule and that states, however, can choose the service types to which they apply these policies and are not obligated to apply them across the board and that other states have chosen this option.

Department response 5: The Department was unable to make changes to these amendments based on the comment of the respondent. The 50 percent rate applies across the board, similar to other states.

Technical change to the amendments: In the process of reviewing these amendments, the Department determined that a technical change to these amendments was necessary to ensure that the Department differentiates the processes for "fee-for-service" members and "managed care" members. Accordingly, paragraph 80.2(2)"h" in Item 2 has been rescinded and a new paragraph adopted in its place, and a new paragraph 80.2(2)"i" in Item 3 has been added.

New paragraph 80.2(2)"h" reads as follows:

"h. For fee-for-service members, providers billing claims for Medicare beneficiaries that do not cross over electronically to the Iowa Medicaid enterprise must submit the following electronically, in accordance with the All Providers, IV. Billing Iowa Medicaid manual, located at <http://dhs.iowa.gov/sites/default/files/All-IV.pdf>:

"(1) Form UB-04.

"(2) Form CMS-1500. The Explanation of Medicare Benefits (EOMB) is only required when requested by the Iowa Medicaid enterprise."

New paragraph 80.2(2)"i" reads as follows:

"i. For managed care members, providers billing claims for Medicare beneficiaries that do not cross over electronically must submit the following electronically:

"(1) Form UB-04 and the Explanation of Medicare Benefits (EOMB); and

"(2) Form CMS-1500 and the Explanation of Medicare Benefits (EOMB)."

The Council on Human Services adopted these amendments on August 9, 2017.

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

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

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These amendments are intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(2).

These amendments will become effective October 4, 2017, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 79.1(22) as follows:

79.1(22) Medicare crossover claims ~~for inpatient and outpatient hospital services~~. Subject to approval of a state plan amendment by the federal Centers for Medicare and Medicaid Services, payment for Medicare crossover claims shall be made as follows.

a. Definitions. For purposes of this subrule:

“Crossover Medicare crossover claim” means a claim for Medicaid payment for ~~Medicare-covered inpatient or outpatient hospital services~~ covered by Medicare Part A or Part B rendered to a Medicare beneficiary who is also eligible for Medicaid. ~~Crossover Medicare crossover~~ claims include claims for services rendered to beneficiaries who are eligible for Medicaid in any category, including, but not limited to, qualified Medicare beneficiaries and beneficiaries who are eligible for full Medicaid coverage.

“Medicaid-allowed amount” means the Medicaid ~~prospective~~ reimbursement for the services service(s) rendered (including any portion to be paid by the Medicaid beneficiary as copayment or spenddown), as determined under state and federal law and policies.

“Medicaid reimbursement” means ~~any amount to be paid by the Medicaid beneficiary as a Medicaid copayment or spenddown and any amount to be paid by the department after application of any applicable Medicaid copayment or spenddown.~~

“Medicare-allowed amount” means the total reimbursement allowed by Medicare for the service(s) rendered, for a participating Medicare provider who has accepted Medicare assignment of claims for services rendered, including any portion to be paid by the Medicare beneficiary as a deductible or coinsurance.

“Medicare deductible and coinsurance amounts” means the portion of the Medicare-allowed amount to be paid by the Medicare beneficiary as a deductible or coinsurance.

“Medicare payment amount” means the Medicare reimbursement rate for the services rendered in a crossover claim, excluding any Medicare coinsurance or deductible amounts to be paid by the Medicare beneficiary.

“Medicare provider reimbursement” means the Medicare-allowed amount less any portion thereof to be paid by the Medicare beneficiary as a deductible or coinsurance.

“Third-party payment” means payment from any source other than Medicaid, Medicare, or the Medicaid and Medicare beneficiary.

b. Reimbursement of Medicare crossover claims. ~~Crossover claims for inpatient or outpatient hospital services covered under Medicare and Medicaid shall be reimbursed as follows. Covered Medicare crossover claims shall be paid by Medicaid at the lesser of:~~

~~(1) If the Medicare payment amount for a crossover claim exceeds or equals the Medicaid-allowed amount for that claim, Medicaid reimbursement for the crossover claim shall be zero.~~

~~(2) If the Medicaid-allowed amount for a crossover claim exceeds the Medicare payment amount for that claim, Medicaid reimbursement for the crossover claim shall be the lesser of:~~

~~1. The Medicaid-allowed amount minus the Medicare payment amount; or~~

~~2. The Medicare coinsurance and deductible amounts applicable to the claim.~~

(1) Applicable Medicare deductible and coinsurance amounts, less any third-party payment available to the provider for the Medicare deductible and coinsurance amounts and any Medicaid copayment or spenddown; or

(2) Either:

1. For Medicaid-covered services: the Medicaid-allowed amount less the Medicare provider reimbursement, any third-party payment available to the provider in addition to the Medicare provider reimbursement, and any Medicaid copayment or spenddown; or

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. For non-Medicaid-covered services: 50 percent of the Medicare-allowed amount less the Medicare provider reimbursement, any third-party payment available to the provider in addition to the Medicare provider reimbursement, and any Medicaid copayment or spenddown.

ITEM 2. Rescind paragraph **80.2(2)“h”** and adopt the following **new** paragraph in lieu thereof:

h. For fee-for-service members, providers billing claims for Medicare beneficiaries that do not cross over electronically to the Iowa Medicaid enterprise must submit the following electronically, in accordance with the All Providers, IV. Billing Iowa Medicaid manual, located at <http://dhs.iowa.gov/sites/default/files/All-IV.pdf>:

(1) Form UB-04.

(2) Form CMS-1500. The Explanation of Medicare Benefits (EOMB) is only required when requested by the Iowa Medicaid enterprise.

ITEM 3. Adopt the following **new** paragraph **80.2(2)“i”**:

i. For managed care members, providers billing claims for Medicare beneficiaries that do not cross over electronically must submit the following electronically:

(1) Form UB-04 and the Explanation of Medicare Benefits (EOMB); and

(2) Form CMS-1500 and the Explanation of Medicare Benefits (EOMB).

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ARC 3297C

PAROLE BOARD[205]

Adopted and Filed

Pursuant to the authority of Iowa Code section 906.3, the Board of Parole hereby amends Chapter 2, “Agency Procedure for Rule Making,” Chapter 3, “Petitions for Rule Making,” Chapter 4, “Declaratory Orders,” Chapter 5, “Fair Information Practices,” Chapter 6, “Public Communications and Records,” Chapter 7, “Victim Notification,” Chapter 8, “Parole and Work Release Considerations,” Chapter 10, “Parole and Work Release Supervision,” Chapter 11, “Parole Revocation,” Chapter 14, “Executive Clemency,” Chapter 15, “Appeal of Decisions,” and Chapter 16, “Waiver and Variance Rules,” Iowa Administrative Code.

All of the agency’s rules were reviewed as part of the comprehensive five-year review required under Iowa Code section 17A.7. These adopted amendments are designed to eliminate outdated or redundant rules, as well as eliminate any rules that are inconsistent or incompatible with statutes or other rules. The adopted amendments also reflect changes to conform the rules to current, more efficient practices.

The adopted amendments to Chapters 2, 3, 4, and 16 are nonsubstantive corrections to change the title of the designated official from “Executive Director” to “Chairperson.”

The adopted amendments to Chapters 5, 6, and 7 reflect updated communication methods and changes to interview proceedings.

The adopted amendments to Chapters 8 and 14 are necessary to bring the rules into conformity with recent changes in the law regarding juveniles serving life sentences. The amendments also update the rules to reflect that hearings are now conducted via videoconferencing and that neither the Board, victims, nor spectators are present at the correctional institutions during the interviews. After reviewing public comment, subrule 8.6(4) was revised so as to reduce the number of inmates excepted from the annual review requirement.

The adopted amendments to Chapter 11 are designed to make the revocation hearing process more efficient while ensuring that parolees receive due process. The amendments reflect the Board’s current practice of utilizing the Iowa Corrections Offender Network (ICON) for submitting reports rather than

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using the mail. Many of the changes were a result of a collaborative effort with the Department of Corrections, Community-Based Corrections, and the Iowa State Sheriffs' and Deputies' Association.

The adopted amendments to Chapter 15 are designed to clarify the appeals process, as well as to eliminate redundant rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3117C** on June 21, 2017. A public hearing was held on July 11, 2017, at the Board of Parole, 510 East 12th Street, Des Moines, Iowa, and written comments were accepted through July 11, 2017. The Board received one comment during the public comment period. There are several changes from the amendments published under Notice of Intended Action. One change, in subrule 8.6(4), is in response to the public comment. The subrule was revised so as to reduce the number of inmates excepted from the annual review requirement. The other changes, in subrule 7.6(5), paragraph 8.14(3)“f,” and subparagraph 8.14(4)“h”(2), involve nonsubstantive, grammatical changes that do not impact the meaning of the rules.

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

These amendments are intended to implement Iowa Code chapters 17A, 904A, 906, 908, and 915.

These amendments will become effective on October 4, 2017.

The following amendments are adopted.

ITEM 1. Amend **205—Chapter 2**, introductory paragraph, as follows:

The board of parole hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are ~~printed in the first volume of the Iowa Administrative Code published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site~~ with the following amendments:

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

2.5(1) Written comments. In lieu of the words “(identify office and address)”, insert “~~Executive Director~~ Chairperson of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 3. Amend subrule 2.11(1) as follows:

2.11(1) General. In lieu of the words “(specify the office and address)”, insert “~~the executive director~~ Chairperson of the ~~board~~ Board of parole Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 4. Amend **205—Chapter 3**, introductory paragraph, as follows:

The board of parole hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure which are ~~printed in the first volume of the Iowa Administrative Code published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site~~ with the following amendments:

ITEM 5. Amend rule 205—3.3(17A) as follows:

205—3.3(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, the text should read “~~the Executive Director~~ Chairperson of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

ITEM 6. Amend **205—Chapter 4**, introductory paragraph, as follows:

The board of parole hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure which are ~~printed in the first volume of the Iowa Administrative Code published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site~~ with the following amendments:

ITEM 7. Amend rule 205—4.5(17A) as follows:

205—4.5(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, the text should read “~~the Executive Director~~ Chairperson of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

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ITEM 8. Amend **205—Chapter 5**, introductory paragraph, as follows:

The board of parole hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices which are ~~printed in the first volume of the Iowa Administrative Code published at~~ <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> on the General Assembly's Web site.

ITEM 9. Amend subrule 5.3(3) as follows:

5.3(3) Request for access. Requests for access to records may be made in writing, in person, ~~or~~ by telephone, or by electronic means if the request is for open record information. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

ITEM 10. Amend subrule 5.14(2) as follows:

5.14(2) Board meeting records. Agendas, minutes and materials presented to the board are available from the ~~office of the director~~ board's business office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Board meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

ITEM 11. Amend subrule 5.14(3) as follows:

5.14(3) Publications. News releases, annual reports, project reports, ~~board newsletters~~, and related documents are available from the board office. Board news releases, annual reports, and project reports, ~~and newsletters~~ may contain information about individuals, including board staff or members of the board councils or committees. This information is not retrieved by individual identifier.

ITEM 12. Amend subrule 5.14(5) as follows:

5.14(5) Grants. Records on persons receiving grants for various projects or programs are available through the ~~office of the executive director~~ board's business office. These records may contain information about employees or a grantee. This information is not retrieved by individual identifier and is not stored on an automated data processing system. The information is collected under the authority of Iowa Code chapter 904.

ITEM 13. Amend subrule 6.2(1) as follows:

6.2(1) Written communication preferred. ~~The board requests that all communications~~ Communications by a person other than a victim, as defined in rule 205—7.1(915), concerning an inmate, parolee, or work releasee shall be in writing so that the communication may readily be made a permanent part of the case file. Oral communications concerning an inmate, parolee, or work releasee by a person other than a victim will be heard only with the consent of the board.

ITEM 14. Amend rule **205—7.1(915)**, definition of "Notification," as follows:

"*Notification*" means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit the board from also providing appropriate information to a registered victim by telephone, electronic mail, or other means.

ITEM 15. Amend rule 205—7.5(915) as follows:

205—7.5(915) Written opinions concerning release. A registered victim may submit a written opinion concerning the release of the inmate ~~at any time by mailing the opinion~~ to the board's business office prior to the parole interview. The written opinion shall be made a permanent part of the inmate's file and shall be reviewed when the board considers the inmate's prospects for parole.

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ITEM 16. Amend rule 205—7.6(915) as follows:

205—7.6(915) Appearances at parole interviews.

7.6(1) A registered victim of a violent crime may appear personally or by counsel at a parole interview to express an opinion concerning the release of the inmate.

7.6(2) ~~If a registered victim of a violent crime intends to appear at a parole interview, the victim must comply with the rules of the department of corrections that require a visitor to a state institution to give prior notice of the intended visit and to receive approval for the visit~~ should communicate such intent to the board's business office or victim liaison prior to the start of the parole interview.

7.6(3) ~~A~~ If intending to appear at a parole interview, a registered victim of a violent crime, or victim's counsel, shall appear at the institution board's business office, or other ICN location as previously arranged, at the time set forth in the notice of parole interview. The victim or counsel shall inform institutional personnel of the purpose of the appearance. Institutional personnel shall coordinate the appearance of the victim or victim's counsel with the board. At the appearance During the parole interview, the board shall permit the victim or victim's counsel to express an opinion concerning the release of the inmate.

7.6(4) Victims shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other victims, spectators, media personnel, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals working in the board's business office building or other ICN location where they may be while participating in the parole interview.

7.6(5) Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request may result in removal by law enforcement of the offending party or parties.

ITEM 17. Amend subrule 8.2(1) as follows:

8.2(1) Mandatory sentences. The board shall not grant parole to an inmate serving a mandatory minimum sentence. The board shall not grant work release to an inmate serving a mandatory minimum sentence unless the inmate is within six months of completing the mandatory minimum portion of the sentence. A parole or work release granted contrary to this rule shall be rescinded. Mandatory sentences are as follows:

a. A life sentence imposed for conviction of a Class "A" felony pursuant to Iowa Code section 902.1, except for a life sentence that expressly includes parole eligibility;

b. A mandatory minimum sentence imposed for use of a ~~firearm~~ dangerous weapon pursuant to Iowa Code section 902.7;

c. A mandatory minimum sentence imposed for violation of uniform controlled substance provisions pursuant to Iowa Code section 124.406 or 124.413;

d. A mandatory minimum sentence imposed for being ~~an~~ a habitual offender pursuant to Iowa Code section 902.8;

e. A mandatory minimum sentence imposed for a prior forcible felony pursuant to Iowa Code section 902.11-;

f. A mandatory minimum sentence imposed for conspiring to manufacture, or delivery of, amphetamine or methamphetamine to a minor pursuant to Iowa Code section 902.8A;

g. A mandatory minimum sentence imposed for offenses specified in Iowa Code section 902.12;

h. Any other mandatory minimum sentence prescribed by statute that is not specifically stated above.

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ITEM 18. Rescind and reserve rule **205—8.4(906)**.

ITEM 19. Amend rule 205—8.6(906) as follows:

205—8.6(906) Parole and work release considerations.

8.6(1) Case reviews. The board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate's prospects for parole or work release at any time. The board shall notify an inmate only if the inmate is granted parole or work release, except as provided in 8.16(3).

8.6(2) Interviews. The board may, in its discretion, interview an inmate committed to the custody of the department of corrections at any time.

8.6(3) The board shall review the status of each inmate as directed by the Iowa Code, and shall provide the inmate with notice of its parole or work release decision. After an inmate has been granted work release, the board shall review the inmate's status at least annually from the date of the decision to grant work release.

8.6(4) ~~Class "A" felons, and Class "B" felons serving a sentence of more than 25 years, Inmates serving a sentence that does not include parole eligibility~~ are excepted from the annual review requirement of 8.6(3).

8.6(5) Inmates serving a mandatory minimum sentence are excepted from the annual review requirements of 8.6(3) until such time as the mandatory minimum has expired.

8.6(6) Department initiated review. The department of corrections may recommend an inmate for parole or work release consideration at any time. ~~The board shall discuss such a recommendation with department staff during the next regularly scheduled board session involving the institution where the inmate in question is incarcerated. The board may, at its discretion, interview the inmate prior to acting upon the recommendation of the department of corrections staff.~~

ITEM 20. Amend rule 205—8.8(906) as follows:

205—8.8(906) Interview notice. The board or the board's designee shall notify an inmate to be interviewed for parole or work release consideration of the time and purpose of the interview. Notice given to the department of corrections shall be considered notice to the inmate. Not less than 20 days prior to the interview, the board shall also notify the department of corrections of the scheduling of the interview, and the department shall make the inmate available to the board at the inmate's institutional residence as scheduled in the notice for the interview. The interview may be conducted electronically by videoconference. However, if health, safety, or security conditions require moving the inmate to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

ITEM 21. Amend rule 205—8.12(906) as follows:

205—8.12(906) Interview procedure. The board may, in its discretion, or board panel ~~shall~~ may, in its discretion, interview the inmate and consider the inmate's records with respect to history, current situation, parole and work release prospects, and other pertinent matters. ~~The~~ If the inmate is interviewed, the board or board panel shall give the inmate ample opportunity to express views and present materials.

ITEM 22. Amend rule 205—8.14(906) as follows:

205—8.14(906) Conduct at parole proceedings.

8.14(1) Parole proceedings shall be open to the public except as otherwise necessary or proper.

8.14(2) Conduct of inmate.

a. Conduct of the inmate shall be in a manner consistent with decorum appropriate for a participant in a public meeting of a governmental body.

b. An inmate may not orally or otherwise communicate with spectators or others present at the parole proceeding except as permitted by the panel or board.

PAROLE BOARD[205](cont'd)

c. The inmate shall speak to the panel or board or counselor only when asked a question or directed otherwise to do so.

d. Each inmate will be given an opportunity to make an independent statement to the panel or board ~~at some point~~ during the parole proceeding. The panel or board may limit this statement in any manner as to topic or time. ~~Specifically subject to this limitation will be persons who have no realistic grounds to believe a parole will be granted, i.e., those with mandatory minimum sentences, those serving life terms, or those having served short times relative to the severity of their crimes and length of their sentences.~~

e. Failure to comply with the direction of the panel or board in limiting statements, in communicating with persons present at the parole proceeding, or any absence of decorum which could disrupt or delay the proceeding may, at the discretion of the board, result in a forfeiture of the right to an interview and a request by the board to have the institutional staff remove the inmate.

f. An inmate who forfeits the right to an interview for reasons under 8.14(2) "e" or for any other reason shall not be interviewed again until the inmate's next annual review, or until such earlier time as determined by the board, except that the inmate may make a request for an earlier interview. The request ~~is to~~ must be made in writing to the board through the board liaison officer, the counselor or other institutional staff member, or the ombudsman, together with assurance by the inmate that no repeat of the offending conduct or other offending conduct will occur. A reinterview is subject to the discretion of the panel or board.

8.14(3) Conduct of spectators.

a. Spectators may not participate in the parole proceedings. The number of spectators will be limited by the number of seats provided. Only board staff or institutional staff will be allowed to stand during the interviews or between interviews, except during breaks of the panel or board or as necessary to enter and leave during times designated by the panel or board. An exception will be made for television camera operators.

b. Spectators may not enter or leave the room during interviews or between interviews, except that the board or panel will designate times when persons may enter and leave. This will be done at reasonable intervals, and may be between interviews even though the board or panel does not take a break.

c. Entering and leaving the interview room before and after the interview sessions and during breaks in the interview sessions shall be subject to the restrictions imposed by ~~the~~ the board ~~staff of the institution at which the session is being held.~~

d. Spectators shall make no utterances which are intended to be or can be heard by the inmate or the panel. This includes any conversation among spectators.

e. Spectators shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other spectators, victims, media personnel, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals working in the board's business office building or other ICN location where they may be while observing the parole interview.

f. Any activity deemed inappropriate by the panel ~~or institutional staff~~ under the guidelines in the rules may result in a request by the panel ~~or institutional staff~~ for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request ~~will~~ may result in a request by the panel to have the person or persons removed by the institutional staff removal by law enforcement of the offending party or parties.

All spectator places shall be on a first-come, first-served basis in accordance with the rules of the ~~institution or the department of corrections~~ board.

g. A spectator who leaves during a time designated for entering or leaving or during a short break by the panel may retain a place if the person returns at the next time designated for that purpose. A person does not retain a place at the hearing over breaks taken for lunch or dinner or overnight.

8.14(4) Conduct of the media.

PAROLE BOARD[205](cont'd)

a. General. Broadcasting, televising, recording and photographing will be permitted in the interview room during open sessions of the board or panel, including recesses between sessions, under the following conditions:

(1) Permission first shall have been granted by the ~~institution or department of corrections, which board chairperson or chairperson's designee, who~~ may prescribe conditions and restrictions for bringing equipment into ~~areas of the institution~~ the board's business office.

(2) Media coverage of any proceeding which is held in closed session under Iowa law is prohibited.

(3) The quantity and types of equipment permitted in the interview room shall be subject to the discretion of the panel or board within the guidelines in these rules, ~~and subject to the permission of the institution or department of corrections.~~

(4) Notwithstanding the provisions of any of these procedural or technical rules, the panel or board may permit the use of other equipment provided the application for variance is made in advance. Ruling upon the variance application shall be in the discretion of the panel or board, ~~subject to permission of the institution or department of corrections to bring in or move equipment.~~

(5) The panel or board may limit or terminate photographic or electronic media coverage by any or all media participants at any time during the proceedings in the event the panel or board finds that rules in this chapter or additional rules imposed by the ~~institution or department of corrections~~ board or panel have been violated.

(6) ~~The rights of motion picture and electronic coverage provided herein may be exercised only by persons or organizations which are part of the news media, except that individuals may use sound tape recorders.~~

b. Advance notice of coverage. All requests by representatives of the news media to use television cameras or electronic sound recording equipment in the interview room shall be made to the ~~institution board~~ in advance in accordance with ~~department of corrections~~ these rules.

c. Equipment specifications. Equipment to be used by the media or public in interview rooms or meeting rooms during interview proceedings or board meetings ~~held at the institutions~~ must be unobtrusive and must not produce distracting sound. In addition, the equipment must satisfy the following criteria, where applicable:

(1) Still cameras. Still cameras and lenses must be unobtrusive, without distracting light or sound.

(2) Television cameras and ~~related~~ other recording equipment. Television cameras are to be electronic and, together with any related equipment to be located in the interview room, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras, ~~and other recording devices,~~ are to be designed or modified so that participants in the parole interview being covered are unable to determine when recording is occurring.

(3) Audio equipment. Microphones, wiring and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the proceeding being covered. Any changes in existing audio systems must be approved by the panel or board. No modifications of existing systems shall be made at public expense.

(4) Advance approval. It shall be the duty of media personnel to demonstrate to the panel or board reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this rule. Failure to obtain advance panel or board approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least 15 minutes prior to the scheduled time of commencement of the proceeding.

d. and e. No change.

f. Location of equipment and personnel. Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the interview room designated by the panel ~~or institutional staff.~~ The area or areas designated shall provide reasonable access to the proceeding to be covered.

g. Movement during proceedings. Television cameras and audio equipment may be installed in or removed from the interview room only when the panel or board is not in session. In addition, the equipment shall at all times be operated from a fixed position. ~~Still photographers and broadcast media~~ Media personnel shall not move about the interview room while proceedings are in session, nor shall

PAROLE BOARD[205](cont'd)

they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

h. Decorum.

(1) All still photographers and broadcast media personnel shall be properly attired and shall maintain conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body at all times while covering a parole proceeding. They shall be respectful of other media personnel, victims, spectators, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals working in the board's business office building or other ICN location where they may be while observing the parole interview.

(2) Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request may result in removal by law enforcement of the offending party or parties.

ITEM 23. Amend rule 205—10.3(906) as follows:

205—10.3(906) Parole or work release agreement. A parole or work release agreement containing standard and special conditions of parole or work release shall be prepared without unreasonable delay following the board's issuance of the order for parole or work release. The board may change these standard conditions from time to time. Special conditions of parole may be imposed at any time in accordance with the needs of the parolee as determined by the board, the department of corrections, or the district department. The parole or work release agreement may provide for a search process and procedure of the parolee or work releasee. The parole or work release shall not commence until the inmate has signed the agreement, unless as otherwise prescribed by law. If the inmate is on work release status at the time parole is granted, the inmate shall remain on work release status until the parole agreement is signed by the parole officer and the inmate.

ITEM 24. Amend rule 205—11.1(906) as follows:

205—11.1(906) Voluntary termination of parole. Any voluntary termination of parole should be executed in writing by the parolee, reviewed by the parole officer, and approved by an administrative parole judge at a hearing. Upon the execution of the voluntary termination of parole, the parole officer shall file a preliminary parole violation information. If a parolee's parole is terminated and, the parolee shall be returned to the Iowa Medical and Classification Center at Oakdale or the Iowa Correctional Institute for Women at Mitchellville as soon as reasonably possible practicable. ~~The administrative parole judge shall, after consultation with the parole officer, determine if the parolee shall be incarcerated prior to the parolee's return to the Iowa Medical and Classification Center. The parole officer shall make arrangements accordingly.~~ The parolee shall receive credit for the time spent on parole prior to the voluntary termination of parole as determined by the administrative parole judge.

ITEM 25. Amend rule 205—11.5(908) as follows:

205—11.5(908) Parole violations.

11.5(1) The parole officer shall report to the board any parolee who is reasonably believed to have engaged in any of the following types of behavior:

a. Violation of any federal or state laws, ~~except simple misdemeanors~~ which would be a felony or aggravated misdemeanor in the state of Iowa.

b. Any violent, ~~or~~ assaultive, ~~or~~ threatening conduct.

c. Possession, control or use of any firearms, imitation firearms, explosives or dangerous weapons as defined in federal or state statutes.

d. ~~Sale, possession, continual or problem use, transportation or distribution of any narcotic or other controlled substance or excessive use of alcohol by the parolee.~~ Any unapproved contact with victims or victims' family or with minors.

PAROLE BOARD[205](cont'd)

e. A parolee whose whereabouts are unknown and who has been unavailable for contact for 30 days, or about whom reliable information has been received indicating that the parolee is taking flight or absconding.

f. ~~Any behavior indicating that the parolee may be suffering from a mental disorder which impairs the parolee's ability to maintain the parolee in the community or which makes the parolee a danger to the parolee or others when the mental disorder cannot be adequately treated while the parolee is in the community.~~

g. ~~Any other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by the parole officer.~~

11.5(2) The parole officer or supervisor is authorized to sanction report any other parolee misconduct or pattern of misconduct not required to be reported above.

ITEM 26. Amend rule 205—11.6(908) as follows:

205—11.6(908) Parole violation report. The parole violation report is a document prepared by the parole officer on a form or medium provided by the board specifying the parole violation charges against a parolee and containing or referring to information known to the parole officer relevant to the charges.

11.6(1) ~~Supplemental parole violation~~ Violation report update. A ~~supplemental parole violation report update~~ may be submitted to report sufficient new information or evidence which proves or disproves violations previously charged; report new violations; note court action on charges which are being prosecuted in a criminal proceeding; expand, clarify, or correct information in an earlier report; provide the board with information not related to the violation but which may affect the board's decision regarding the appropriate disposition; provide additional requested information to the board at any time; or change the parole officer's recommendation. A ~~supplemental violation report update~~ shall be filed upon the apprehension of a parolee on absconder status. The violation report update shall be served in accordance with subrule 11.7(1).

11.6(2) Recommendations. The parole officer shall recommend review the information available and, upon consultation of policy and with the supervisor or designee, make evidence-based, informed recommendations as to the appropriate disposition action necessary to deal with the alleged violation. ~~In a parole violation report, the parole officer may make one of the following recommendations:~~

a. ~~Continue on parole. This recommendation may be used when a violation charge is not serious enough to warrant reincarceration. A copy of the violation report containing a "continue on parole" recommendation shall be personally delivered and explained to the parolee by the parole officer, and the parolee shall be given an opportunity to admit the alleged violations. Admitted violations contained in the report may be used to adjust time calculations in a later revocation proceeding. In the event that a dispute arises as to alleged violations, the parolee may request a parole hearing. An administrative parole judge shall review the violation report and enter an order either affirming the recommendation to continue on parole or scheduling the matter for a parole revocation hearing.~~

~~A parolee shall be allowed only two violation reports containing a "continue on parole" recommendation in a 12-month period, after which a parole revocation hearing must be scheduled.~~

~~Generally, violations occurring more than 12 months prior to the request for a parole revocation hearing will not be used to adjust time calculations, except in absconder cases and related matters.~~

b. ~~Schedule for revocation proceedings. This recommendation may be used whenever the violation(s) alleged is so serious that reincarceration is necessary.~~

c. ~~Delay action. This recommendation is used when there is a lack of information at the time the report is submitted or because charges are still pending and final disposition is unknown or the whereabouts of the parolee are unknown. The parole officer shall notify the board of the reason(s) for the recommendation to delay action.~~

d. ~~Issue a detainer. This recommendation is used to request that an Iowa detainer be placed against an Iowa parolee who is serving time in another jurisdiction for an offense committed while on parole which would constitute a felony or aggravated misdemeanor if committed in Iowa.~~

PAROLE BOARD[205](cont'd)

e.—~~Continue on parole and impose special condition 209A of the parole agreement, participation in the violator's program.~~ This recommendation may be used when there has been a violation of parole, but treatment in the violator's program is seen as a reasonable alternative to revocation of parole.

f.—~~Automatic revocation.~~ This recommendation may be used when a parolee has been convicted of and sentenced for a new felony committed while on parole or when the parolee is convicted and sentenced to incarceration in a state correctional institution for an aggravated misdemeanor committed while on parole.

11.6(3) No change.

ITEM 27. Amend rule 205—11.7(908) as follows:

205—11.7(908) Parole revocation hearing. Following receipt submission of a parole officer's request for a parole revocation hearing, the ~~administrative parole judge or board's designated~~ parole officer shall ~~set the date, time and place of~~ schedule the parole revocation hearing and shall cause a notice of parole revocation hearing to be completed. The parole revocation hearing shall be held in any county in the same judicial district as that in which the alleged parole violator had the initial appearance, or in the county from which the warrant for the arrest of the alleged parole violator was issued.

11.7(1) Parole revocation hearing notice. The parole officer or board's designated officer shall cause to be prepared a written notice to the parolee, and parolee's attorney, if applicable, of the date, time, and place of the parole revocation hearing, which shall:

a. Include a complete copy of the report of violations, and updated report if applicable, including all documents referred to therein except confidential material defined in 205—subrule 6.4(2).

b. Be served upon the parolee by personal service. The notice may be served by any person 18 years of age or older at least seven days prior to the parole revocation hearing unless the parolee waives the right to seven days' advance notice.

c. Inform the parolee of the purpose of the hearing, the violations of parole conditions alleged, the circumstances of the alleged violations, the possible action which may be taken as a result of the revocation proceedings, and the following rights to which the parolee shall be entitled at the parole revocation hearing:

(1) To appear and speak ~~in~~ on the parolee's own behalf and to be aided by an interpreter if aid is determined to be necessary by the administrative parole judge.

(2) To be represented by an attorney or, if the parolee is indigent, the right to be represented by an attorney pursuant to Rule 2.28 of the Iowa Rules of Criminal Procedure and Iowa Code section 908.2A.

(3) To remain silent.

(4) To present witnesses to testify on the parolee's behalf as to matters relevant to the alleged violation of parole.

(5) To confront and cross-examine adverse witnesses unless the administrative parole judge determines that such witnesses would be subjected to risk of harm.

(6) To present documentary evidence and any relevant material or information.

11.7(2) to 11.7(5) No change.

11.7(6) Witnesses.

a. to c. No change.

d. Fearful witnesses. All witnesses who refuse to attend the hearing either because they would be subjected to risk of harm if their identities were disclosed or who, even if their identities were known, fear for their safety should they attend the hearing shall be interviewed by the parole officer prior to the hearing, and their information and the reasons for their fear shall be documented in writing or on ~~tape~~ the record. The officer must assess whether this testimony is necessary to proceed with prosecution of parole violations. If there are other alleged violations that merit a recommendation of revocation, this testimony may not be necessary. The administrative parole judge shall determine whether good cause exists to excuse a witness's attendance and shall document the decision including the reasons.

e. No change.

11.7(7) Subpoenas—general. Subpoenas may be issued by the board of parole to require the attendance of witnesses or the production of documents at parole revocation hearings.

PAROLE BOARD[205](cont'd)

a. Who may request. The parolee, the parolee's attorney, parole officer, or board staff may request that a subpoena be issued. The requested witness(es) should be contacted prior to issuance of the requested subpoena. If the parolee is pro se, the parole officer may need to make contact.

b. To whom made. Requests ~~shall~~ may be made directly to the administrative parole judge, ~~or the board's designated officer,~~ or the parole officer, as appropriate. The parole officer shall provide the necessary information to the board of parole in order to process the request.

c. When made. The request shall be made prior to the scheduled hearing.

d. Subpoena duces tecum. The request for a subpoena duces tecum shall be accompanied by a declaration in support of the request. The declaration must show good cause for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and materiality of that evidence to the hearing, and verification that the requested witness has possession or control of the documentary evidence.

e. Costs. The board of parole shall not be required to pay subpoena service fees, witness fees, or witness transportation expenses.

11.7(8) Continuances.

a. A hearing may be continued by the presiding administrative parole judge for good cause shown, either upon the presiding judge's own motion or upon the request of a party. A party's request for continuance shall be made in writing to the ~~board's business office~~ administrative parole judge prior to the hearing. Each party shall be granted only one continuance ~~except that in the case of extreme emergency, determined by the presiding administrative parole judge, further.~~ Further continuance may be granted for good cause.

b. If, because of an emergency or other good cause, a party having received timely notice is unable to attend the hearing or to request continuance within the allotted time, the presiding administrative parole judge may continue the hearing and schedule another hearing with notice to all interested parties.

c. ~~A notice~~ Notice of continuance may be served upon the parolee's attorney of record for the parole revocation proceeding, in lieu of personal service upon the parolee.

d. ~~If a notice of continuance does not involve any new allegations of parole violation, it need not be served upon the parolee or the parolee's attorney of record at least seven days prior to the hearing date. However, if~~ If the notice of continuance includes allegations of violations beyond those contained in the original notice of hearing, it must be served upon the parolee or the parolee's attorney of record at least seven days prior to the hearing date in accordance with subrule 11.7(1).

11.7(9) Areas of responsibility. The following areas of responsibility will apply for a parole revocation hearing.

a. The parole officer shall be responsible for the following:

(1) Coordinating and scheduling location, security, and control of the parole revocation hearing ~~in a courtroom unless good cause is established prior to the hearing;~~

(2) to (8) No change.

b. The administrative parole judge shall be responsible for the following:

(1) Maintaining records on all hearings ~~in the field;~~

(2) ~~Advising the business office regarding progress of each case;~~

(3) ~~Forwarding to the business office all materials and forms when hearings are completed.~~

11.7(10) Parole revocation hearing—adjudication.

a. to d. No change.

11.7(11) Parole revocation—hearing summary and order. The administrative parole judge or the board's designated officer shall forward a summary of the parole revocation hearing to the parolee, the parolee's attorney, the parole officer, and the board office as soon as reasonably possible following the parole revocation hearing. The summary of the parole revocation shall consist of a summary of the proceeding and shall contain the judge's findings of fact, conclusions of law and disposition of the matter.

11.7(12) Parole revocation hearing—conduct of the media. The provisions governing the conduct of the media at parole interviews as set out in 205—subrule 8.14(4) shall also apply to parole revocation hearings, except that decisions committed to the discretion of the board or board panel in that rule shall be made by the presiding administrative parole judge.

PAROLE BOARD[205](cont'd)

11.7(13) Motions and requests. Any motion or request shall be submitted to the administrative parole judge or the board's designated officer, with copies to all parties, prior to the hearing. The parolee or parolee's attorney may submit any motion or request directly to the administrative parole judge, or designee, or through the parole officer. The board of parole does not utilize EDMS for submissions or notifications.

ITEM 28. Amend rule 205—11.8(908) as follows:

205—11.8(908) Appeal or review. The order of the administrative parole judge shall become the final decision of the board of parole unless, within ten days of the date of the decision, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion. ~~On appeal or review of the judge's decision, the board panel has all the power which it would have in initially making the revocation hearing decision. The appeal or review shall be conducted pursuant to rules adopted by the board of parole. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the parole office or be postmarked by the applicable date or they will not be considered.~~

11.8(1) General. On appeal or review of the judge's decision, the chairperson or board panel's designee has all the power which the administrative parole judge would have in initially making the revocation hearing decision. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the parole business office or postmarked by the applicable date or they will not be considered. An order continuing disposition is not a final order and therefore is not appealable. The board shall give notice of its decision to the parolee.

11.8(2) Grounds. All grounds shall be included in the same appeal, and all necessary documents and information shall be attached to the appeal. The general grounds for an appeal include that the board action is:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the board;
- c. In violation of a board rule;
- d. Made upon unlawful procedure;
- e. Affected by other error of law;
- f. Unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action;
- g. Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of decision.

11.8(3) Filing an appeal. An appeal shall be filed in writing and shall state:

- a. The particular action which is the subject of the appeal.
- b. The grounds on which relief is sought.
- c. The relief sought.

ITEM 29. Amend rule 205—11.11(908) as follows:

205—11.11(908) Waivers.

11.11(1) When the parole officer makes a ~~recommendation~~ request to the board of parole for a revocation of parole hearing, the parole officer shall inform the parolee of the parolee's rights and ~~afford the parolee the opportunity to execute a waiver of parole revocation hearing.~~

11.11(2) The parole officer shall also inform the parolee of the opportunity to waive the parolee's right to personal appearance and consent to the parole revocation hearing's being conducted over the telephone.

11.11(1) Waiver of parole revocation hearing. A waiver of parole revocation hearing shall constitute an admission of the alleged violation(s) and shall include a waiver of any right to a personal appearance before the administrative parole judge to contest the violations.

PAROLE BOARD[205](cont'd)

~~11.11(2) Parole revocation hearing waiver procedures.~~ If the parolee desires to execute a waiver of parole revocation hearing, the waiver shall be entered on the appropriate form provided by the board which shall be signed by the parolee in the presence of the administrative parole judge or by the parolee in the presence of the parole officer/supervisor if the waiver hearing is conducted electronically. The administrative parole judge shall make a verbatim record of the waiver proceeding and shall address the parolee personally and inform the parolee of and determine that the parolee understands the contents of the waiver form which shall include:

- ~~a.~~ The nature of the parole violation to which the waiver is addressed;
- ~~b.~~ The legal rights of the parolee;
- ~~c.~~ The fact that the execution of the waiver constitutes an admission of the alleged violation(s);
- ~~d.~~ The fact that the parolee may be committed to the custody of the Iowa department of corrections without further proceedings;
- ~~e.~~ The fact that the waiver is complete and final upon execution;
- ~~f.~~ The fact that the waiver may be appealed according to the parole board's parole revocation appeal process in rule 205—11.8(908).

~~11.11(3) Waiver of the right to personal appearance.~~ In the event the parolee executes a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the parole revocation hearing shall be scheduled and conducted as a routine parole revocation hearing with the exception that it shall be conducted by telephone. In the event the parolee does not execute a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the hearing shall be scheduled and may, at the discretion of the administrative parole judge, be conducted electronically by videoconference.

ITEM 30. Amend rule 205—14.1(902) as follows:

205—14.1(902) Interviews of inmates serving life terms without the possibility of parole. The board shall not grant a parole or work release to a Class “A” felon serving a life term without the possibility of parole unless the governor commutes the sentence to a term of years. Administrative rules relating to the parole and work release consideration of an inmate sentenced to an indeterminate term shall not apply to an inmate sentenced to a life term without the possibility of parole. ~~The board shall interview a Class “A” felon serving a life term to determine whether to recommend that the governor commute the sentence to a term of years. The board shall recommend that the governor commute the sentence when the board concludes that the inmate should be considered for release on parole or work release. In making such a recommendation, the board shall also indicate the existence of any registered victims and communicate any opinions expressed by those victims regarding release of the inmate.~~

ITEM 31. Amend subrule 14.6(2) as follows:

14.6(2) Parole board commutation investigation process.

- ~~a. to c.~~ No change.
- ~~d.~~ The board shall attempt to provide notice of the commutation ~~investigation~~ interview to any individual who would qualify as a victim under Iowa's victim notification law. Notice shall be by regular mail to the last-known address. The notice shall provide a specified amount of time for the victim to provide a statement to the board regarding the application for commutation.
- ~~e. and f.~~ No change.

ITEM 32. Amend subrule 14.6(3) as follows:

14.6(3) Recommendation and report.

~~a.~~ The board shall vote on a recommendation regarding the application. Any decision to recommend commutation shall be by unanimous vote. The board may continue the matter until such time as the board may determine by majority vote.

~~b.~~ The board may consider any factor it deems appropriate when considering commutation including, but not limited to, the nature and circumstances of the crime, the number of years the applicant has served, the applicant's previous criminal record, the applicant's conduct while confined, the impact on the victim, and the public interest.

PAROLE BOARD[205](cont'd)

c. The board shall prepare a written report of its findings and recommendations and forward its report to the governor.

d. In making such a recommendation, the board shall also indicate the existence of any registered victims and communicate any opinions expressed by those victims regarding release of the inmate.

ITEM 33. Amend rule 205—15.1(17A) as follows:

205—15.1(17A) General. An inmate, parolee, or work releasee may appeal any action of the board staff or board that affects that person except a decision to schedule a hearing or a work release transfer hearing decision, ~~the denial of an appeal decision, or the decision to conduct an appearance by electronic means, or the revocation of parole~~ which shall be appealed according to the procedure indicated in rule 205—11.8(908).

ITEM 34. Rescind and reserve rules **205—15.5(17A)** and **205—15.6(21)**.

ITEM 35. Amend subrule 16.5(2) as follows:

16.5(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted to the board's ~~executive director~~ chairperson.

ITEM 36. Amend rule 205—16.7(17A) as follows:

205—16.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic, electronic, or in-person meeting between the petitioner and the board's ~~executive director~~ chairperson, a committee of the board, or a quorum of the board.

[Filed 8/4/17, effective 10/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3298C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 306D.4, the Iowa Department of Transportation, on August 9, 2017, adopted amendments to Chapter 132, "Iowa Scenic Byway Program," Iowa Administrative Code.

The amendments to this chapter:

- Eliminate the emphasis on "scenic," which is consistent with the rebranding of the program as Iowa Byways.
- Correct contact information.
- Remove or revise outdated, unnecessary language.
- Add definitions and update the definition of "advisory council."
- Clarify the eligibility requirements of proposed routes exhibiting heritage or scenic qualities.
- Provide for clarity of responsibilities between the Department and the byway jurisdictions for the design, fabrication, installation and maintenance of byway signage along designated routes.
- Provide additional detail about the qualities desired regarding the proposed byways. The qualities form the basis for the criteria upon which proposed byways are assessed when considered for designation.
- Remove the mandatory periodic review of designated byways by the Department and replace it with a discretionary review as conditions warrant or if signage is not being properly maintained.

TRANSPORTATION DEPARTMENT[761](cont'd)

- Change the application cycle for proposed byways from two years to four years to allow sufficient time to complete review, designation, and signage of a previous cycle before accepting new applications.
- Simplify the review process for proposed byways.
- Clarify that the Iowa Byways Advisory Council will review and make recommendations for new byway designations for the Department's consideration.

Notice of Intended Action for these amendments was published in the June 21, 2017, Iowa Administrative Bulletin as **ARC 3130C**. These amendments are identical to those published under Notice of Intended Action.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

These amendments are intended to implement Iowa Code chapter 306D.

These amendments will become effective October 4, 2017.

The following amendments are adopted.

ITEM 1. Amend **761—Chapter 132**, title, as follows:

~~IOWA SCENIC BYWAY~~ BYWAYS PROGRAM

ITEM 2. Amend rule 761—132.1(306D) as follows:

761—132.1(306D) Purpose, overview and information.

132.1(1) Purpose. The purpose of the Iowa ~~scenic byway~~ Byways program is to designate qualifying Iowa roads as ~~scenic~~ byways on the basis of scenic byway, heritage byway, or a combination of scenic and heritage byway qualities. These designations are intended both to preserve the state's scenic, natural, and historic resources and to support economic development through travel and tourism.

132.1(2) Overview. Under the Iowa ~~scenic byway~~ Byways program, proposed routes are identified via an application process. The department inventories and evaluates the proposed routes. The advisory council ~~selects~~ recommends the routes to be designated by the department. The department provides identifying signs for the designated routes. Routes designated as an Iowa Byway are part of Iowa's scenic byway program and are therefore subject to the prohibition set forth in 23 U.S.C. Section 131(s).

132.1(3) Information and forms. Information, instructions and application forms may be obtained from the Office of ~~Location and Environment~~ Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664; or through the department's Web site at www.iowadot.gov.

ITEM 3. Amend rule **761—132.2(306D)**, definition of "Advisory council," as follows:

"Advisory council" means the ~~scenic byway~~ Iowa Byways advisory council. This group is responsible for ~~selecting~~ recommending routes for ~~scenic byway~~ Iowa Byways designation. It is comprised of representatives from the ~~department of transportation, the department of economic development, the department of cultural affairs, and the department of natural resources~~ state agencies with jurisdiction over transportation, tourism, cultural resources, historic resources and natural resources.

ITEM 4. Adopt the following new definitions of "Department," "Designation," "Heritage byway," and "Scenic byway" in rule **761—132.2(306D)**:

"Department" means the Iowa department of transportation.

"Designation" means department approval of a route as an Iowa Byway.

"Heritage byway" means a route that has historic or cultural significance along its length or connects various areas or sites of historic or cultural significance along its length.

"Scenic byway" means a route that has naturally scenic features visible along its length.

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ITEM 5. Rescind rule **761—132.3(306D)**.

ITEM 6. Renumber rules **761—132.4(306D)** to **761—132.7(306D)** as **761—132.3(306D)** to **761—132.6(306D)**.

ITEM 7. Amend renumbered rule 761—132.3(306D) as follows:

761—132.3(306D) General requirements.

132.3(1) A route eligible for designation as an Iowa Byway must meet the definition of either a heritage byway or a scenic byway. A route may also be eligible for designation if segments of the route meet a combination of either a heritage byway or a scenic byway along its entire length.

~~132.3(1)~~ **132.3(2)** Primary roads, secondary roads and city streets are eligible for designation as scenic byways Iowa Byways.

~~132.3(2)~~ **132.3(3)** A scenic byway route eligible for designation as an Iowa Byway should be continuous and at least 20 miles in length. Scenic or heritage features in one form or another should exist along the entire route.

~~132.3(3)~~ **132.3(4)** Each city and county through which a route passes must approve the scenic byway designation. The governing body of each city and county through which a route passes must pass a formal resolution endorsing the application for Iowa Byway designation and agreeing to the responsibilities of having jurisdiction over a portion of a designated route.

~~132.3(4)~~ **132.3(5)** Signs designating scenic byways shall be paid for and furnished by the department. Each roadway jurisdiction is responsible for installing scenic byway signs on roads under its jurisdiction in accordance with a signing plan provided by the department. The initial installation of signs identifying an Iowa Byway including the accompanying posts and hardware necessary for installation shall be paid for and furnished by the department. Each roadway jurisdiction is responsible for the inventory, maintenance, and reinstallation of signs provided by the department following the initial installation.

ITEM 8. Amend renumbered rule 761—132.4(306D) as follows:

761—132.4(306D) Application and approval process.

132.4(1) Program cycle. The scenic byway Iowa Byways program shall operate on a two-year four-year cycle, with the following steps and timetable: applications due by October 1, 2020, and every fourth year thereafter. Field inventories, evaluation, and rating of proposed routes will follow with designation of any new routes completed by the next application deadline.

<u>Step</u>	<u>Timetable</u>
Deadline for submission of applications	October 1 of even-numbered years
Field inventories of proposed routes	April to October of odd-numbered years
Evaluation and rating of proposed routes	November to February following field inventories
Designation and signing of routes	March to August of even-numbered years

~~Subrules 132.5(2) to 132.5(7) further explain each step of the program cycle.~~

132.4(2) Application. Application to designate a route as a scenic byway an Iowa Byway or to propose an extension or loop to an existing route shall be on a form provided by the department and shall be submitted to the office of location and environment received by the department by the stated application deadline. The application must be accompanied by a document indicating approval of the designation from the city council of each city and the board of supervisors of each county through which the proposed route passes formal resolution described in subrule 132.3(4). Applications must provide some discussion of the planned administration and governance of the proposed Iowa Byway as well as how the byway will be marketed to visitors.

132.4(3) Initial review. Applications shall be reviewed by the advisory council to acquaint the council members with the proposed routes, and to allow the members time an opportunity to provide any the department with information from their areas of expertise regarding the routes, and to provide

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~~guidance to the program. Such input may provide details related to the existence and quality of scenic, archaeological, cultural, historic, natural, and recreational resources along a proposed route.~~

~~132.4(4) *Field inventory.* The department shall conduct a field inventory of proposed routes. The department shall collect the following information for each proposed route which will address the following qualities:~~

~~a. *Scenic value.* Types and qualities of views along the proposed route, including panoramas, scenes and focal points contributing to the scenic quality of the route shall be identified as well as views that distract from or negatively affect the scenic quality of the route. Several elements or items related to material or color are also pinpointed. The field inventory will provide an assessment of the visual character of the proposed route along its length.~~

~~b. *Cultural and historic resources.* Quality of the various views along the route, from outstanding to poor or distracting. Known cultural and historic resources will be identified along the length of the proposed route. Such resources may include archaeological, architectural, historical or other cultural sites of national or state significance and may also include interesting or unique local cultures or architecture that may appeal to visitors.~~

~~c. *Natural resources.* How long one sees a particular view or element. Resources including but not limited to agricultural lands, forests, river basins, and other distinctive landforms will be identified.~~

~~d. *Recreational resources.* Relative ease of seeing the various views and elements as the road is driven. Public lands and facilities providing opportunities for organized sport, outdoor recreation, or other recreation will be identified.~~

~~e. *Transportation.* Visual character of the roadway alignment. An assessment will be made of existing and future traffic conditions, planned improvements to the proposed route, and any safety concerns whether existing or anticipated. If the route is being considered for heritage byway designation, historic elements specific to transportation will be identified.~~

~~f. Types of scenic areas or historic sites along the route.~~

~~g. Variety of views as the route is driven.~~

~~132.4(5) *Evaluation and rating.* The department shall compile and evaluate the field inventory data for each proposed route, calculate an overall quality rating for each proposed route, and prepare a written report documenting these findings. A potential quality rating ranges from “excellent” to “very poor.” The midpoint is “average.” The written report shall also consider the sustainability of the proposed route based on the information provided in the application for planned governance and marketing plans as well as how the proposed route will complement the existing Iowa Byways.~~

~~132.4(6) *Selection.* The advisory council shall review the evaluations and ratings and select the recommend routes to be designated as Iowa Byways based on this information and any other information the council may have obtained regarding the routes. For a route to be designated, it must have an overall quality rating that is above “average.” Also, at least 50 percent of the length of the route must be rated above “average.”~~

~~132.4(7) *Designation.* The department will consider designating routes recommended by the advisory council as Iowa Byways.~~

~~132.4(7) 132.4(8) *Signing.* The department shall provide the necessary state scenic byway signs and accompanying posts and hardware for the newly designated scenic byways. Upon the designation of Iowa Byways, the department will proceed with the initial design and installation of signage identifying new Iowa Byways.~~

ITEM 9. Amend renumbered rule 761—132.5(306D) as follows:

~~761—132.5(306D) *Reevaluation.* Every four years from the date of designation At its discretion, the department shall may inventory and evaluate the scenic byway designated Iowa Byways or portions of byways to determine its their continued eligibility in for the program. The department reserves the right to remove a route or portion of a route from the scenic byway program if the route no longer meets the designating criteria or if the route signage has not been maintained. The department may modify an existing route if an alternative route would better benefit the traveling public in cases of poor road conditions, closures or changes in available amenities.~~

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ITEM 10. Amend renumbered rule 761—132.6(306D) as follows:

761—132.6(306D) Promotional and tourism efforts. The department is not responsible for economic development, promotional and, or other tourism efforts for ~~scenic byways~~ Iowa Byways.

[Filed 8/9/17, effective 10/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3299C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 315.10, the Iowa Department of Transportation, on August 9, 2017, adopted amendments to Chapter 163, "RISE Program," Iowa Administrative Code.

The amendments to this chapter:

- Remove or revise outdated, unnecessary language.
- Update definitions.
- Clarify the purpose of the program and the types of development activities that the program is intended to assist by adding a definition for "value-adding activities" and by further defining that tourism must also have a state impact rather than just a local impact.
 - Correct contact information.
 - Provide more detail on the responsibility of the Iowa Transportation Commission to monitor RISE fund cash flow and, if necessary, take action to ensure availability of funds.
 - Add that all projects require a public letting to be completed by the public project sponsor in accordance with all laws and rules.
 - Include further explanation of eligible project costs for right-of-way, design, utilities and permit costs. As a result, complementary changes were also made to the ineligible activities.
 - Make changes to the ability to incur eligible right-of-way costs prior to a funding commitment to include the ability to incur certain design costs.
 - Clarify that matching funds to RISE funds may include funds from other state agencies, programs or in-kind costs.
 - Clarify that applications must include a formal resolution from the jurisdiction to more clearly communicate the requirement that the roadway project be dedicated to public use and be properly maintained.
 - Add a new subrule stating that project costs may be subject to audit by the Department.

Notice of Intended Action for these amendments was published in the June 21, 2017, Iowa Administrative Bulletin as **ARC 3131C**. These amendments are identical to those published under Notice of Intended Action.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

These amendments are intended to implement Iowa Code chapter 315.

These amendments will become effective October 4, 2017.

The following amendments are adopted.

ITEM 1. Amend rule **761—163.1(315)**, definitions of "Direct jobs created," "Direct jobs retained," "Economic development," and "Immediate opportunity project," as follows:

"*Direct jobs created*" refers to ~~new jobs~~ new jobs new to the state in firms, developments, or sites specifically assisted by a RISE project.

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“*Direct jobs retained*” refers to existing Iowa jobs that would otherwise be lost in firms, developments, or sites specifically assisted by a RISE project.

“*Economic development*” means private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost. For the purposes of this program, economic development shall be viewed from a statewide perspective rather than a local or substate, regional perspective and shall result in a net gain to the state.

“*Immediate opportunity project,*” one of the two types of RISE projects, is a roadway project that needs a funding commitment within a short time period and meets the threshold criteria in subrule ~~163.8(6)~~ 163.10(6). The project primarily provides improved access to ~~either~~ a single economic unit, such as a county, a city, an industrial park, a plant or other business, a development site or a tourist attraction; ~~or to a portion of a metropolitan area.~~

ITEM 2. Rescind the definition of “Metropolitan area” in rule ~~761—163.1(315)~~.

ITEM 3. Adopt the following new definition of “Value-adding activities” in rule ~~761—163.1(315)~~:

“*Value-adding activities*” means activities which, through the employment of knowledge or labor, add value to a product, process or service that results in the creation of new wealth to the state.

ITEM 4. Renumber rules ~~761—163.2(315)~~ to ~~761—163.7(315)~~ as ~~761—163.3(315)~~ to ~~761—163.8(315)~~; rules ~~761—163.8(315)~~ and ~~761—163.9(315)~~ as ~~761—163.10(315)~~ and ~~761—163.11(315)~~; and rule ~~761—163.11(315)~~ as ~~761—163.12(315)~~.

ITEM 5. Adopt the following new rule ~~761—163.2(315)~~:

~~761—163.2(315) Information and forms.~~ Information, instructions and application forms may be obtained from the Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664; or through the department’s Web site at www.iowadot.gov.

ITEM 6. Amend renumbered rule ~~761—163.3(315)~~ as follows:

~~761—163.3(315) Purpose of RISE program.~~ The purpose of the RISE program is to promote economic development in Iowa through the establishment, construction, improvement, and maintenance of roads and streets. The RISE program shall be targeted toward value-adding activities to provide maximum economic impact to the state. Value-adding activities feed new dollars into the economy. As these dollars are circulated, the state experiences economic growth. Tourism activities that result in the attraction of out-of-state dollars to the state economy may also be targeted by the program. Residential development, local government facilities, local public schools, locally oriented business services and personal services are generally not value-adding activities and will rarely meet the intent of the program.

The RISE program shall also be administered to encourage economic diversification, new business opportunities, small business development, exporting, import substitution and tourism in Iowa.

ITEM 7. Amend renumbered rule ~~761—163.4(315)~~ as follows:

~~761—163.4(315) Administration of RISE program.~~

~~163.4(1)~~ and ~~163.4(2)~~ No change.

~~163.4(3)~~ The department’s office of systems planning shall be responsible for administering the RISE project selection process. RISE application instructions and forms are available upon request to the Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664. Application forms and instructions are also available on the Internet at www.dot.state.ia.us/forms.

~~163.4(4)~~ **163.4(3)** The department shall annually prepare a written report indicating the amount and percentage of funds expended during the previous year on primary roads, secondary roads, city streets, state park roads and county conservation parkways.

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ITEM 8. Amend renumbered rule 761—163.5(315) as follows:

761—163.5(315) Source, allocation, and use of RISE funds.

163.5(1) No change.

163.5(2) Allocation and use.

a. to c. No change.

d. Type of projects. The two types of projects which may be funded under the RISE program are immediate opportunity projects and local development projects. The requirements and procedures specifically applicable to the two project types are located in the following rules of this chapter:

(1) Immediate opportunity projects: Rule ~~163.8(315)~~ 761—163.10(315).

(2) Local development projects: Rule ~~163.9(315)~~ 761—163.11(315).

e. No change.

f. Use of repaid funds. RISE funds repaid to the department for any reason may be used for other projects or carried over to the next programming cycle ~~at the discretion of the commission~~. RISE funds repaid shall be credited to the share of the fund from which the project was originally funded.

g. No change.

h. Reserve for future needs and contingencies. The commission shall ~~hold back from funding commitment an amount of RISE funds sufficient to meet~~ monitor RISE fund commitments and expected RISE fund cash flow and take actions necessary to ensure that funds remain available for anticipated present and future immediate opportunity project needs and other contingencies. Such actions may include placing a moratorium on the receipt and award of local development RISE applications, placing a limit on RISE dollars awarded to each project, or taking other actions at the discretion of the commission.

ITEM 9. Amend renumbered subrule 163.7(1) as follows:

163.7(1) Applicant eligibility. All incorporated cities and all counties in the state of Iowa are eligible to apply for and receive funds under the RISE program. The department is also eligible to initiate projects and receive funds under this program; but need not formally apply for funds. Private firms or developers or other agencies may not apply directly for funds; but are encouraged to work with county or city governments in seeking funding for projects. In any case, all projects must be let by the applicant or through the department's office of contracts and in accordance with all applicable laws and rules.

ITEM 10. Amend renumbered rule 761—163.8(315) as follows:

761—163.8(315) Project activities eligible and ineligible for RISE funds.

163.8(1) Eligible activities. Project activities or costs eligible for RISE funding, and which may be counted as part of the non-RISE participation in immediate opportunity and local development roadway projects, include only the following:

a. to c. No change.

d. Public transportation system improvements, including but not limited to bus shelters, bus turnouts, and passenger information signage, when they are integral to the roadway improvement.

e. Bicycle and pedestrian infrastructure improvements, including but not limited to sidewalks, at-grade pedestrian crossings, bike lanes, and separated bike lanes, when they are integral to the roadway improvement.

~~*d. f.*~~ Right-of-way purchase acquisition costs, including but not limited to appraisals, negotiation, compensation, and cultural resources surveys necessary to comply with applicable local, state and federal laws, rules and regulations.

e. g. Construction or improvement of motorist rest areas, welcome centers, and information centers.

~~*f. h.*~~ Design engineering costs leading to construction plan development and construction inspection costs associated with RISE-financed projects.

~~*g. i.*~~ County and city bond principal and interest payments associated with RISE projects. No financing expenses incurred prior to funding commitment shall be eligible.

~~*h. j.*~~ Storm drainage and storm sewer costs to the extent needed for draining the roadway.

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k. Reconstruction or adjustment of utilities, including but not limited to water, sanitary sewer, electric, telephone, and natural gas, when utilities are located on private property and require replacement or relocation due to project construction; or said utilities are located in the public right-of-way and the utility is not required to relocate at its own expense.

l. Costs associated with the acquisition of local, state and federal permits required for roadway construction.

163.8(2) Ineligible activities. Activities or costs ineligible for RISE funding, and which may not be counted as part of the non-RISE participation in immediate opportunity or local development roadway projects, include but are not limited to the following:

a. ~~Any and all costs incurred prior to a funding commitment by the commission except for advance right-of-way acquisition costs necessary to protect or preserve a project corridor. If there is an extreme urgency involving right-of-way acquisition, a potential applicant may formally request from the department written approval to acquire the right-of-way immediately without jeopardizing the eligibility of the acquisition costs for future RISE funding. Granting of this approval does not imply or guarantee that a subsequent application which includes the acquisition costs will be funded. The request must include justification regarding the urgency of the acquisition, a description of the land to be acquired, and a map showing its location. Approval to acquire right-of-way immediately must be requested from and granted by the department prior to the applicant's acquisition of the land in question. The RISE application which includes the acquisition costs must be received by the department within two years following the granting of this approval, or the approval is not valid notwithstanding rule 761—163.9(315).~~

b. Routine roadway, bridge and culvert maintenance, including but not limited to pothole filling, crack sealing, seal coating, patching, shoulder maintenance, gravel or earth roadway maintenance, and bridge painting.

c. Winter roadway and bridge maintenance, including but not limited to snow plowing, sanding, and salting.

d. No change.

e. Expenses associated with the preparation and submission of applications for RISE funding.

f. Predesign engineering, feasibility or alignment studies, and other planning expenses.

g. and *h.* No change.

i. ~~Electric, water, natural gas, telephone and other utility~~ Utility construction, reconstruction or adjustment except when utilities located on private property are replaced or relocated for project construction for those activities or costs described in subrule 163.8(1).

j. to *m.* No change.

n. Parking expenditures, including those for structures, lots, meters, paving, and marking whether for on-street or off-street parking.

o. to *q.* No change.

~~*r.* Sanitary sewers.~~

~~*s.* Water mains.~~

~~*t.* Donated right-of-way.~~

ITEM 11. Adopt the following **new** rule 761—163.9(315):

761—163.9(315) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.

163.9(1) Need for advance eligibility. If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a RISE funding commitment, a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with RISE funding without jeopardizing the project's eligibility for

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funding approval, but does not imply or guarantee that the commission will commit RISE funding to a subsequent application.

163.9(2) Request, justification and review. The request must be received by the department prior to the expenditure and must include justification regarding the extreme urgency and necessity to incur costs prior to a RISE funding commitment. A request for land acquisition must also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests must include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant must be submitted which includes the scope of services to be rendered. Costs for RISE application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 163.8(2) “e” and “f” remain ineligible for RISE funding and shall not be included in a request for determination of advance eligibility. The department will review the submittal. If the requirements of this rule are met, the department will provide written confirmation of the determination of advance eligibility.

163.9(3) Requirements. Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance eligibility must be noted in the subsequent RISE funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with RISE funds if the property acquired or design work completed is not necessary to construct the proposed RISE project included in the subsequent application. Design costs receiving a determination of advance eligibility may not exceed 10 percent of the total construction costs for the project. An application for funding which includes the expenditure must be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for RISE funding.

ITEM 12. Amend renumbered rule 761—163.10(315) as follows:

761—163.10(315) Immediate opportunity projects.

163.10(1) No change.

163.10(2) Contents of applications. Each application for an immediate opportunity project must contain the following:

a. to e. No change.

~~f. For a road or street which is not currently dedicated to public use, written assurance of future dedication from the jurisdiction responsible or to be responsible for the road or street to be constructed or improved.~~

~~g. f. An official endorsement A formal resolution passed by the governing body of the project proposal from the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. The jurisdiction must also provide written assurance The resolution shall state that if the project will be adequately maintain the new or improved road or street. maintained and dedicated to public use for a minimum of 20 years after completion of the project. The resolution must also certify that the project meets the threshold criteria cited in paragraph 163.10(6) “a.”~~

~~h. g.~~ Documentation showing that the threshold criteria of subrule ~~163.8(6)~~ 163.10(6) have been met.

~~i. Rescinded IAB 8/8/01, effective 7/20/01.~~

163.10(3) Submission of applications. ~~Application instructions and forms for immediate opportunity projects are available from the office of systems planning or on the Internet at www.dot.state.ia.us/forms. An original and one copy of each completed application shall be submitted to the office of systems planning department. Applications may be submitted at any time.~~

Once an application has been submitted, no further information concerning that application shall be accepted by the department from the applicant unless specifically requested by the department. Applications may be withdrawn by the applicant and resubmitted at any time. Resubmitted applications shall be dated accordingly.

163.10(4) Incomplete applications. An applicant must satisfy the application requirements outlined in this chapter of rules and must fully complete the official application form before its applications

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~~the application will be reviewed considered by the commission. An applicant shall be notified if an application is incomplete. An incomplete application shall be reviewed when it is resubmitted in a complete form by the applicant.~~

163.10(5) No change.

163.10(6) *Threshold criteria.* Funding commitment decisions for immediate opportunity projects shall be made on an individual basis. There is no competitive ranking of project applications. In order to gain a funding commitment, an application must meet all of the following threshold criteria:

a. The project must be related to an immediate, nonspeculative opportunity for permanent job creation or retention. The applicant county or city (or its agent) should be in the process of negotiating a location or retention decision with a developer or firm. ~~This criterion may be satisfied by a resolution from the applicant county or city stating that it is involved in negotiations with a developer or firm.~~

b. and *c.* No change.

d. There must be at least 20 percent non-RISE financial participation in the roadway project, ~~except as indicated in subparagraph (2) of this paragraph the commission may approve a participation amount that is less than 20 percent if it determines that the applicant city or county is economically distressed.~~

~~(1) This participation shall include only those items listed as eligible for RISE funding, and may be in the form of cash, the value of design engineering and construction inspection services, or the cost of eligible advance right of way acquisitions pursuant to paragraph 163.7(2)“a.” The applicant shall provide documentation to the department supporting the value of any noncash contribution to the project.~~

~~(2) The commission may approve a participation amount that is less than 20 percent if it determines that the applicant city or county is economically distressed.~~

e. There must be a strong likelihood that the total development, including the roadway project, can be completed in a timely manner. It is up to the applicant to identify a time schedule and maintain it. This time schedule may be adjusted ~~when agreed to by the commission if for such reasons including but not limited to~~ the project involves unusually complex engineering studies, extensive real estate negotiations, extensive analysis for environmental clearances, or unusually complex planning for associated development. The commission may withdraw funding if time schedules have been misrepresented or have not been maintained.

163.10(7) *Review and funding of applications.*

a. The staff of the department shall review complete immediate opportunity project applications and may consult with other organizations with economic development responsibilities. As part of the review, the staff shall evaluate the effect of the proposed project on the state economy using the following factors: consistency with the state economic development plan; diversification of the state economy; the impact on in-state suppliers, competitors, and import substitution; percentage of out-of-state sales; the quality of employment positions; and the record of law violations. This review shall be performed within a reasonable period of time after receipt of the application. Following this review, complete applications meeting the threshold criteria of subrule ~~463.8(6)~~ 163.10(6) shall be forwarded to the commission for action at ~~their~~ its next meeting.

b. and *c.* No change.

d. Immediate opportunity project applications may, at the discretion of the commission, be considered as applications for local development projects. These applications shall be included in the current round of local development project programming, regardless of the deadlines stated in subrule ~~463.9(3)~~ 163.11(3). However, immediate opportunity project applications submitted solely to circumvent the deadlines for local development project applications shall not be considered in this manner.

ITEM 13. Amend renumbered rule 761—163.11(315) as follows:

761—163.11(315) Local development projects.

163.11(1) No change.

163.11(2) *Contents of applications.* Each application for a local development project must contain the following:

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a. to e. No change.

~~*f.* For a road or street which is not currently dedicated to public use, written assurance of future dedication from the jurisdiction responsible or to be responsible for the road or street to be constructed or improved.~~

~~*g. f.* An official endorsement of the project proposal from A formal resolution passed by the governing body of the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. The jurisdiction must also provide written assurance that it The resolution shall state that the project will be adequately maintain the new or improved road or street maintained and dedicated to public use for a minimum of 20 years after completion of the project.~~

~~*h.* Rescinded IAB 8/8/01, effective 7/20/01.~~

~~**163.11(3) *Submission of applications.*** Application instructions and forms for local development projects are available from the office of systems planning or on the Internet at www.dot.state.ia.us/forms. An original and one copy of each completed application shall be submitted to the office of systems planning department.~~

~~*a.* Applications may be submitted at any time. However, in order to be considered in the current round of programming, complete applications must be received by the department or postmarked no later than February 1 or September 1.~~

~~*b.* No change.~~

~~**163.11(4) *Incomplete applications.*** An applicant must satisfy the application requirements outlined in this chapter of rules and must fully complete the official application form before its the application will be reviewed considered by the commission. An applicant shall be notified if an application is incomplete. An incomplete application shall be reviewed when it is resubmitted in a complete form by the applicant.~~

~~**163.11(5)** No change.~~

~~**163.11(6) *Rating factors.*** The following factors and potential rating points shall be used in assessing applications for local development projects; assessment. Assessment of these factors shall be the responsibility of the department.~~

~~*a. to e.* No change.~~

~~**163.11(7)** No change.~~

ITEM 14. Amend renumbered rule 761—163.12(315) as follows:

761—163.12(315) Project administration.

~~**163.12(1) *Projects located on primary roads or state park roads.*** RISE projects located on primary roads or state park roads shall be administered by the department in conformance with the requirements of Iowa Code chapter 315. The department may delegate part or all of this responsibility to another participating jurisdiction.~~

~~**163.12(2) *Projects located on secondary roads, city streets or county conservation parkways.***~~

~~*a. 163.12(1) *Agreement.** After a funding commitment has been made for a project located on secondary roads, city streets or county conservation parkways, the department shall enter into a project agreement with those local jurisdictions whose roads, streets or parkways are a part of the project the applicant. The agreement shall delineate responsibilities for project planning, design, right-of-way, contracting, construction and materials inspection, and documentation. The agreement shall require that a business assisted by the project which acquires or merges with an Iowa corporation within three years following the RISE application shall make a good-faith effort to hire the workers of the merged or acquired company. The agreement shall require the applicant to comply with all local, state, and federal laws, rules and regulations that may apply to the project.~~

~~*b. 163.12(2) *Project payments.** Payments from the RISE fund to counties or cities shall be made on a cost reimbursement basis, and financial participation shall be limited to the maximum percentage allowed by the funding commitment. All known required environmental permits must be granted and regulations met before moneys are released. The non-RISE financial participation shall include only those items listed as eligible for RISE funding and may be in the form of cash, the value of design engineering and construction inspection services, or the cost of eligible advance right-of-way acquisitions or preliminary design pursuant to rule 761—163.9(315). Grants from other state agencies~~

TRANSPORTATION DEPARTMENT[761](cont'd)

or programs may also contribute to the non-RISE financial participation if their laws and rules allow. The applicant shall provide documentation to the department supporting the value of any noncash contribution to the project. The department has the sole authority to determine the value of noncash contributions. Contributions made by a third party may be allowed.

e. ~~163.12(3)~~ Project expenditures incurred prior to agreement. Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, ~~may be~~ are eligible for reimbursement if ~~prior written authorization is obtained from the department and an a project agreement is subsequently executed.~~ However, under no circumstances shall any reimbursement be paid until the agreement has been executed.

d. ~~163.12(4)~~ Remedies for noncompliance with project agreement. The commission may revoke funding commitments, require repayment of RISE funds loaned or granted, or take both actions when the county or city has not fulfilled the terms of the project agreement.

~~163.12(3)~~ **163.12(5)** *Cost overruns.* RISE funds committed for projects are for a maximum dollar amount. Cost overruns shall be the responsibility of the administering jurisdiction.

163.12(6) *Audit.* The department may audit all project costs incurred for compliance with the agreement, including costs that are part of the matching contribution. All force account work performed by a county or city on the project shall be audited.

[Filed 8/9/17, effective 10/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3300C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 465B.2, the Iowa Department of Transportation, on August 9, 2017, adopted amendments to Chapter 165, "Recreational Trails Program," Iowa Administrative Code.

The amendments to this chapter:

- Add new definitions and update the definition of "recreational trails fund."
- Correct contact information.
- Update implementation statutes and the chapter's implementation sentence.
- Remove or revise outdated, unnecessary language.
- Clarify that matching funds to state recreational trail funds may include funds from other state agencies, programs or in-kind costs.
 - Include additional explanation of eligible project costs to include costs of right-of-way, design and utility costs. As a result, complementary changes were also made to the ineligible activities. The advance eligibility waiver process has been rewritten and now includes the ability to incur certain design costs.
 - Rewrite the requirement that applications include a formal resolution from the jurisdiction to more clearly communicate requirements that a project be dedicated to public use and be properly maintained.
 - Provide extra points in scoring for shovel-ready projects.

Notice of Intended Action for these amendments was published in the June 21, 2017, Iowa Administrative Bulletin as **ARC 3132C**. The Iowa Farm Bureau submitted comments concerning condemnation of land for trails and prioritizing non-state grant cash match over in-kind contributions in application scoring. The Department addressed these concerns by making the following modifications:

- Subrule 165.15(1) was modified by adding "and as allowed by Iowa Code section 6A.21" so project applicants know certain agricultural land cannot be condemned for state recreational trails purposes.

TRANSPORTATION DEPARTMENT[761](cont'd)

- Subrule 165.26(2) was modified by adding “Projects with cash match (5 points)” in a new paragraph “h.”

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

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

These amendments are intended to implement Iowa Code chapter 465B.

These amendments will become effective October 4, 2017.

The following amendments are adopted.

ITEM 1. Strike “(312)” wherever it appears in **761—Chapter 165** and insert “(465B)” in lieu thereof.

ITEM 2. Adopt the following new definitions of “Commission,” “Department,” and “Recreational trail” in rule **761—165.1(312)**:

“*Commission*” means the state transportation commission.

“*Department*” means the Iowa department of transportation.

“*Recreational trail*” means a thoroughfare or track across land or snow, used for recreational purposes such as pedestrian activities including wheelchair use; skating or skateboarding; equestrian activities, including carriage driving; nonmotorized snow trail activities, including skiing; bicycling or use of other human-powered vehicles; providing access to aquatic or water activities; and motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

ITEM 3. Amend rule **761—165.1(312)**, definition of “Recreational trails fund,” as follows:

“*Recreational trails fund funds*” means ~~the fund created funds appropriated~~ for the acquisition, construction, and improvement of recreational trails pursuant to Iowa Code section 312.2.

ITEM 4. Amend rule 761—165.2(312) as follows:

761—165.2(312) Information and forms. Information, instructions and application forms may be obtained from: the Office of Project Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1225 (515)239-1664; or through the department’s Web site at www.iowadot.gov. ~~All inquiries regarding the recreational trails program should be directed to this office.~~

ITEM 5. Amend paragraph **165.5(2)“a”** as follows:

a. The ~~transportation~~ commission is solely responsible for all funding commitments and shall determine the projects to be funded, subject to the availability of recreational trails funds. The commission may approve, modify, or deny an application. The commission may fund all or part of a project and may make funding conditional upon adherence to a time schedule or to fulfillment of an agreement.

ITEM 6. Amend subrule 165.12(2) as follows:

165.12(2) Criteria. A proposed recreational trails project shall meet all of the following requirements:

a. and b. No change.

c. The project shall include a contribution of at least 25 percent matching funds. ~~Notwithstanding, at the discretion of the department, funds may be granted up to a maximum of 80 percent. Except as provided in subrule 165.22(3), matching funds shall be from sources other than the recreational trails program.~~

d. Matching funds ~~shall not~~ may include other grants from other state agencies or ~~the provision~~ programs if their laws and rules allow and the donation of in-kind labor, materials, equipment, and services from a third party. The department has the sole authority to determine the value of noncash contributions. The value of donated land may be an eligible matching contribution if:

TRANSPORTATION DEPARTMENT[761](cont'd)

(1) and (2) No change.

ITEM 7. Amend rule 761—165.15(312) as follows:

761—165.15(312) Eligible project costs.

165.15(1) Land. Land acquisition costs including, but not limited to, ~~appraisal costs appraisals, negotiation costs, compensation and the required cultural resources survey pursuant to Iowa Code chapter 305A surveys necessary to comply with applicable local, state and federal laws, rules and regulations~~ are eligible project costs. Land may be acquired by lease, easement or fee simple and as allowed by Iowa Code section 6A.21. ~~Except for primary road projects, the~~ The performance of land negotiation and acquisition activities shall not be the responsibility of the department although the department may provide advisory services.

165.15(2) Other eligible costs. Other project costs that are eligible for funding are limited to the following:

- a. to d. No change.
- e. Design engineering costs leading to construction plan development and construction inspection costs directly associated with the project.
- f. No change.
- g. Utility relocation costs necessary for trail construction or improvement if the utility is not located on public right-of-way. Reconstruction or adjustment of utilities including but not limited to water, sanitary sewer, electric, telephone, and natural gas when utilities are located on private property and require replacement or relocation due to project construction; or said utilities are located in the public right-of-way and the utility is not required to relocate at its own expense.
- h. No change.

ITEM 8. Amend rule 761—165.17(312) as follows:

761—165.17(312) Ineligible project costs.

165.17(1) Before commission approval. Any and all costs incurred prior to a funding commitment ~~by the commission approval of funding for a project are ineligible for funding under the recreational trails program notwithstanding rule 761—165.19(465B).~~

165.17(2) Other ineligible costs. Other project costs that are ineligible for funding include, but are not limited to, the following:

- a. Routine maintenance of a trail, bridge, culvert, fence or sign; winter maintenance of a trail or bridge, including but not limited to snow plowing, sanding, and salting.
- b. No change.
- c. Expenses associated with the preparation and submission of a project application.
- d. Predesign engineering, feasibility, or alignment studies and other planning expenses.
- e. Utility costs other than those listed in rule 165.15(312) construction, reconstruction or adjustment except for those activities or costs described in subrule 165.15(2).
- f. No change.
- g. Purchases of office furnishings or equipment, construction or maintenance equipment, or personal property.
- ~~h. Sanitary sewers or water mains except as necessary for rest room construction.~~
- ~~h.~~ General government expenses and expenses associated with the provision of any public service that are not otherwise eligible for project funding.

ITEM 9. Rescind rule 761—165.19(312) and adopt the following **new** rule in lieu thereof:

761—165.19(465B) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.

165.19(1) Need for advance eligibility. If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a recreational trails program funding commitment,

TRANSPORTATION DEPARTMENT[761](cont'd)

a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with recreational trails program funding without jeopardizing the project's eligibility for funding approval, but does not imply or guarantee that the commission will commit recreational trails program funding to a subsequent application.

165.19(2) Request, justification and review. The request must be received by the department prior to the expenditure and must include justification regarding the extreme urgency and necessity to incur costs prior to a recreational trails program funding commitment. A request for land acquisition must also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests must include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant must be submitted which includes the scope of services to be rendered. Costs for recreational trails program application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 165.17(2) "c" and "d" remain ineligible for recreational trails program funding and shall not be included in a request for determination of advance eligibility. The department will review the submittal. If the requirements of this rule are met, the department will provide written confirmation of the determination of advance eligibility.

165.19(3) Requirements. Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance eligibility must be noted in the subsequent recreational trails program funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with recreational trails program funds if the property acquired or design work completed is not necessary to construct the proposed recreational trails program project included in the subsequent application. Design costs receiving a determination of advance eligibility may not exceed 10 percent of the total construction costs for the project. An application for funding which includes the expenditure must be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for recreational trails program funding.

ITEM 10. Amend rule 761—165.22(312) as follows:

761—165.22(312) Application.

165.22(1) Submission. An eligible applicant shall complete and submit an ~~original and four copies of a project~~ application on a form and in the quantity prescribed by the department.

a. and b. No change.

c. ~~The deadlines are January 2 and July 1 or the first workdays following those dates. The application deadline shall be on the first day of the fiscal year for which funding has been provided to the program and any additional stated deadline as deemed necessary by the department to fully award program funding.~~

d. ~~Applications shall be submitted to the office of project planning. To be considered in the current funding cycle, an application must be received by project planning by 4:30 p.m. on the day of the deadline received by the department or postmarked by the stated application deadline.~~

165.22(2) Contents of application. Each application shall contain the following:

a. No change.

b. A project concept statement including a location map, a cross section and a sketch of the project intended to be constructed with program funds. The proposed project need not be designed before applying, but the concept must be reasonable from a transportation engineering standpoint and detailed enough to generate project cost estimates.

c. An itemized cost estimate for the total project to be constructed showing for each item the cost and funding source. When a project is part of a larger multiphase project, the application shall differentiate the costs and scope of the proposed construction project from the costs and scope of the overall multiphase project.

TRANSPORTATION DEPARTMENT[761](cont'd)

d. A time schedule for ~~the total trail project with the applicant's written assurance of project completion as scheduled.~~ A time schedule adjustment may be approved by the department if the project involves unusually complex studies, extensive real estate negotiations, extensive analyses for environmental clearances, complex planning for associated developments, or another compelling reason.

e. No change.

f. ~~An official endorsement of the application from the responsible authority and written assurance from that authority that the total trail used to justify the project~~ A formal resolution passed by the governing body of the responsible authority endorsing the application and the timeline for project completion provided therein. The resolution shall also state that the proposed trail project will be adequately maintained and made available for the intended public use for a minimum of 20 years after completion of the project ~~except as approved by the commission.~~

165.22(3) Funding requests.

~~a.~~ An applicant shall specify in the application the amount of ~~the grant funding grant~~ requested from the recreational trails ~~fund~~ program and may offer a matching fund contribution larger than is required.

b. ~~In lieu of a grant request, an applicant may request alternative funding, such as a loan at below market interest rate, a no-interest loan, or a partial repayment of principal.~~

c. ~~If recreational trails funds are loaned as matching funds, the value of the loan repayments for matching fund purposes shall be based on net present value.~~

ITEM 11. Amend rule 761—165.23(312) as follows:

761—165.23(312) Application procedure.

~~165.23(1) An application may be submitted at any time and shall be dated when received in the office of project planning. Once an application has been submitted, no further information shall be accepted from the applicant unless specifically requested by the department.~~

~~165.23(2) 165.23(1) If an application is incomplete, the~~ All applications for funding shall be complete. The department shall reserves the right to return the an incomplete application to the applicant to be resubmitted when complete without further consideration for funding. A resubmitted application shall be dated when it is received in the office of project planning. An applicant may then submit a completed application for the next available funding cycle.

~~165.23(3) 165.23(2) An application that is considered but not funded in one funding cycle may be resubmitted by the applicant for consideration in the next cycle.~~

~~165.23(4) 165.23(3) An applicant may withdraw an application at any time.~~

ITEM 12. Amend rule 761—165.26(312) as follows:

761—165.26(312) Evaluation and approval.

165.26(1) No change.

165.26(2) The department shall evaluate each complete application primarily on the basis of whether the predicted use of the trail justifies the construction and maintenance costs including, but not limited to, the following criteria:

a. to e. No change.

f. Special facilities for ~~the handicapped~~ persons with disabilities (5 points).

g. Project is shovel-ready and planned to be completed within three years of award of funding (25 points).

h. Projects with cash match (5 points).

165.26(3) Completed applications shall be reviewed by a committee composed of one representative from each of these departments: ~~natural resources, economic development, cultural affairs, and transportation~~ state agencies with jurisdiction over transportation, tourism, cultural resources and natural resources. The committee shall recommend applications to the department by ranking them in order of funding priority.

TRANSPORTATION DEPARTMENT[761](cont'd)

165.26(4) The department shall prepare a list of applications and funding recommendations and present it to the commission for final approval and award of funding.

ITEM 13. Amend rule 761—165.30(312) as follows:

761—165.30(312) Project agreement.

165.30(1) After the commission has approved funding for a recreational trails project, the department and the applicant shall execute a project agreement.

~~a. The department shall administer a project located on a primary road; however, the department by agreement may delegate part or all of this responsibility.~~

~~b. a. For all other projects, the~~ The agreement shall specify the responsibilities for project planning, design, land acquisition, contracting, construction and materials inspection, and documentation and the criteria for each. The agreement shall also specify the overall funding level approved and contain an estimated budget for eligible work items.

b. The agreement shall require the applicant to comply with all local, state and federal laws, rules and regulations that may apply to the project.

165.30(2) No change.

165.30(3) Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, ~~may be~~ are eligible for reimbursement if ~~prior written authorization is obtained from the department and~~ a project agreement is subsequently executed. However, under no circumstances shall any reimbursement be paid until the project agreement has been executed.

165.30(4) No change.

ITEM 14. Amend rule 761—165.33(312), introductory paragraph, as follows:

761—165.33(312) Noncompliance. ~~The commission~~ department may revoke funding commitments, seek repayment of funds ~~loaned or granted~~ already reimbursed, or take both actions if:

ITEM 15. Amend **761—Chapter 165**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter ~~342~~ 465B.

[Filed 8/9/17, effective 10/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3301C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2, 328.12, and 328.19 and 2016 Iowa Acts, chapter 1131, section 3, the Iowa Department of Transportation, on August 9, 2017, adopted amendments to Chapter 720, "Iowa Airport Registration," and Chapter 750, "Aircraft Registration," Iowa Administrative Code.

The amendments to Chapter 720:

- Update a phone number, Web site address and the chapter's implementation sentence.
- Update references to the Federal Aviation Administration's circular concerning standards for airport markings.
- Add a new subrule, in compliance with 2016 Iowa Acts, chapter 1131, section 3, which concerns the process used by the Department to review contractual obligations when an airport closes.

The amendments to Chapter 750 update a Web site address and remove reference to issuing a certificate for an aircraft that is not airworthy since the certificate is already addressed in Iowa Code section 328.21.

TRANSPORTATION DEPARTMENT[761](cont'd)

Notice of Intended Action for these amendments was published in the June 21, 2017, Iowa Administrative Bulletin as **ARC 3128C**. These amendments are identical to those published under Notice of Intended Action.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

These amendments are intended to implement Iowa Code sections 328.12 and 328.19 and 2016 Iowa Acts, chapter 1131, section 3.

These amendments will become effective October 4, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 720.4(1) as follows:

720.4(1) Application for site approval. The sponsor shall complete Iowa Department of Transportation Form 300025, "Airport Site Approval and New Registration Application," and submit it to the office of aviation. This form is available from the Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone ~~(515)239-1691~~ (515)239-1468; or through the ~~Internet~~ department's Web site at ~~http://www.iawings.com~~ www.iowadot.gov.

~~a. and b. Rescinded IAB 7/4/07, effective 8/8/07.~~

ITEM 2. Amend subparagraph **720.10(2)"b"(1)** as follows:

(1) Paved runways. Paved runways shall be marked in accordance with FAA Circular ~~150/5340-1J~~ 150/5340-1L (Standards for Airport Markings) as amended through ~~April 29, 2005~~ September 27, 2013.

ITEM 3. Amend paragraph **720.10(3)"a"** as follows:

a. Approaches shall be clear of obstructions above a glide path of 20:1 from the ends of each usable runway. If an obstruction exists in an approach zone, the runway threshold on a paved runway shall be displaced in accordance with FAA Advisory Circular ~~150/5340-1J~~ 150/5340-1L (Standards for Airport Markings) as amended through ~~April 29, 2005~~ September 27, 2013. On a nonpaved runway, the runway end markers shall be relocated to provide the prescribed obstruction clearance. The runway length remaining between the displaced threshold and the departure end of the runway is the landing distance available.

ITEM 4. Amend rule 761—720.15(328) as follows:

761—720.15(328) Airport closing.

720.15(1) No change.

720.15(2) Marking. All marking indicating a usable runway shall be obliterated. The sponsor shall place at a central location a yellow X in accordance with FAA Advisory Circular ~~150/5340-1J~~ 150/5340-1L (Standards for Airport Markings) as amended through ~~April 29, 2005~~ September 27, 2013.

720.15(3) Temporary closing. When conditions require the temporary closing of a runway, it shall be marked on both ends with a yellow X in accordance with FAA Advisory Circular ~~150/5340-1J~~ 150/5340-1L (Standards for Airport Markings) as amended through ~~April 29, 2005~~ September 27, 2013.

720.15(4) Repayment of financial assistance.

a. Review of closure on or after October 4, 2017. Within 30 days of closing an airport (other than temporary closing), the sponsor shall request from the department a review of contractual obligations that require repayment of financial assistance. The department will provide a determination detailing grant obligations that must be repaid. Any repayment of grants must be made to the department in no more than five equal annual installments, beginning one year from the airport's closure date. If an alternative future use of the airport facility is planned for a project that creates jobs and expands the economy, the sponsor may, within 30 days of the department's determination, request forgiveness of repayment. The request must include a plan detailing the alternative future use of the airport facility, an explanation of how the alternative future use creates jobs and expands the economy, a cost-benefit analysis from the sponsor, a commitment of private investment in the project equal to at least two times the amount of repayment due to the state, and a commitment from the sponsor, or associated political subdivision(s),

TRANSPORTATION DEPARTMENT[761](cont'd)

to complete the alternative use project within five years. The department will review the request for forgiveness of repayment and approve or deny the request within 60 days of receipt.

b. Review of closure after July 1, 2015, and before October 4, 2017. An airport that closed after July 1, 2015 (other than temporary closing), but before October 4, 2017, is eligible to request forgiveness for repayment of financial assistance from the department. By November 3, 2017, the sponsor shall request from the department a review of contractual obligations that require repayment of financial assistance. The department will provide a determination detailing grant obligations that must be repaid. Any repayment of grants must be made to the department in no more than two equal annual installments, beginning one year from October 4, 2017. If an alternative future use of the airport facility is planned for a project that creates jobs and expands the economy, the sponsor may, within 30 days of the department's determination, request forgiveness of repayment. The request must include a plan detailing the alternative future use of the airport facility, an explanation of how the alternative future use creates jobs and expands the economy, a cost-benefit analysis from the sponsor, a commitment of private investment in the project equal to at least two times the amount of repayment due to the state, and a commitment from the sponsor, or associated political subdivision(s), to complete the alternative use project within five years. The department will review the request for forgiveness of repayment and approve or deny the request within 60 days of receipt.

ITEM 5. Amend **761—Chapter 720**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 328.1, 328.12, 328.19 and 328.35 and 2016 Iowa Acts, chapter 1131, section 3.

ITEM 6. Amend rule 761—750.3(17A) as follows:

761—750.3(17A) Information and forms. Information, instructions and forms are available from the office of aviation or on the department's Web site at <http://www.iawings.com> www.iowadot.gov. Application forms may also be obtained from aircraft dealers. The mailing address for aircraft registration is: Iowa Department of Transportation, Office of Aviation, Aircraft Registration, 800 Lincoln Way, Ames, Iowa 50010.

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

ITEM 7. Amend rule 761—750.15(328) as follows:

761—750.15(328) Aircraft not airworthy. An aircraft that is not airworthy is not subject to registration fees if the owner submits with the registration application a written, signed explanation of the aircraft's condition and an estimate of the date when the aircraft will be airworthy. The department shall ~~issue a certificate and shall~~ mark the record of the aircraft until the owner notifies the department that the aircraft is airworthy or until the aircraft is no longer subject to registration in Iowa.

This rule is intended to implement Iowa Code section 328.21.

[Filed 8/9/17, effective 10/4/17]

[Published 8/30/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3302C

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.2, and 477A.12, the Utilities Board (Board) gives notice that on August 11, 2017, the Board issued an order in Docket No. RMU-2016-0041, In re: Review of Certificates of Franchise Authority for Cable and Video Service Rules [199 IAC Chapter 44], "Order Adopting Amendments," amending the Board's rules governing certificates of franchise authority for cable and video service providers. The order adopted amendments relating to a renewal

UTILITIES DIVISION[199](cont'd)

process for certificates of franchise authority as published under Notice of Intended Action in the Iowa Administrative Bulletin in Vol. XXXIX, No. 26 (6/21/17) p. 2668, as **ARC 3122C**.

The Board is undertaking a comprehensive review of its rules to ensure the rules are current and consistent with statute. Iowa Code section 477A.3(5)“d” specifies the content of a certificate of franchise authority and provides that a certificate issued by the Board is for a term of ten years and is renewable. The Board has been issuing certificates of franchise authority since 2008. The current rules do not include a renewal process. The Board recognizes the need to have a renewal process in Chapter 44 in place before the first certificates of franchise authority issued by the Board reach the end of their initial ten-year term.

The Board received written comments in response to the Notice of Intended Action from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and the Iowa Communications Alliance (ICA). Neither OCA nor ICA objected to the proposed amendments.

The order adopting amendments and approving this Adopted and Filed rule making can be found on the Board’s Electronic Filing System (EFS) Web site, <http://efs.iowa.gov>, in Docket No. RMU-2016-0041.

After analysis and review of this rule making, the Board concludes that the adopted amendments will not have a detrimental effect on jobs in Iowa.

These amendments are intended to implement Iowa Code sections 17A.4, 476.2, and 477A.12.

These amendments will become effective on October 4, 2017.

The following amendments are adopted.

ITEM 1. Renumber rule **199—44.7(17A,476,477A)** as **199—44.8(17A,476,477A)**.

ITEM 2. Adopt the following new rule 199—44.7(17A,476,477A):

199—44.7(17A,476,477A) Renewal of certificate of franchise authority.

44.7(1) Thirty days prior to the tenth anniversary of the issuance of the original certificate and every ten years thereafter, the certificate holder shall file with the board a notice of renewal containing the following:

- a. An acknowledgment that the certificate holder continues to hold the certificate;
- b. A statement that the certificate holder continues to provide cable service or video service or both in all or a portion of its approved service territory;
- c. Any necessary updates to the address of the principal place of business, the telephone number for customer service, and the names and titles of the principal executive officers with direct authority over and responsibility for the cable or video operations;
- d. A list of the approved areas the certificate holder currently is serving; and
- e. A list of the areas in which the certificate holder was previously authorized to offer service but where service has ceased or never commenced.

44.7(2) The notice of renewal shall be filed using the VCA docket number in which the initial certificate was issued. The board will acknowledge the renewal by letter.

[Filed 8/4/17, effective 10/4/17]

[Published 8/30/17]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.

ARC 3303C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Workforce Development hereby amends Chapter 22, “Employer Records and Reports,” Chapter 23, “Employer’s Contribution and Charges,” Chapter 24, “Claims and Benefits,” and Chapter 25, “Benefit Payment Control,” Iowa Administrative Code.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

These amendments update, clarify and simplify the procedures by which claimants and employers interact with Iowa Workforce Development.

Notice of Intended Action for these amendments was published in the July 5, 2017, Iowa Administrative Bulletin as **ARC 3178C**. No comments were received. The Notice was on the agenda for the Administrative Rules Review Committee (ARRC) meeting held on August 4, 2017. No questions or comments were received during this public meeting of the ARRC. One change has been made to the amendments since publication of the Notice. In Item 11, the numbers of the groups listed in paragraph 24.2(1)“c” were changed to reflect current agency practices.

These amendments do not have any fiscal impact on the State of Iowa.

Waiver provisions do not apply to this rule making.

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

These amendments will become effective October 4, 2017.

These amendments are intended to implement Iowa Code chapter 96.

The following amendments are adopted.

ITEM 1. Amend subrule 22.8(2), introductory paragraph, as follows:

22.8(2) Notification of status. The department shall maintain a separate account for each employer and shall notify the employer ~~by mailing a Form 65-5308, Notice of Employer Status and Liability, to the last known address of any status change.~~ This notice will advise the employer of:

ITEM 2. Amend subrule 22.9(1) as follows:

22.9(1) Each employing unit engaged in doing business in the state of Iowa January 1, 1936, or after, shall ~~file a report to determine liability complete a registration with the department on a form supplied by the department, Form 60-0126, Report to Determine Liability,~~ setting forth the names and addresses of the owners of the business, or if a corporation, association, or joint stock company or limited liability company, the names and addresses of its officers or members. Each employing unit must show its principal place of business, the nature of its business, the number of individuals whom it customarily hires to perform services for it, the place or places where such services are performed, the time when such business was begun, the number of weeks in the year for which it is customary to operate such business and such other information as may be required ~~by such form.~~

ITEM 3. Amend subrule 22.10(2) as follows:

22.10(2) *Reporting requirement.* If, after the change in partners, the partnership is required to obtain a new federal identification number by the Internal Revenue Service, or if there has been a change of ownership as described in Iowa Code section 96.19(18) “b” or a change of ownership as described in rule 871—23.28(96), then the old partnership shall notify the department by filing Form 60-0111, Employer’s Notice of Change, within ten days from the date the change occurred. The new partnership shall ~~notify the department by filing Form 60-0126, Report to Determine Liability,~~ complete a registration within ten days from the date the change occurred.

ITEM 4. Amend rule 871—22.12(96) as follows:

871—22.12(96) Reporting units. Any employer having two or more separate establishments will file those establishments as separate reporting units. Additionally at the employer’s discretion, the employer may establish reporting units to report according to function within the business. When filing a ~~Form 65-5300, Employer’s Contribution & Payroll Report, by paper,~~ employer’s contribution and payroll, all reporting units will be listed ~~on a separate page and will all be submitted together.~~ ~~When filing a Form 65-5300, Employer’s Contribution & Payroll Report, by electronic means,~~ The individual reporting units may be filed separately by the reporting units when authorized, but the complete account report is not submitted until all reporting units are completed. Maintaining current status for the reporting units will be the employer’s responsibility. If any reporting units are deleted or added, the department shall be notified within ten working days from the date of change.

This rule is intended to implement Iowa Code sections 96.7(2) “a” and 96.19(6).

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ITEM 5. Amend subrule 22.13(2) as follows:

22.13(2) It will be permissible to accept this information over the telephone by qualified personnel of the ~~field audit section providing~~ tax bureau provided that the employer makes known all of the above requested information and the person receiving this information notes the date it was received, the time it was received, who telephoned the information to the department, and the name and telephone number of a responsible party that can be contacted if further verification is needed with respect to the location coding procedure. ~~Field audit section~~ Tax bureau personnel receiving this classified information by telephone will accordingly note this and make it a matter of permanent record.

ITEM 6. Rescind and reserve rule **871—23.17(96)**.

ITEM 7. Amend subrule 23.29(1) as follows:

23.29(1) *Notice of acquisition.*

a. Whenever any employing unit in any manner succeeds to or acquires from an employer either the organization, trade or business or substantially all the assets thereof, and continues such organization, trade or business, such employing unit shall notify the department for the purpose of accomplishing the transfer of the reserve account of the predecessor employer to the successor employing unit. Such notification must be ~~in writing on Form 60-0126, Report to Determine Liability,~~ and include the name and address of the predecessor, the date of acquisition, and the name and address of the successor. When such notice has been received or in the absence of the notice when necessary information establishing that the acquisition occurred has been received by the department, the actual contribution and benefit experience and taxable payrolls of the predecessor shall be transferred to the successor employing unit for determining its rate of contribution. Thereafter, benefits chargeable because of employment for such transferred organization, trade, or business shall be charged to the account of the successor. The predecessor must ~~submit in writing a completed Form 60-0111, Employer Notice of Change~~ notify the department of the status change.

b. Where one or more employing units have been reorganized, merged or consolidated into a single employing unit and the successor employing unit continues to operate such merged or consolidated enterprise, the employing units involved shall ~~file change of ownership Forms 60-0111, Employer Notice of Change, and 60-0126, Report to Determine Liability, with the workforce development~~ notify the department within 30 days from the date of the transaction. In addition to Forms 60-0111 and 60-0126, all All entities involved in the merger shall ~~file with the workforce development department~~ provide the articles of merger, or if there are no articles of merger, a statement advising that the merger has transpired.

(1) The predecessor business or businesses involved in the merger shall each file a final quarterly payroll report form as soon as possible after the merger has occurred but in no case later than 30 days after the close of the quarter in which the merger occurred.

(2) The successor entity shall indicate ~~on Form 60-0126, Report to Determine Liability,~~ whether or not the experience rates of all accounts are to be combined and the rate recomputed for the balance of the calendar year in which the merger took place.

ITEM 8. Amend subrule 23.37(1) as follows:

23.37(1) Whenever any employer discovers that the contribution report submitted is incorrect resulting in overpayment of contributions due and owing, such employer may file an application for credit allowance or refund. If the department discovers that the contribution ~~report~~ submitted by any employer is incorrect resulting in overpayment of contribution, it may on its own initiative refund or make a credit allowance. No refund or credit allowance will be made after three years from the date on which the overpayment was made. The ~~Form 68-0061, Employer's Wage Adjustment Report,~~ employer's wage adjustment report shall be filed ~~by paper or~~ electronically to show corrections to the individual wage amounts, corrections of grand totals (total wages, taxable wages and contributions), and a full explanation for the adjustment. Adjustment shall be made by the department in the form of credit allowance or refund as provided in subrule 23.37(3) equal to that portion of contributions erroneously paid which exceeds the benefits paid to claimants as a direct result of the employer's erroneous report.

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ITEM 9. Amend subrule 23.52(4) as follows:

23.52(4) Unless otherwise required, all determinations by the tax bureau will be sent by regular mail ~~to the last known address of the employer~~ or e-mail, depending on how the employer elected to receive correspondence. The determination will be dated, and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. The employer has 15 days to appeal a Notice of Reimbursable Benefit Charges, Form 65-5324.

ITEM 10. Amend subrule 23.70(3) as follows:

23.70(3) All requests by nonprofit organizations wishing to be considered for reimbursable status shall be filed on Form 68-0463 and that form, along with the organization's 501(c)(3) Internal Revenue Service letter of exemption, except as otherwise provided in subrule 23.70(2), shall be directed to the attention of the ~~field audit unit~~ tax bureau. The request for reimbursable status will be examined by a ~~field auditor or other~~ an authorized representative.

ITEM 11. Rescind paragraph **24.2(1)“c”** and adopt the following new paragraph in lieu thereof:

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. A group code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are:

(1) Group “3” claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular “employer.” This group pertains only to those individuals who worked full-time and will again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. After a period of temporary unemployment, claimants in this group are reviewed for placement in group “5” or “6.”

(2) Group “4” claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job. Group “4” claimants shall have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group “4” code shall not apply to weeks claimed under the extended benefit or federal supplemental compensation programs.

(3) Group “5” claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership must be maintained. Contact must be made weekly to check for available work. Loss of membership shall result in an assignment to group “6.”

(4) Group “6” claimants are those individuals who do not otherwise meet the qualification group code “3,” “4,” or “5.” This group must complete and document work searches made either in-person, online or by submitting a resumé.

(5) Group “7” claimants are workers who are employed on a reduced workweek with an employer who is under voluntary shared work contract approved by the department. This group pertains only to those individuals who worked full-time and will again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. Once the contract expires, claimants in this group are reviewed for placement in group “3,” “4,” “5,” or “6.”

(6) Group “8” claimants are workers who are part of a federally declared emergency. Once the emergency period expires, claimants in this group are reviewed for placement in group “3,” “4,” “5,” or “6.”

(7) Nothing in this rule shall be construed as prohibiting an authorized representative of the department from requiring claimants for unemployment insurance benefits to avail themselves of workforce development center referral and counseling services if deemed beneficial and necessary to obtain prompt reemployment, nor shall anything in this rule be construed to deny referral or counseling service to claimants for unemployment insurance benefits.

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ITEM 12. Rescind rule 871—24.3(96) and adopt the following new rule in lieu thereof:

871—24.3(96) Social security number needed for filing. The correct social security number must be provided by the claimant. The correct social security number is essential in the processing of the claim. Therefore, if the claimant has a social security card, the number must be taken from that card or be provided by the claimant. If the claimant has two or more social security numbers, the claim shall be held until the claimant ascertains which number is correct.

ITEM 13. Adopt the following new paragraph **24.13(4)“o”**:

o. Payments conditional upon the release of any rights.

ITEM 14. Adopt the following new paragraph **24.13(4)“p”**:

p. Payments requiring the individual to work through a specific day to be eligible.

ITEM 15. Amend subrule 24.50(6) as follows:

24.50(6) Overpayments will be offset up to and including ~~50~~ 100 percent of the federal temporary extended unemployment compensation benefit payment.

ITEM 16. Amend subrule 25.8(3) as follows:

25.8(3) Purging uncollectible overpayments. On the last working day of each calendar month, the department reviews all outstanding overpayments; which are ten years or older from the date of the overpayment decision; and determines as uncollectible and purges from its records the unpaid balances of overpayments which are ten years or older ~~from the date of the most recent recovery of a part of the outstanding overpayment.~~

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