IOWA ADMINISTRATIVE BULLETIN

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IOWA FINANCE AUTHORITY[265] (Cont'd)

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]; usury rates [535.2(3)"a"]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

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

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CITATION of Administrative Rules

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

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

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)
441 IAC 79.1(1)"a"(1)"1"	(Numbered paragraph)

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 Rulemaking
2024

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
21	**Friday, March 29, 2024**	**April 17, 2024**
22	**Friday, April 12, 2024**	**May 1, 2024**
23	**Friday, April 26, 2024**	**May 15, 2024**

PLEASE NOTE:

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Monday, April 8, 2023, at 10 a.m. in Room 116, State Capitol, Des Moines, Iowa. For more information, contact Jack Ewing at jack.ewing@legis.iowa.gov. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]
Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

Definitions, ch 1 Filed **ARC 7677C** 3/6/24
Organization and administration, ch 2 Filed **ARC 7678C** 3/6/24
Certification of CPAs, ch 3 Filed **ARC 7679C** 3/6/24
Licensure of LPAs, ch 4 Filed **ARC 7680C** 3/6/24
Licensure status and renewal of certificates and licenses, ch 5 Filed **ARC 7681C** 3/6/24
Attest and compilation services, ch 6 Filed **ARC 7682C** 3/6/24
Certified public accounting firms, ch 7 Filed **ARC 7683C** 3/6/24
Licensed public accounting firms, ch 8 Filed **ARC 7684C** 3/6/24
Reciprocity and substantial equivalency, ch 9 Filed **ARC 7685C** 3/6/24
Continuing education, ch 10 Filed **ARC 7686C** 3/6/24
Peer review, ch 11 Filed **ARC 7687C** 3/6/24
Fees, ch 12 Filed **ARC 7688C** 3/6/24
Rules of professional ethics and conduct, ch 13 Filed **ARC 7689C** 3/6/24
Disciplinary authority and grounds for discipline, ch 14 Filed **ARC 7690C** 3/6/24
Disciplinary investigations, ch 15 Filed **ARC 7691C** 3/6/24
Disciplinary proceedings, ch 16 Filed **ARC 7692C** 3/6/24
Enforcement proceedings against nonlicensees, ch 17 Filed **ARC 7693C** 3/6/24
Licensees' duty to report, ch 18 Filed **ARC 7694C** 3/6/24
Practice privilege for out-of-state certified public accountants, ch 20 Filed **ARC 7695C** 3/6/24
Practice privilege for out-of-state certified public accountant firms, ch 21 Filed **ARC 7696C** 3/6/24

CHILD ADVOCACY BOARD[489]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Agency realignment, amend chs 1 to 4; rescind ch 5 Filed **ARC 7698C** 3/6/24

CITY DEVELOPMENT BOARD[263]
ECONOMIC DEVELOPMENT AUTHORITY[261]"umbrella"

Organization and administration, ch 1 Filed **ARC 7699C** 3/6/24
Agency procedure for rulemaking, ch 2 Filed **ARC 7700C** 3/6/24
Petitions for rulemaking, ch 3 Filed **ARC 7701C** 3/6/24
Declaratory orders, ch 4 Filed **ARC 7702C** 3/6/24
Fair information practices, ch 5 Filed **ARC 7703C** 3/6/24
Waiver rules, ch 6 Filed **ARC 7704C** 3/6/24
Voluntary annexation, ch 7 Filed **ARC 7705C** 3/6/24
Petitions for involuntary city development action, ch 8 Filed **ARC 7706C** 3/6/24
Committee proceedings on petitions for involuntary city development action, ch 9 Filed **ARC 7707C** 3/6/24
Board proceedings on petitions for involuntary boundary change after committee approval, ch 10 Filed **ARC 7708C** 3/6/24
Islands—identification and annexation, rescind ch 11 Filed **ARC 7709C** 3/6/24

CULTURAL AFFAIRS DEPARTMENT[221]

Agency reorganization, rescind chs 1 to 4 Notice **ARC 7721C** 3/20/24

EDUCATION DEPARTMENT[281]

Students first act—definition of "annual income," 20.1(1) Filed **ARC 7652C** 3/6/24
Pathways for academic career and employment program; gap tuition assistance program, ch 25 Filed **ARC 7653C** 3/6/24
Workforce training and economic development funds, ch 27 Filed **ARC 7654C** 3/6/24
High school equivalency diploma, ch 32 Filed **ARC 7655C** 3/6/24
Educational and program standards for children's residential facilities, ch 35 Filed **ARC 7656C** 3/6/24
Extracurricular interscholastic competition, ch 36 Filed **ARC 7657C** 3/6/24
Extracurricular athletic activity conference for member schools, ch 37 Filed **ARC 7658C** 3/6/24
Work-based learning; individualized career and academic plan, rescind ch 48; adopt ch 49 Filed **ARC 7659C** 3/6/24
Iowa reading research center, ch 61 Filed **ARC 7660C** 3/6/24
Standards for paraeducator preparation programs, ch 80 Filed **ARC 7661C** 3/6/24
Teacher and administrator quality programs, ch 83 Filed **ARC 7662C** 3/6/24

EDUCATIONAL EXAMINERS BOARD[282]
EDUCATION DEPARTMENT[281]"umbrella"

Complaints, investigations, contested case hearings—confidentiality, investigation of complaints, 11.4(9), 11.5 Filed **ARC 7718C** 3/20/24
Renewal or extension fees—licenses, certificates, statements of professional recognition, authorizations, 12.2 Filed **ARC 7719C** 3/20/24

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]
Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

Administration, ch 1 Filed **ARC 7664C** 3/6/24
Fees and charges, ch 2 Filed **ARC 7665C** 3/6/24
Application and renewal process, ch 3 Filed **ARC 7666C** 3/6/24
Engineering licensure, ch 4 Filed **ARC 7667C** 3/6/24
Land surveying licensure, ch 5 Filed **ARC 7668C** 3/6/24
Seal and certificate of responsibility, ch 6 Filed **ARC 7669C** 3/6/24
Professional development, ch 7 Filed **ARC 7670C** 3/6/24
Professional conduct of licensees, ch 8 Filed **ARC 7671C** 3/6/24
Complaints, investigations, and disciplinary action, ch 9 Filed **ARC 7672C** 3/6/24
Peer review, ch 10 Filed **ARC 7673C** 3/6/24
Minimum standards for property surveys, ch 11 Filed **ARC 7674C** 3/6/24
Minimum standards for U.S. public land survey corner certificates, ch 12 Filed **ARC 7675C** 3/6/24
Civil penalties for unlicensed practice, ch 13 Filed **ARC 7676C** 3/6/24

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Agency reorganization, rescind chs 3 to 6, 46 Notice **ARC 7722C** 3/20/24

HUMAN RIGHTS DEPARTMENT[421]

Agency realignment, amend ch 1; rescind chs 2 to 7 Filed **ARC 7710C** 3/6/24

HUMAN SERVICES DEPARTMENT[441]

Agency realignment, 1.8, 9.12(1) Filed **ARC 7711C** 3/6/24
Contracting out department of human services employees and property, rescind ch 2 Notice **ARC 7724C** 3/20/24
Foster care placement and services, amendments to ch 202 Notice **ARC 7739C** 3/20/24

INSURANCE AND FINANCIAL SERVICES DEPARTMENT[181]

Organization and operation, ch 1 Filed **ARC 7728C** 3/20/24

INSURANCE DIVISION[191]
INSURANCE AND FINANCIAL SERVICES DEPARTMENT[181]"umbrella"

Organization, ch 1 Filed **ARC 7729C** 3/20/24
Public records and fair information practices, ch 2 Filed **ARC 7730C** 3/20/24
Contested cases, ch 3 Filed **ARC 7731C** 3/20/24
Waiver of rules and declaratory orders, ch 4 Filed **ARC 7732C** 3/20/24
Life insurance illustrations model regulation, ch 14 Filed **ARC 7733C** 3/20/24
Unfair trade practices, ch 15 Filed **ARC 7734C** 3/20/24
Replacement of life insurance and annuities, ch 16 Filed **ARC 7735C** 3/20/24
Property and casualty insurance, ch 20 Filed **ARC 7736C** 3/20/24
Requirements for surplus lines, risk retention groups and purchasing groups, ch 21 Filed **ARC 7737C** 3/20/24
Military sales practices, ch 25 Filed **ARC 7738C** 3/20/24
Workers' compensation insurance rate filing procedures, ch 60 Filed **ARC 7740C** 3/20/24
Financial and health information regulation, ch 90 Filed **ARC 7741C** 3/20/24

MEDICINE BOARD[653]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Standards of practice and principles of medical ethics—abortion, 13.17 Filed **ARC 7720C** 3/20/24

PUBLIC HEALTH DEPARTMENT[641]

Tobacco use prevention and control funding process, rescind ch 152 Notice **ARC 7727C** 3/20/24
Agency realignment, rescind chs 170 to 175; amend ch 176 Filed **ARC 7712C** 3/6/24
Criteria for awards or grants, rescind ch 176 Notice **ARC 7725C** 3/20/24
Advisory bodies of the department, rescind ch 191 Notice **ARC 7726C** 3/20/24

PUBLIC SAFETY DEPARTMENT[661]
Motor carrier safety, hazardous materials—adoption by reference of federal regulations, 22.1(1) Notice **ARC 7723C** 3/20/24

REVENUE DEPARTMENT[701]
Property assessment appeal board, ch 115 Filed **ARC 7713C** 3/6/24
Filing returns and payment of tax, ch 202 Filed **ARC 7714C** 3/6/24
Events, amusements, and other related activities, ch 216 Filed **ARC 7715C** 3/6/24
Sales and services related to vehicles, ch 218 Filed **ARC 7716C** 3/6/24
Receipts subject to use tax; receipts exempt from use tax; receipts subject to use tax depending on method of transaction, rescind chs 280, 281; adopt ch 282 Filed **ARC 7717C** 3/6/24

UTILITIES DIVISION[199]
Nonutility services—recordkeeping and cost allocations, ch 33 Filed **ARC 7663C** 3/6/24
Nonutility service, ch 34 Filed **ARC 7697C** 3/6/24

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 Mike Klimesh
Chair
Senate District 32

Senator Nate Boulton
Senate District 20

Senator Mike Bousselot
Senate District 21

Senator Waylon Brown
Senate District 30

Senator Cindy Winckler
Senate District 49

Representative Megan Jones
Vice Chair
House District 6

Representative Amy Nielsen
House District 85

Representative Rick Olson
House District 39

Representative Mike Sexton
House District 7

Representative David Young
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Des Moines, Iowa 50319
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HUMAN SERVICES DEPARTMENT[441]

Contracting out department of human services employees and property, rescind ch 2 IAB 3/20/24 **ARC 7724C**	Microsoft Teams ID: 266 326 244 672 Passcode: RSVaFR	April 10, 2024 11 to 11:30 a.m.
	Microsoft Teams ID: 260 668 126 347 Passcode: jcaKdL	April 15, 2024 12 noon to 12:30 p.m.
Child care assistance program, 170.2, 170.4 IAB 2/21/24 **ARC 7651C**	Microsoft Teams ID: 291 465 633 702 Passcode: KGsoMf	March 21, 2024 11:30 a.m.
Foster care placement and services, amendments to ch 202 IAB 3/20/24 **ARC 7739C**	Microsoft Teams ID: 227 039 897 635 Passcode: bTZJ9E	April 9, 2024 11:30 a.m. to 12 noon
	Microsoft Teams ID: 241 334 884 463 Passcode: C9aN7m	April 12, 2024 11:30 a.m. to 12 noon

IOWA FINANCE AUTHORITY[265]

General, ch 1 IAB 3/20/24 **Regulatory Analysis**	1963 Bell Ave. Des Moines, Iowa	April 9, 2024 1 p.m.
Iowa main street loan program, ch 11 IAB 3/20/24 **Regulatory Analysis**	1963 Bell Ave. Des Moines, Iowa	April 9, 2024 1:15 p.m.
Waivers from administrative rules, ch 18 IAB 3/20/24 **Regulatory Analysis**	1963 Bell Ave. Des Moines, Iowa	April 9, 2024 1:30 p.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Ambulatory surgical centers, adopt ch 49 IAB 2/21/24 **ARC 7650C**	6200 Park Ave., Suite 100 Des Moines, Iowa	March 20, 2024 11 to 11:20 a.m.
Petitions for rulemaking, ch 2; declaratory orders, ch 3; procedure for rulemaking, ch 4; Contribution rates; licensing, noncompliance—child support, student loan repayment, state debt, ch 8 IAB 2/21/24 **ARCs 7645C** to **7647C**, **7649C**	6200 Park Ave., Suite 100 Des Moines, Iowa	March 20, 2024 11:20 to 11:40 a.m.

INSURANCE DIVISION[191]

Captive companies, adopt ch 113 IAB 2/21/24 **ARC 7644C**	1963 Bell Ave., Suite 100 Des Moines, Iowa	March 20, 2024 10 to 11 a.m.
		March 20, 2024 3 to 4 p.m.

NURSING BOARD[655]

Certified professional midwives, ch 16 IAB 3/20/24 **Regulatory Analysis**	6200 Park Ave. Des Moines, Iowa	April 9, 2024 9 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Tobacco use prevention and control funding process, rescind ch 152; criteria for awards or grants, rescind ch 176; advisory bodies of the department, rescind ch 191 IAB 3/20/24 **ARCs 7725C** to **7727C**	Microsoft Teams ID: 266 326 244 672 Passcode: RSVaFR Microsoft Teams ID: 260 668 126 347 Passcode: jcaKdL	April 10, 2024 11 to 11:30 a.m. April 15, 2024 12 noon to 12:30 p.m.

PUBLIC SAFETY DEPARTMENT[661]

Motor carrier safety, hazardous materials—adoption by reference of federal regulations, 22.1(1) IAB 3/20/24 **ARC 7723C**	First Floor Public Conference Room 125 Oran Pape State Office Bldg. Des Moines, Iowa	April 9, 2024 8 to 8:30 a.m.

TRANSPORTATION DEPARTMENT[761]

Outdoor advertising, ch 117 IAB 3/20/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 354 741 910	April 11, 2024 10 to 10:30 a.m.

UTILITIES DIVISION[199]

Competitive bidding process, ch 40 IAB 3/6/24 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	March 26, 2024 9 to 11 a.m.
Crossing of railroad rights-of-way, ch 42 IAB 3/20/24 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	April 24, 2024 10 a.m.

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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Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 265—Chapter 1 "General"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5 and 17A.3
State or federal law(s) implemented by the rulemaking: Iowa Code sections 16.2 and 17A.3

Public Hearing

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

April 9, 2024	1963 Bell Avenue
1 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Finance Authority no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kristin Hanks-Bents
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6220
Email: kristin.hanks-bents@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapter 1 relating to the organization and administration of the Authority and to adopt a new chapter in lieu thereof. The new chapter eliminates language that duplicates statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not impose any additional costs on members of the public who wish to understand the organization and administration of the Authority compared to the existing Chapter 1.

- Classes of persons that will benefit from the proposed rulemaking:

The rulemaking benefits persons interested in understanding the general organization and administration of the Authority.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The proposed rulemaking provides clarity about the organization and administration of the Authority. No costs are imposed by the rulemaking.

- Qualitative description of impact:

The rulemaking provides clarity about the organization and administration of the Authority.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

No additional costs are imposed by the proposed rulemaking.

- Anticipated effect on state revenues:

The rulemaking has no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The proposed rulemaking does not impose any costs. Iowa Code section 17A.3 requires the Authority to adopt rules to describe its organization and administration. This is the least costly version of those rules.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Authority has not identified any less costly methods or less intrusive methods of describing the organization and administration of the Authority.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Authority did not consider any alternative methods because the Authority did not identify any less costly or less intrusive method.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Authority did not consider any alternative methods because the Authority did not identify any less costly or less intrusive method.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 265—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
GENERAL

265—1.1(16) Mission. The mission of the authority is to administer programs and provide financial assistance to increase the supply of affordable housing, assist in the construction and operation of various

types of water treatment facilities, provide financial assistance to lower the barriers to entry for beginning farmers, and provide title guaranties to maintain land title stability.

265—1.2(16) Finance authority board of directors. Iowa Code section 16.2 creates the board of directors of the authority and describes the board's membership. The board holds meetings pursuant to Iowa Code section 16.2. Meetings are generally held at 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or at such other location as the authority may designate. Meetings of the board are subject to Iowa Code chapter 21.

265—1.3(16) Organization, requests, and submissions.

1.3(1) *Director.* The director is appointed pursuant to Iowa Code section 16.6 and performs such duties as assigned by the Iowa Code or the Iowa Administrative Code.

1.3(2) *Organization.* The authority is organized into such divisions as established by statute or the director pursuant to Iowa Code section 16.6.

1.3(3) *Requests and submissions.* All official communications, including submissions and requests, may be addressed to the Iowa Finance Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or to ifafyi@iowafinance.com. The authority's website address is www.iowafinance.com.

These rules are intended to implement Iowa Code sections 17A.3 and 16.2.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 265—Chapter 11
"Iowa Main Street Loan Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5(1)"r"
State or federal law(s) implemented by the rulemaking: Iowa Code section 16.51

Public Hearing

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

April 9, 2024	1963 Bell Avenue
1:15 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Finance Authority no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kristin Hanks-Bents
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: kristin.hanks-bents@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapter 11 and to adopt a new chapter in lieu thereof. The new chapter eliminates unnecessary language, removes unnecessarily restrictive terms and updates outdated language.

Additionally, the following changes are proposed:

- Existing rules 265—11.1(16), 265—11.2(16), and 265—11.3(16) are removed because those rules are unnecessary.
- Existing rule 265—11.4(16) is renumbered as rule 265—11.1(16). Unnecessary definitions are removed from the existing rule. A new definition of "authority" is added for clarity.
- Existing rule 265—11.5(16), relating to applications for loans, is removed.
- Existing rule 265—11.6(16) is renumbered as rule 265—11.2(16). The rule is updated to be more concise.
- Existing rule 265—11.7(16) is renumbered as rule 265—11.3(16). The rule is updated to eliminate the criteria for evaluating loans. Only those portions of the rule relating to ongoing administration of outstanding loans are necessary.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking imposes minimal costs and does not impose any additional costs on borrowers who were issued loans under the program. The program issued loans through November 12, 2019. No new loans are being issued. Interest on loans is also assessed at a rate related to the Authority's cost of funds for the loan term.

- Classes of persons that will benefit from the proposed rulemaking:

Existing borrowers may benefit from the new chapter's improved clarity.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The proposed rulemaking imposes minimal costs and does not impose any additional costs on borrowers who were issued loans under the program. Existing borrowers are already subject to loan agreements and obligated to repay loans at the interest rate set forth in the existing borrowers' respective loan agreements. Under the program, loan agreements set forth fixed interest rates for the term of the loans.

- Qualitative description of impact:

The rulemaking will provide clarity about the policies and procedures applicable to the Main Street Loan Program.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Authority staff time is required to administer outstanding loans.

- Anticipated effect on state revenues:

The proposed rulemaking is not anticipated to have any impact on state revenues because existing borrowers were already subject to a loan agreement and obligated to repay the loan at the interest rate set forth in the loan agreement.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The proposed rulemaking imposes minimal costs and does not impose any additional costs on borrowers who were issued loans under the program.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Authority has not identified any less costly methods or less intrusive methods for achieving the purpose of the proposed rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Authority did not consider any alternative methods.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Authority did not consider any alternative methods because the Authority did not identify any less costly or less intrusive method.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 265—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
IOWA MAIN STREET LOAN PROGRAM

265—11.1(16) Definitions. As used in connection with the Iowa main street loan program, the following terms have the meanings indicated.

"Authority" means the Iowa finance authority created in Iowa Code section 16.1A.

"Commercial property" means property formerly or currently used primarily for business, retail, governmental or professional purposes.

"Downtown area" means the business area of a community that is centrally located within the community within the context of the Iowa main street program.

"Housing" means the same as defined in Iowa Code section 16.1(14).

"Infill development" means new construction on a vacant commercial lot currently held as open space.

"Participating city" means a city participating in the Iowa main street program.

"Upper floor housing" means any housing that is attached to or contained in the same building as commercial property, whether located on the ground floor behind the traditional storefront or on other floors of the property.

265—11.2(16) Public benefit. Projects are approved for an Iowa main street loan if they demonstrate one of the following public benefits:

1. Rehabilitation of upper floor housing or commercial properties or new construction development on infill vacant lots located in the downtown area of a participating city;
2. Housing in downtown areas located in a participating city; or
3. Stimulation of downtown area economic development within the context of historic preservation of the downtown area in a participating city.

265—11.3(16) Loan terms.

11.3(1) *Amount of loans.* The principal amount of each loan is between $50,000 and $250,000.

11.3(2) *Term of loan.* Loans are amortized over not more than 30 years; the actual term of the loan is determined by the authority depending on the economic feasibility of the project.

11.3(3) *Interest rate.* Interest is charged on the loan at a rate related to the authority's cost of funds for the loan term as determined and announced by the authority from time to time.

11.3(4) *Loan fee.* The authority may charge a fee in the amount of 1 percent of the initial loan amount at closing.

These rules are intended to implement Iowa Code sections 16.5(1)*"r"* and 16.51.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 265—Chapter 18
"Waivers from Administrative Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5 and 17A.9A
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.9A

Public Hearing

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

April 9, 2024	1963 Bell Avenue
1:30 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Finance Authority no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kristin Hanks-Bents
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: kristin.hanks-bents@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapter 18 and adopt a new chapter in lieu thereof. The new chapter eliminates language that is duplicative of statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language. Additionally, the following changes are proposed:

- Existing rule 265—18.2(17A,16) is removed to eliminate unnecessary language.
- The text of existing rule 265—18.7(17A,16) is moved from the rule to a new subrule in rule 265—18.8(17A,16) (after renumbering) to improve organization and clarity for petitioners.
- Existing rule 265—18.12(17A,16) is removed to eliminate language that duplicates statutory language.
- A new rule 265—18.10(17A,16) is proposed to combine existing rules 265—18.13(17A,16) through 265—18.16(17A,16) to improve clarity for petitioners by placing together those rules that are only applicable after a ruling on an administrative waiver is issued.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not impose any additional costs on petitioners requesting waiver of an administrative rule compared to the existing Chapter 18.

- Classes of persons that will benefit from the proposed rulemaking:

Persons requesting a waiver of administrative rules may benefit from the improved clarity of the chapter.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Petitioners requesting a waiver of administrative rules may incur costs to draft the petition for a waiver. The amount of the costs will vary depending on the complexity of the issues and the compensation of staff or service providers who draft the waiver.

- Qualitative description of impact:

The proposed rulemaking will provide clarity about the Authority's processes for consideration of waiver requests.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Authority incurs staff time to implement the waiver process, including time to review petitions for waiver. If the petition for waiver is filed within a contested case hearing, staff time is required to hold a hearing in accordance with contested case hearing procedures.

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The proposed rulemaking does not impose any additional costs on petitioners requesting waiver of an administrative rule compared to the existing Chapter 18. There is minimal change to the costs and benefits.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Authority has not identified any less costly methods or less intrusive methods that exist for addressing petitions for waivers.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Authority did not consider any alternative methods.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Authority did not consider any alternative methods because the Authority did not identify a less costly or less intrusive method.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 265—Chapter 18 and adopt the following **new** chapter in lieu thereof:

CHAPTER 18
WAIVERS FROM ADMINISTRATIVE RULES

265—18.1(17A,16) Definitions.

"Authority" means the Iowa finance authority created in Iowa Code section 16.1A.

"Director" means the same as defined in Iowa Code section 16.1(7).

"Person" means the same as defined in Iowa Code section 17A.2(9).

"Waiver" means the same as defined in Iowa Code section 17A.9A(5).

265—18.2(17A,16) Applicability of chapter. The authority may grant a waiver of a rule as permitted by Iowa Code section 17A.9A.

265—18.3(17A,16) Criteria for waiver. In response to a petition filed pursuant to this chapter, the authority may grant a waiver if the authority finds, based on clear and convincing evidence, all of the factors listed in Iowa Code section 17A.9A(2).

265—18.4(17A,16) Filing of petition. Petitions for waiver should be submitted in writing to the Director, Iowa Finance Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315. If the petition relates to a pending contested case, the petition is filed in the contested case proceeding, using the caption of the contested case. Petitions may be delivered by email to an email address supplied by the authority's legal counsel.

265—18.5(17A,16) Content of petition. A completed petition for waiver includes the following information where applicable and known to the petitioner:

1. The name, address, and telephone number of the person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under criteria described in Iowa Code section 17A.9A(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the authority and the petitioner relating to the regulated activity, license, financial assistance, or incentives affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.
6. Any information known to the petitioner regarding the authority's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.
8. The name, address, and telephone number of any person who would be adversely affected by the granting of a waiver.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver.

265—18.6(17A,16) Notice. The authority will acknowledge a petition within five business days of its receipt. Within 30 days of the receipt of the petition, the authority will provide notice of the pendency of the petition and a copy of the petition or a concise summary of the petition to all persons to whom notice is required by any provision of law. In addition, the authority may give notice to other persons. To accomplish this provision, the authority may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the authority attesting that notice has been provided.

265—18.7(17A,16) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply to the following:

18.7(1) When any petition for a waiver is filed within a contested case;

18.7(2) When the authority so provides by rule or order; or

18.7(3) When required to do so by statute.

265—18.8(17A,16) Authority responsibilities regarding petition for waiver.

18.8(1) *Additional information.* Prior to issuing an order granting or denying a waiver, the authority may request additional information from the petitioner relative to the petition and surrounding circumstances. The authority may schedule a meeting between the petitioner and the authority or, if the petition was filed in a contested case, between the petitioner and all parties to the contested case.

18.8(2) *Compliance with Iowa Code standards.* The authority applies the standards and burdens in Iowa Code section 17A.9A(3).

18.8(3) *Final discretion.* The final decision on whether the circumstances justify the granting of a waiver is in the sole discretion of the authority.

18.8(4) *Ruling.* An order granting or denying a waiver will be in writing and will contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is granted.

18.8(5) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the authority will balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

18.8(6) *Time for ruling.* The authority will grant or deny a petition for a waiver as soon as practicable but, in any event, will do so within 90 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a pending contested case, the authority will grant or deny the petition no later than the time at which the final decision in that matter is issued. Failure of the authority to grant or deny a petition within the required time period is deemed a denial of that petition by the authority. However, the authority remains responsible for issuing an order denying a waiver.

18.8(7) *Service of order.* Within seven days of its issuance, the authority will transmit an order issued under this chapter to the petitioner or any other person entitled to such notice.

265—18.9(17A,16) Public availability. The authority will comply with the public availability and filing procedures of Iowa Code section 17A.9A(4).

265—18.10(17A,16) After issuance of a waiver.

18.10(1) *Voiding or cancellation.* A waiver is void if the material facts upon which the petition is based are not true or if material facts have been withheld. The authority may withdraw, cancel or modify a waiver if, after appropriate notice and hearing, the authority issues an order finding any of the following: facts as stated in the request are not true; material facts have been withheld; the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute or substantially equal protection of public health, safety, and welfare; or the requester has failed to comply with the conditions of the order.

18.10(2) *Violations.* Violation of a condition in a waiver order is the equivalent of a violation of the particular rule for which the waiver is granted. The recipient of a waiver under this chapter who violates

a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

18.10(3) *Defense.* After the authority issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

18.10(4) *Judicial review.* Judicial review of the authority's decision to grant or deny a waiver petition may be undertaken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and chapter 16.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 655—Chapter 16
"Certified Professional Midwives"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 148I
State or federal law(s) implemented by the rulemaking: 2023 Iowa Acts, House File 265

Public Hearing

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

April 9, 2024	6200 Park Avenue
9 a.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.249.7038
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

This proposed rulemaking implements 2023 Iowa Acts, House File 265, by creating rules for the licensure and regulation of certified professional midwives. The proposed chapter sets out requirements for certified professional midwives to obtain a license in the state of Iowa, including initial licensure, renewal and reactivation.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are costs to the licensee in terms of fees for licensure. These fees are equivalent to the fees required for advanced registered nurse practitioner (ARNP) licensure. The fees proposed in this rulemaking are lower than most other states' fees for certified professional midwife licensure, as shown in the table below.

State	Licensing Fee
Idaho	Initial license $1000; renewal $850
Maine	Initial license $296; renewal $275
Maryland	$900
Minnesota	Initial license $233.25; renewal $100 (traditional midwife)
Montana	Initial license $500; renewal $240
Tennessee	Initial application $500; biennial renewal fee $700
Texas	Initial application $195; renewal $390
Wisconsin	Initial license $59; renewal $59

The agency bears the costs of implementing and enforcing the provisions of the rulemaking. Staff salaries to support the work of the Board of Nursing are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the Fund to cover operation costs for the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this rulemaking is to implement 2023 Iowa Acts, House File 265, by creating rules for the licensure and enforcement of practice standards for certified professional midwives. The public benefits from the additional services certified professional midwives can provide to Iowans.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The licensee bears costs in fees for licensure. The proposed fee for certified professional midwife licensure is equivalent to the fees required for ARNP licensure. The fees proposed in this rulemaking are lower than most other states' fees for certified professional midwife licensure, as shown in the table below.

State	Licensing Fee
Idaho	Initial license $1000; renewal $850
Maine	Initial license $296; renewal $275
Maryland	$900
Minnesota	Initial license $233.25; renewal $100 (traditional midwife)
Montana	Initial license $500; renewal $240
Tennessee	Initial application $500; biennial renewal fee $700
Texas	Initial application $195; renewal $390
Wisconsin	Initial license $59; renewal $59

- Qualitative description of impact:

A review of licensing and renewal fees in surrounding states shows that Iowa's proposed fees are generally lower than other surrounding states. The fees are necessary to provide funds to support Board operations to ensure Iowans receive competent and safe services.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are the staff time needed to review applications for licensure and renewal, investigate complaints and issue discipline when necessary. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees, not the State. Staff salaries to support the work of the Board are covered by the Fund. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board believes the costs of this rulemaking are justified by the benefits received. The licensure of certified professional midwives creates additional job opportunities for Iowans. This rulemaking implements 2023 Iowa Acts, House File 265.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

In drafting this rulemaking, the Board used caution to ensure there is no greater regulation than necessary for the profession. While this rulemaking does impose some regulations for certified professional midwives, these regulations are necessary to ensure Iowans are receiving competent and safe services.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

At this time, the boards have not identified any alternative methods. This rulemaking implements 2023 Iowa Acts, House File 265.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

2023 Iowa Acts, House File 265, directed the Board to promulgate rules for the licensure of certified professional midwives.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Traditionally, certified professional midwives operate in an individual or small business capacity, which was taken into consideration for this rulemaking. If an individual licensee finds a rule to be overly burdensome, the goals of which could be achieved in a manner that results in less impact on the small business, the licensee may utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 655—Chapter 16:

CHAPTER 16
CERTIFIED PROFESSIONAL MIDWIVES

655—16.1(148I) Definitions. As used in this chapter, in addition to those listed below, definitions as stated in Iowa Code section 148I.1 apply to this chapter.

"Administer" means the same as defined in Iowa Code section 155A.3(1).

"Consultation" means discussing the aspects of an individual client's circumstance with other professionals to ensure comprehensive and quality care for the client, consistent with the objectives in the client's treatment plan or for purposes of making adjustments to the client's treatment plan. Consultation may include history-taking; examination of the client; rendering an opinion concerning diagnosis or treatment; or offering service, assistance or advice.

"Professional conduct" means behavior that adheres to the practice standards set out in rule 655—16.3(148I).

"Unprofessional conduct" means unethical conduct, including but not limited to acts or behavior that is inconsistent with Iowa Code chapter 148I or any violations of 655—Chapter 16.

655—16.2(148I) Licensure.

16.2(1) *Initial license.* An individual seeking initial licensure as a certified professional midwife (CPM) will submit the following:

a. A completed application for licensure.

b. Payment of the application fee.

c. A dated copy of the applicant's current certification issued by the North American Registry of Midwives or its successor organization, including the applicant's education or midwifery bridge certificate in accordance with Iowa Code section 148I.2.

d. An official transcript or certificate denoting the date of high school graduation and diploma or equivalent.

e. A dated certificate of completion of mandatory reporter training.

f. A written plan in accordance with Iowa Code section 148I.4(1)*"g."*

g. Two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check.

h. If the applicant has a criminal history, a copy of all documents required by rule 655—3.11(272C).

16.2(2) *Renewal of license.* A certified professional midwife license may be renewed beginning 60 days prior to the license expiration date and ending 30 days after the license expiration date. To renew, a licensee shall submit the following:

a. A completed application for licensure.

b. Payment of the application fee.

c. A dated copy of the applicant's current certification issued by the North American Registry of Midwives or its successor organization.

d. Attestation of fulfillment of the continuing education and peer review requirements established by the North American Registry of Midwives or its successor organization.

e. Attestation of reporting client data to the Iowa department of health and human services by way of filing the paperwork required to obtain a birth certificate in accordance with Iowa Code section 148I.4(1)*"i."*

16.2(3) *Inactive status.* Failure to renew a CPM license within 30 days after its expiration will result in an inactive CPM license.

a. Continuing to work as a CPM with an inactive CPM license may result in disciplinary action.

b. To reactivate the license, the licensee must complete the license renewal process established in subrule 16.2(2).

16.2(4) *Fees.* The following fees apply to licensure for certified professional midwives.

a. Application fee for an initial license is $81 for a period of licensure up to three years.

b. Evaluation fee of the fingerprint cards and the criminal history background check by the Federal Bureau of Investigation (FBI) and division of criminal investigation (DCI) is $50.

c. Fee for renewal of license to practice as a certified professional midwife is $81.

d. Fee for late renewal of a license to practice as a certified professional midwife is $50, plus the renewal fee.

e. Fee for reactivation of a license to practice as a certified professional midwife is $81 for any period of licensure up to three years.

f. All other fees are as defined in rule 655—3.1(148I).

16.2(5) *Exceptions to licensure.* Exceptions to licensure are established in Iowa Code section 148I.3.

655—16.3(148I) Practice standards. A certified professional midwife shall practice within the legal boundaries for certified professional midwifery as set forth in Iowa Code chapter 148I, this chapter, and any other pertinent law or regulation. A licensed certified professional midwife shall:

16.3(1) Comply with the practice standards accepted by the North American Registry of Midwives as defined by the National Association of Certified Professional Midwives (NACPM) or its successor organization, as of February 1, 2024, found at nacpm.org.

16.3(2) Demonstrate professionalism and accountability in the practice of certified professional midwifery, including:

a. Demonstrating honesty and integrity in practice.

b. Basing decisions in practice on knowledge, judgment, skills, and the needs of clients.

c. Maintaining competence through completion of the continuing education requirements in subrule 16.2(2) and application of such education in practice.

d. Reporting to appropriate authorities instances of unsafe practice by a certified professional midwife.

e. Being accountable for judgments and individual actions as a certified professional midwife and competence, decisions, and behaviors in the practice of certified professional midwifery.

16.3(3) Maintain a record of, and provide to each client orally and by written consent form, all information and consents in accordance with Iowa Code section 148I.4(1)*"h."*

16.3(4) Comply with Iowa Code sections 136A.6 and 136A.5A.

16.3(5) File a birth certificate for each birth in accordance with Iowa Code section 148I.4.

16.3(6) Consult with a licensed physician or certified nurse midwife for high-risk pregnancies and births.

a. A CPM shall consult with a licensed physician or a certified nurse midwife providing obstetrical care whenever there are significant deviations, including but not limited to abnormal laboratory results, relative to a client's pregnancy or to a neonate. If a referral to a physician is needed, the certified professional midwife shall refer the client to a physician and, if possible, remain in consultation with the physician until resolution of the concern.

b. A CPM shall consult with a licensed physician or certified nurse midwife with regard to any mother who presents with or develops the following risk factors or presents with or develops other risk factors that in the judgment of the CPM warrant consultation:

(1) Antepartum.

1. Pregnancy-induced hypertension, as evidenced by a blood pressure of 140/90 on two occasions greater than six hours apart.
2. Persistent, severe headaches; epigastric pain or visual disturbances.
3. Persistent symptoms of urinary tract infection.
4. Significant vaginal bleeding before the onset of labor not associated with uncomplicated spontaneous abortion.
5. Rupture of membranes prior to the thirty-seventh week of gestation.
6. Noted abnormal decrease in or cessation of fetal movement.
7. Anemia resistant to supplemental therapy.
8. Fever of 102°F or 39°C or greater for more than 24 hours.

9. Nonvertex presentation after 38 weeks of gestation.
10. Hyperemesis or significant dehydration.
11. Isoimmunization, Rh-negative sensitized, positive titers, or any other positive antibody titer that may have a detrimental effect on mother or fetus.
12. Elevated blood glucose level unresponsive to dietary management.
13. Positive HIV antibody test.
14. Primary genital herpes infection in pregnancy.
15. Symptoms of malnutrition or anorexia or protracted weight loss or failure to gain weight.
16. Suspected deep vein thrombosis.
17. Documented placental anomaly or previa.
18. Documented low-lying placenta in a woman with history of previous cesarean delivery.
19. Labor prior to the thirty-seventh week of gestation.
20. History of prior uterine incision.
21. Lie other than vertex at term.
22. Known fetal anomalies that may be affected by the site of birth.
23. Marked abnormal fetal heart tones.
24. Abnormal nonstress test or abnormal biophysical profile.
25. Marked or severe polyhydramnios or oligohydramnios.
26. Evidence of intrauterine growth restriction.
27. Significant abnormal ultrasound findings.
28. Gestation beyond 42 weeks by reliable confirmed dates.

(2) Intrapartum.

1. Rise in blood pressure above baseline, more than 30/15 points or greater than 140/90.
2. Persistent, severe headaches; epigastric pain or visual disturbances.
3. Significant proteinuria or ketonuria.
4. Fever over 100.6°F or 38°C in absence of environmental factors.
5. Ruptured membranes without onset of established labor after 18 hours.
6. Significant bleeding prior to delivery or any abnormal bleeding, with or without abdominal pain; or evidence of placental abruption.
7. Lie not compatible with spontaneous vaginal delivery or unstable fetal lie.
8. Failure to progress after five hours of active labor or following two hours of active second-stage labor.
9. Signs and symptoms of maternal infection.
10. Active genital herpes at onset of labor.
11. Fetal heart tones with nonreassuring patterns.
12. Signs or symptoms of fetal distress.
13. Thick meconium or frank bleeding with birth not imminent.
14. Client or CPM desires physician consultation or transfer.

(3) Postpartum.

1. Failure to void within six hours of birth.
2. Signs or symptoms of maternal shock.
3. Febrile: 102°F or 39°C and unresponsive to therapy for 12 hours.
4. Abnormal lochia or signs or symptoms of uterine sepsis.
5. Suspected deep vein thrombosis.
6. Signs of clinically significant depression.

c. A CPM shall consult with a licensed physician or certified nurse midwife with regard to any neonate who is born with or develops the following risk factors:

(1) Apgar score of six or less at five minutes without significant improvement by ten minutes.
(2) Persistent grunting respirations or retractions.
(3) Persistent cardiac irregularities.
(4) Persistent central cyanosis or pallor.
(5) Persistent lethargy or poor muscle tone.

(6) Abnormal cry.
(7) Birth weight less than 2,300 grams.
(8) Jitteriness or seizures.
(9) Jaundice occurring before 24 hours or outside of normal range.
(10) Failure to urinate within 24 hours of birth.
(11) Failure to pass meconium within 48 hours of birth.
(12) Edema.
(13) Prolonged temperature instability.
(14) Significant signs or symptoms of infection.
(15) Significant clinical evidence of glycemic instability.
(16) Abnormal, bulging, or depressed fontanel.
(17) Significant clinical evidence of prematurity.
(18) Medically significant congenital anomalies.
(19) Significant or suspected birth injury.
(20) Persistent inability to suck.
(21) Diminished consciousness.
(22) Clinically significant abnormalities in vital signs, muscle tone or behavior.
(23) Clinically significant color abnormality, cyanotic, or pale or abnormal perfusion.
(24) Abdominal distension or projectile vomiting.
(25) Signs of clinically significant dehydration or failure to thrive.

16.3(7) Not use forceps or a vacuum extractor in accordance with Iowa Code section 148I.4.

655—16.4(148I) Delegation process.

16.4(1) *Delegation to another certified professional midwife.* The certified professional midwife shall apply the delegation process when delegating to another certified professional midwife by:

a. Delegating only those midwifery tasks that fall within the delegate's scope of practice, education, experience, and competence.

b. Matching the client's needs and circumstances with the delegate's qualifications and resources.

c. Communicating directions and expectations for completion of the delegated activity and receiving confirmation of understanding of the communication from the delegate.

d. Monitoring performance, progress and outcomes and ensuring appropriate documentation is complete.

e. Evaluating client outcomes as a result of the delegation process.

f. Intervening when problems are identified and revising plan of care when needed.

g. Retaining accountability for properly implementing the delegation process.

h. Promoting a safe and therapeutic environment by:

(1) Providing appropriate monitoring of the care environment.

(2) Identifying unsafe care situations.

(3) Correcting problems or referring problems to a physician or advanced registered nurse practitioner as defined in Iowa Code sections 148.1 and 152.1.

16.4(2) *Delegation to unlicensed assistive personnel (UAP).* The certified professional midwife shall apply the delegation process when delegating to unlicensed assistive personnel (UAP) by:

a. Ensuring UAP have the appropriate education and training and have demonstrated competency to perform the delegated task.

b. Ensuring the task does not require assessment, interpretation, and independent midwifery judgment or midwifery decision during the performance or completion of the task.

c. Ensuring the task does not exceed the scope of practice of a certified professional midwife.

d. Verifying that, in the professional judgment of the delegating certified professional midwife, the task poses minimal risk to the patient.

e. Communicating directions and expectations for completion of the delegated activity and receiving confirmation of understanding of the communication from UAP.

f. Supervising UAP and evaluating the client outcomes of the delegated task.

655—16.5(148I) Testing and drugs.

16.5(1) A licensee may:

a. Obtain and administer drugs in accordance with Iowa Code section 148I.4.

b. Request board approval to obtain and administer other drugs, not otherwise stated in Iowa Code section 148I.4(1)*"d,"* consistent with the practice of certified professional midwifery.

c. Obtain appropriate screening and testing for clients in accordance with Iowa Code section 148I.4(1)*"c."*

d. Administer prescription drugs prescribed by a licensed health care provider to a client in accordance with Iowa Code section 148I.4(1)*"e."*

16.5(2) A licensee who dispenses or administers controlled substances must adhere to 657—Chapter 10.

16.5(3) Standards of practice for controlled substances. In addition to following the standards of practice for treating a client described in rule 655—16.3(148I), a certified professional midwife who administers a controlled substance shall practice in accordance with the following:

a. The client's health history will include a personal and family substance abuse risk assessment performed by a licensed prescribing health care provider or the documented rationale for not performing the assessment.

b. The client's health record must include documentation of the presence of one or more recognized indications for the use of a controlled substance.

c. A certified professional midwife who administers any controlled substance will maintain an active Drug Enforcement Administration (DEA) registration and active controlled substances Act (CSA) registration when required by the DEA and the board of pharmacy.

655—16.6(148I) Discipline. A licensee may be disciplined for failure to comply with Iowa Code chapter 148I or this chapter or for any wrongful act or omission related to the licensee's practice, licensure, or professional conduct, including but not limited to the following:

16.6(1) In accordance with Iowa Code section 147.55(1), behavior that constitutes fraud in procuring a license that may include but need not be limited to the following:

a. Falsification of the application, certification, or records submitted to the board for licensure or license renewal as a certified professional midwife.

b. Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a certified professional midwife.

16.6(2) In accordance with Iowa Code section 147.55(2), professional incompetency that may include but need not be limited to the following:

a. Lack of knowledge, skill, or ability to discharge professional obligations within the scope of the practice of midwifery.

b. Deviation by the licensee from the standards of learning, education, or skill ordinarily possessed and applied by other certified professional midwives in the state of Iowa acting in the same or similar circumstances.

c. Willful or repeated departure from or failure to form to the minimum standards of acceptable and prevailing practice of midwifery in the state of Iowa.

16.6(3) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) that constitutes unethical conduct or practice harmful or detrimental to the public that may include but need not be limited to the following:

a. Engaging in practice contradictory to NACPM standards of practice.

b. Performing services beyond the authorized scope of practice for which the individual is licensed or prepared.

c. Allowing another person to use one's license for any purpose.

d. Failing to comply with any rule promulgated by the board related to minimum standards of care.

e. Improper delegation of services, functions or responsibilities.

f. Committing an act or omission that may adversely affect the physical or psychosocial welfare of the client.

g. Committing an act that causes physical, emotional, or financial injury to the client.

h. Violating the confidentiality or privacy rights of the client.

i. Discriminating against a client because of age, sex, race, ethnicity, national origin, creed, illness, disability, sexual orientation, or economic or social status.

j. Failing to assess, accurately document, evaluate, or report the status of a client when necessary.

k. Misappropriating or attempting to misappropriate medications, property, supplies, or equipment of the client.

l. Fraudulently or inappropriately using or permitting the use of prescriptions, obtaining or attempting to obtain prescription medications under false pretenses, or assisting others to obtain or attempt to obtain prescription medication under false pretenses.

m. Practicing midwifery while under the influence of alcohol, marijuana, or illicit drugs or while impaired by the use of pharmacological agents or medications, even if legitimately prescribed.

n. Being involved in the unauthorized manufacture or distribution of a controlled substance.

o. Being involved in the unauthorized possession or use of a controlled substance.

p. Engaging in behavior that is contradictory to professional decorum.

q. Failing to report suspected wrongful acts or omissions committed by the licensee of the board.

r. Failing to comply with an order of the board.

s. For administering drugs:

(1) In an unsafe manner.

(2) Without accurately documenting the drug or without assessing, evaluating, or instructing the patient or client.

(3) To individuals who are not clients.

t. Failing to property safeguard or secure medications.

u. Failing to properly document or perform medication wastage.

16.6(4) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) that constitutes unethical conduct or practice harmful or detrimental to the public that may include but need not be limited to the professional boundaries violations in paragraphs 16.6(4)*"a"* through *"e."* For purposes of this subrule, "client" includes the client and the client's family that are present with the client while the client is under the care of the licensee.

a. Sexual contact with a client, regardless of the client's consent.

b. Making lewd, suggestive, demeaning, or otherwise sexual comments, regardless of client consent.

c. Participating in, initiating, or attempting to initiate a sexual or emotional relationship with a client, regardless of client consent.

d. Soliciting, borrowing, or misappropriating money or property from a client, regardless of client consent.

e. Engaging in a sexual, emotional, social or business relationship with a former client when there is a risk of exploitation or harm to the client, regardless of client consent.

16.6(5) In accordance with Iowa Code section 147.55(4), habitual intoxication or addiction to the use of drugs that may include but need not be limited to the following:

a. Excessive use of alcohol that may impair a licensee's ability to practice the profession with reasonable skill and safety.

b. Excessive use of drugs that may impair a licensee's ability to practice the profession with reasonable skill and safety.

16.6(6) Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including Alford and nolo contendere pleas, or a finding or verdict of guilt, even if the adjudication of guilt is deferred, withheld, or not entered. An offense directly relates to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or if the circumstances under which the offense was committed are circumstances customary to the profession.

16.6(7) In accordance with Iowa Code section 147.55(5), fraud in representation as to skill or ability.

16.6(8) In accordance with Iowa Code section 147.55(6), use of untruthful or improbable statements in advertisements.

16.6(9) In accordance with Iowa Code section 147.55(7), willful or repeated violations of provisions of Iowa Code chapter 147, 148I, or 272C.

16.6(10) In accordance with Iowa Code section 147.55(10), other acts or offenses as specified by board rule, including the following:

a. Failing to provide written notification of a change of address to the board within 30 days of the event.

b. Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory, or country.

c. Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction where it occurred.

d. Failing to submit an additional completed fingerprint packet as required and the applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.

e. Failing to respond to the board during a board audit or submit verification of compliance with continuing education requirements or exceptions within the time period provided.

f. Failing to respond to the board during a board audit or submit verification of compliance with training in child or dependent adult abuse identification and reporting or exceptions within the time period provided.

g. Failing to respond to or comply with a board investigation or subpoena.

h. Engaging in behavior that is threatening or harassing to the board, board staff, or agents of the board.

16.6(11) In accordance with Iowa Code section 147.2 or 147.10:

a. Engaging in the practice of midwifery in Iowa prior to licensure.

b. Engaging in the practice of midwifery in Iowa on an inactive license.

655—16.7(148I) Telehealth.

16.7(1) *Telehealth permitted.* A certified professional midwife may, in accordance with all applicable laws and rules, provide services to a client through telehealth.

16.7(2) *License required.* A certified professional midwife who provides services through telehealth to a client physically located in Iowa must be licensed by the board. A certified professional midwife who provides services through telehealth to a client physically located in another state shall be subject to the laws and jurisdiction of the state where the client is physically located.

16.7(3) *Standard of care.*

a. A certified professional midwife who provides services through telehealth shall be held to the same standard of care as is applicable to in-person settings. A certified professional midwife shall not perform any service via telehealth unless the same standard of care can be achieved as if the service were performed in person.

b. Prior to initiating contact with a client for the purpose of providing services to the client using telehealth, a certified professional midwife shall:

(1) Review the client's history and all relevant medical records; and

(2) Determine as to each unique client encounter whether the certified professional midwife will be able to provide the same standard of care using telehealth as would be provided if the services were provided in person.

16.7(4) *Scope of practice.* A certified professional midwife who provides services through telehealth must ensure the services provided are consistent with the certified professional midwife's scope of practice, education, training and experience.

16.7(5) *Certified professional midwife-client relationship.*

a. Prior to providing services through telehealth, the certified professional midwife shall first establish a certified professional midwife-client relationship. A certified professional midwife-client relationship is established when:

(1) The client seeks assistance from the certified professional midwife;

(2) The certified professional midwife agrees to provide services; and

(3) The client agrees to be treated, or the client's legal guardian or legal representative agrees to the client's being treated, by the certified professional midwife regardless of whether there has been a previous in-person encounter between the certified professional midwife and the client.

b. A certified professional midwife-client relationship can be established through an in-person encounter, consultation with another certified professional midwife or health care provider, or telehealth encounter.

c. Notwithstanding paragraphs 16.7(5)*"a"* and *"b,"* services may be provided through telehealth without first establishing a certified professional midwife-client relationship in the following settings or circumstances:

(1) In response to an emergency or disaster;

(2) Via informal consultations with another health care provider performed by a certified professional midwife outside of the context of a contractual relationship, or on an irregular or infrequent basis, without the expectation or exchange of direct or indirect compensation;

(3) A substitute certified professional midwife acting on behalf and at the designation of an absent certified professional midwife in the same specialty on an on-call or cross-coverage basis.

16.7(6) *Consent to telehealth.* Prior to providing services via telehealth, the certified professional midwife shall obtain consent from the client, or the client's legal guardian or legal representative, to receive services via telehealth.

16.7(7) *Technology.* A certified professional midwife providing services through telehealth shall utilize technology that is secure and compliant with the Health Insurance Portability and Accountability Act (HIPAA), as effective [effective date of this rulemaking]. The technology must be of sufficient quality, size, resolution, and clarity such that the certified professional midwife can safely and effectively provide the telehealth services and abide by the applicable standard of care.

16.7(8) *Records.* A certified professional midwife who provides services through telehealth shall maintain a record of the care provided to the client. Such records shall comply with all applicable laws, rules, and standards of care for recordkeeping, confidentiality, and disclosure of a client's medical record.

16.7(9) *Follow-up care.* A certified professional midwife who provides services through telehealth shall refer a client for follow-up care when required by the standard of care.

These rules are intended to implement Iowa Code section 148I.4 as enacted by 2023 Iowa Acts, House File 265, section 7.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 117
"Outdoor Advertising"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 306B.4, 306B.5, 306C.6, 306C.11, 306C.18, 306C.24, and 306D.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 306B, 306C, and 306D; 23 U.S.C. 131; and 23 CFR Part 750

Public Hearing

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

April 11, 2024
10 to 10:30 a.m.

Microsoft Teams link
Or dial: 515.817.6093
Conference ID: 354 741 910

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Brooks Glasnapp
Advertising Management
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1255
Email: brooks.glasnapp@iowadot.us

Purpose and Summary

The Highway Beautification Act, 23 U.S.C. Section 131, was passed in 1965 and was intended to protect the public's investment in the primary highway system, promote the safety and recreational value of public travel, and preserve natural beauty alongside the roadway. The prohibition on outdoor advertising signs in rural, residential, and other areas not considered commercial or industrial was a key element to this law. To encourage participation by all 50 states, the 10 percent penalty was included as a potential consequence for noncompliance. Forty-six states have laws and regulations that are similar to Iowa's regulations, while four states completely ban outdoor advertising signs.

The Iowa Code and this chapter intend to establish and maintain "effective control" of outdoor advertising signs adjacent to the primary highway system in Iowa. Federal requirements in 23 CFR Section 750.705 must be met for the Federal Highway Administration (FHWA) to determine that said "effective control" is achieved and maintained. Regulations and enforcement procedures are submitted to FHWA for approval when changes are proposed. Any changes must comport with agreements signed between the Department and FHWA dated 1965, 1972, and 2006, with the 1965 Highway Beautification Act, as amended, and with the standards contained in 23 CFR Part 750.

Iowa's advertising control program was reviewed by FHWA in 2018 and found to be providing effective control. In 2021, Iowa's statutes were amended to pass constitutional muster following review of First Amendment case law, including the U.S. Supreme Court case *Reed v. Town of Gilbert* [2015], and subsequent U.S. Circuit Court decisions. Several states including Iowa were directly affected by lawsuits that were filed claiming that content-based discrimination is inherent in laws that categorize

types of signs based on the content of the sign, resulting in varying levels of size, location, and spacing restrictions. Such discrimination, especially if applied to noncommercial speech, failed a strict scrutiny standard of review, resulting in state laws being overturned in Oregon, Texas, Tennessee, and Kentucky. Cases in Iowa, Colorado, and Ohio had not yet progressed to this step when statutes were proactively amended. The federal law itself, even as compromised by the *Reed* case, remains in effect, meaning states must continue to adhere to its requirements as closely as possible to avoid a penalty on highway funds.

For Iowa, the 2021 amended statutes, as well as the 2021 amended rule chapter, connect regulation to the exchange of remuneration (compensation of any form) between the owner of the sign, the property owner, and the business being advertised on the sign. If remuneration exists, the sign qualifies as an "advertising device" under the amended definitions and is therefore regulated. All such signs are regulated equally without regard to the content of the sign. The Department worked with the industry association in the development of the amendments so that the outcome resembled the traditional approach. In other words, signs displaying on-site messages would be exempt, while signs displaying off-site messages would be regulated. FHWA was provided with the opportunity to review these amendments during development. The other six states, with some variation, also developed control schemes that connect regulation to the exchange of compensation.

In 2022, the U.S. Supreme Court determined in *City of Austin v. Reagan National Outdoor Advertising* that using a strict scrutiny standard of review is not necessary to distinguish between signs displaying messages concerning businesses that are located on the premises of the business, and signs that are located off the premises of the business. While this preserved the ability of state and local authorities to draw this important and primary distinction when constructing laws and ordinances, there remain some minor content-based elements within the federal law that would not pass the test of *Reed*, including an exemption for religious notices provided such notices do not exceed eight square feet in size. Since no solution has yet to be developed for these vulnerabilities, the Department has not taken any interest in further amendments to the statutes at this time, while continuing an open dialogue with FHWA.

This proposed repromulgation of Chapter 117 was undertaken with an effort to follow Executive Order 10 (January 10, 2023) by eliminating redundancies and any unnecessary restrictions that are not contained in federal requirements or that do not directly further the legislative intent of Iowa Code chapter 306B, 306C, or 306D.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The regulated industry and various individual business owners who have advertising permits bear the cost of the proposed rulemaking. The Iowa Legislature's passage of Iowa Code chapter 306C in the early 1970s resulted in the creation of a special fund for the deposit of permit revenue from the signs regulated. This fund was intended to be self-sustaining and has been sufficient over the years to operate the regulatory program, which includes billboards, logo signs, and tourist-oriented directional signs.

The cost for a billboard permit is $100, plus an annual renewal fee that ranges between $15 and $50 depending upon the size of the sign. These fees, along with revenue from the logo and directional sign programs, cover the salaries, benefits, equipment, vehicle, and fuel expenses for the seven-member section responsible for administering these signing programs.

The fees have not been increased since 1996. In 2020, the chapter was amended so that signs with a size of 32 square feet or less were exempted from all fees. The proposed repromulgation continues that exemption and does not increase permit fees.

- Classes of persons that will benefit from the proposed rulemaking:

All Iowans benefit from the receipt of annual federal aid highway apportionments. These funds help maintain existing highway infrastructure and build new highways where needed. A 10 percent penalty on the apportionment would amount to $63.6 million, and the penalty would continue each subsequent year until effective control is reinstated.

Iowans also benefit from having primary road systems that have not been compromised in highway safety or by the deterioration of roadside views due to the existence of advertising sign clutter. The statute and this proposed repromulgation limit advertising signs to the commercial or industrial areas in accordance with spacing requirements.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The quantitative impacts include an initial application fee of $100 to cover the expense of conducting a field review of the location to ensure that it meets federal and state requirements. Signs measuring 32 square feet or less in size are exempt from this fee. Annual renewal fees on a tiered schedule are billed each year, ranging from $15 to $50 depending upon the size of the sign, again with the smaller signs being exempted.

Quantitative impacts would also include the cost of constructing an advertising sign on someone else's property without being aware of state laws and regulations. If the sign is in a nonconforming area, it may need to be removed, resulting in wasted material and labor expenses. The Department does not have information on these costs.

- Qualitative description of impact:

Qualitative impacts include a lost-opportunity cost to advertise along a primary highway when the business does not enjoy highway frontage and the location of the sign does not conform to zoning and spacing requirements. The Department attempts to mitigate the effect by providing some flexibility on time frames for compliance, and by providing alternatives for making signs legal. The Department has also expanded the blue directional sign program so that nearly all businesses open to the general public and in rural areas within ten miles of a primary highway can qualify for participation.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Department attempts to keep the advertising control program operating at a net-neutral revenue level. The operating costs are paid out of the Highway Beautification Fund, which is supported by the advertising permit fees charged through the billboard, logo, and directional sign programs. The advertising control program requires almost $1 million to operate, and the revenue from permit fees is approximately at that level. Fund levels at the annual low point of April 1 have been as follows:

April 1, 2021: $2,089,079.41
April 1, 2022: $2,082,460.54
April 1, 2023: $2,034,491.69

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues since the program is generally self-sustaining through the permit billing mechanism.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

With the proposed chapter in effect, the Department would receive its full annual federal-aid highway apportionment, and advertising signs would be limited to the commercial or industrial zones along the primary highway system in accordance with state and federal spacing requirements.

With inaction, the Department would receive a warning from FHWA on providing effective control in accordance with 23 CFR Section 750.705. After a specified period of time of inaction, highway funding is reduced by 10 percent. The most recent calculation of this penalty is $63.6 million, continuing each year in which effective control is not provided. Many cities and counties already have ordinances that contain similar restrictions, so individuals interested in the unrestricted scenario may still be unable to place commercial-type signs in the rural or residential areas. Some local jurisdictions defer to state regulations on primary routes, so there could also be an unintended consequence if state control were to be lifted without adequate notice given to those jurisdictions.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

In accordance with Part IV of Executive Order 10, a rigorous item-by-item review of Chapter 117 has been conducted to ensure that the least restrictive means are used in achieving effective control as described in 23 CFR Part 750 and in implementing Iowa Code chapters 306B, 306C, and 306D. In addition, a review of agreements that have been signed with the U.S. Secretary of Transportation for the purpose of the preservation of highway funds was conducted to ensure that rules sufficiently meet, but do not unnecessarily exceed, what is necessary to meet the Department's agreement obligations. Although it is not uncommon for a state to have more restrictive requirements for outdoor advertising, Iowa has generally been only just as restrictive as the federal requirements.

After review and study, a number of regulations were identified that are not specifically required in any statute or federal law, regulation, or guidance. These regulations only marginally further the intent of the statutes, and the public benefit or protection from public harm is nearly insignificant. These are proposed to be rescinded, as explained in the Red Tape Review Rule Report.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

At least two states, Texas and Pennsylvania, have a certification program that is administered by city governments, as provided for in 23 CFR Section 750.706.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The state is still ultimately responsible for control, and the Texas regulator does not recommend this approach due to the same amount of work being necessary to coordinate satisfactory control at the local level. Notably, the city of Philadelphia was "de-certified" by FHWA for not providing effective control. The state was then left to rectify the problems that developed during the time in which control was deferred to the city. From the public's viewpoint, the outcomes would not be affected because the federal standards would need to be met regardless of which jurisdiction is enforcing the standards.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

In 2019, the Department reviewed the advertising control program, looking for ways to reduce any impacts on small business. One solution implemented was to exempt all signs measuring 32 square feet or less in size from the permit fee structure. More recently, eligibility for the blue directional sign program was expanded so that more businesses in general could qualify, providing a much-needed option for signing in the rural areas where advertising permits are often not allowed due to the lack of commercial or industrial zoning.

Other than the listed changes in this Regulatory Analysis, the Department is not aware of any other less restrictive means by which effective control can be maintained in accordance with 23 CFR Section 750.705.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 117 and adopt the following **new** chapter in lieu thereof:

CHAPTER 117
OUTDOOR ADVERTISING

761—117.1(306B,306C) Definitions. The definitions in Iowa Code section 306C.10 are adopted. In addition:

"Abandoned sign" means an advertising device for which the owner has failed to timely apply for the required outdoor advertising permit(s) or has failed to timely pay the required fee(s).

"Blank sign" means an advertising device for which any of the following conditions exist:

1. The face does not display advertising copy.
2. The face has been removed.
3. The entire advertising device has been removed or does not exist at the permitted location.

"Daylight area" means a triangular area formed by a line connecting two points each back (50 feet in city, 100 feet in unincorporated area) from the point where the right-of-way lines of the main traveled way and an intersecting street meet or would meet if extended.

"Destroyed" means that at least 60 percent of the supports are broken, if wooden, or broken, bent or twisted, if metal, such that normal repair practices would call for the replacement of the damaged supports.

"Face" means that part of an advertising device that is devoted to the display of advertising and that is visible to traffic proceeding in any one direction.

"Interchange" means the entire area constructed for a junction of two or more public streets or highways by a system of separate levels that permit traffic to pass from one level to another without the crossing of traffic streams. This includes all acceleration and deceleration lanes constructed to accommodate this movement of traffic.

"LED display" means a face, as defined herein, displaying a message that is formed by light-emitting diodes and that is changed by an electronic process. An LED display is a single face.

"Modification" means any addition to or change in dimensions, lighting, structure or advertising face, except as incidental to the customary maintenance of an advertising device.

1. A change in the number or type of support posts is a modification. A change in dimensions is a modification. However, the addition of extensions or cutouts, including forward projecting, is not a modification if the extensions or cutouts are added for a period of 90 days or less and if they are illuminated only by existing sign lighting and do not contain internal lighting.
2. A lawful change in advertising message is not a modification. The use of a vinyl overlay or wrap on either a poster panel or paint unit is a change in advertising message, not a modification.
3. On an advertising device that conforms to all current requirements, the replacement of one metal-framed face with another metal-framed face of the same size, using dissimilar component parts or assembly methods, or both, is not a modification.
4. The addition of LED display capabilities to an advertising device is a modification.
5. The elimination of trim surrounding the area used for advertising copy is not a modification, provided the advertising copy retains the same dimensions as the original advertising copy.

"Nonconforming sign" means an advertising device that was lawfully erected and continues to be lawfully maintained, but that does not comply with current requirements due to changed conditions, such as a change in zoning, establishment of a new highway, or a similar change that affects compliance.

"Regularly used" means open for business and staffed by an owner or employee for at least 20 hours per week, on property assessed as commercial or industrial by the jurisdiction having authority, and with the hours of operation visibly posted on the premises. The department may delay action on the permit

application for up to 180 days from the date of the application in order to conduct periodic checks on the site as necessary to determine whether the purported commercial or industrial activity meets this definition. A rental storage business is excepted from the staffing requirement if it has 24-hour access for customers and a minimum of 50 units, each occupying at least 50 square feet, individually separated, and enclosed by walls.

"Scenic area," as used in Iowa Code section 306C.13, means any area of particular scenic beauty or historical significance, as determined by the federal, state or local officials having jurisdiction of the area. It includes real property interests that have been acquired for the restoration, preservation and enhancement of scenic beauty.

"Tri-face device" means an advertising device with three singular faces attached to one common structure in a triangular configuration.

"Tri-vision device" means an advertising device that has an advertising face with a mechanical device that allows three advertising messages to be alternately visible to traffic proceeding in any one direction. Each message is attached to individual vertical or horizontal louvers, which are mechanically rotated to change the message.

"Widening," as used in Iowa Code section 306C.13, means the point at which it is detectable that a deceleration or exit ramp is beginning to form alongside the main traveled way, or an acceleration or merging ramp has tapered to a close alongside the main traveled way. In the case where an entrance ramp becomes an auxiliary lane and the auxiliary lane becomes an exit ramp at the adjacent interchange, the widening shall be the point at which a deceleration ramp completely separates from the main traveled way as evidenced by the inside lane marking of such ramp, or an acceleration ramp joins with the main traveled way as evidenced by the inside lane marking of the ramp intersecting with the outside lane marking of the main traveled way.

761—117.2(306B,306C) General provisions.

117.2(1) *Scope.* This chapter pertains to all advertising devices which are visible from the main traveled way of any primary highway, except for the following:

a. Advertising devices within incorporated areas which are beyond 660 feet from the nearest edge of the right-of-way.

b. Official traffic control devices, logo signing and tourist-oriented directional signing.

c. Advertising devices erected within the right-of-way of any primary highway; such devices are subject to Iowa Code chapter 318.

117.2(2) *Rebuttable presumption.* The department may regulate signs as advertising devices except when sufficient documentation from persons reasonably identified as potential payors or receivers of remuneration is available to the department showing or certifying that remuneration does not exist.

117.2(3) *Contact information.* Inquiries, requests for forms, and applications regarding this chapter may be directed to the Advertising Management Section, Traffic and Safety Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. Similar information is also available at www.iowadot.gov/iowaroadsigns/sign-programs-and-applications/advertising-signs.

117.2(4) *Advertising devices permitted under the private directional sign program between May 26, 1983, and July 1, 2021.* Any advertising device permitted as a private directional sign by the department between May 26, 1983, and July 1, 2021, may continue to exist, even if nonconforming to this chapter, under the following conditions:

a. The permit is renewed each year by payment of a $15 fee on or before July 1.

b. The permit remains issued to the owner of the permit on record with the department on July 1, 2021.

c. The advertising device is not modified or destroyed.

d. The advertising device is properly maintained with legible copy.

e. The design and display of the advertising device meet federal standards contained in 23 CFR Section 750.154 as amended to October 1, 2023.

761—117.3(306B,306C,306D) General criteria.

117.3(1) *Limitations.* In addition to the standards contained in Iowa Code section 306C.13, advertising devices shall not be erected or maintained:

a. Which attempt or appear to attempt to direct the movement of traffic.

b. Which move or have any animated or moving parts in areas subject to Iowa Code chapter 306B.

c. Which contain LED displays, unless each advertisement remains in a fixed position on the display screen for at least eight seconds, transitions between advertisements occur within one second, and advertisements are not flashed, rolled, scrolled, or moved in any way on the display screen.

d. Within the adjacent area of a designated scenic byway, unless the erection occurred prior to the date of designation, in which case subsequent permitting may occur in accordance with Iowa Code section 306C.18.

117.3(2) *Measurements of distance.* Measurements of distance for general spacing purposes are conducted in a horizontal manner parallel with the highway centerline. However, when determining the limits of the adjacent area defined in Iowa Code section 306C.10, measurements from the edge of the right-of-way are conducted in a horizontal manner perpendicular to the highway centerline.

117.3(3) *Measurement of size.* The size of an advertising device is determined by measuring the smallest square, rectangle, triangle, circle or combination thereof which will encompass the entire display area including border and trim, but excluding temporary cutouts and extensions, base, apron, support, and other structural members.

117.3(4) *Zoning exclusions.* The following zoning actions are not commercial or industrial zones for advertising control purposes:

a. A zone in which limited commercial or industrial activities are permitted incidental to other primary land uses.

b. Action which is not a part of comprehensive zoning in accordance with Iowa Code chapter 335 or 414.

c. Action taken primarily to permit advertising devices.

761—117.4 Reserved.

761—117.5(306B,306C) Location, size and spacing requirements.

117.5(1) *Advertising devices lawfully in existence prior to July 1, 1972.*

a. An advertising device that was lawfully in existence prior to July 1, 1972, including a device located beyond the adjacent area in unincorporated areas, may remain in existence without conforming to the location, size and spacing requirements in this rule provided that a permit is maintained in accordance with rule 761—117.6(306C).

b. If the advertising device is located in an adjacent area which is neither a zoned nor an unzoned commercial or industrial area, the device may remain in existence as described in paragraph 117.5(1)*"a"* only until such time as the device is acquired by the department. The permit issued for the device will be a provisional permit in accordance with Iowa Code section 306C.18(3) and subject to acquisition in accordance with rule 761—117.9(306B,306C).

117.5(2) *Advertising devices erected after July 1, 1972.* Except as otherwise provided in subrule 117.2(4), advertising devices shall not be erected after July 1, 1972, or subsequently maintained except for those which comply with Iowa Code chapters 306B and 306C and the following criteria:

a. Commercial or industrial area. Eligible areas for permitting are limited to the following three areas:

(1) Adjacent to interstate highways; areas which are zoned and used for commercial or industrial purposes in accordance with Iowa Code section 306B.2; within 750 feet of the regularly used portion of a commercial or industrial activity visible from the main traveled way; and on the same individual, platted parcel of land as that commercial or industrial activity.

(2) Adjacent to noninterstate primary highways; areas which are zoned commercial or industrial.

(3) Adjacent to noninterstate primary highways; areas which meet the definition of an unzoned commercial or industrial area.

b. *Spacing.* In addition to the standards contained in Iowa Code sections 306B.2 and 306C.13, the following requirements apply:

(1) Spacing standards apply to advertising devices for all highways from which the devices are visible, when more than one highway is in the vicinity of the advertising device.

(2) Spacing standards default to unincorporated spacing when both incorporated and unincorporated areas exist within the adjacent area on either side of the highway. However, daylight spacing may be determined by whether the subject location itself is within or outside of the incorporated municipality.

(3) Advertising devices subject to the daylight area spacing exemption in Iowa Code section 306C.13(5) are considered in conformity with that Iowa Code section if the catwalk or light ballasts extend out further than the 12 inches specified, provided such parts do not overhang the right-of-way. If the building from which the device is mounted is removed, the permit is revoked.

(4) Applications for advertising devices proposed in a location which meets the spacing requirements for that location, but which create a nonconformity to exist with another permitted advertising device, will be denied or adjusted so that the nonconformity is not created.

c. The following types of advertising devices are eligible for permits:

(1) Single face devices; one permit required.

(2) Back-to-back devices; two permits required.

(3) V-type devices with the inside angle formed by the two faces not exceeding 60 degrees so that both faces are not readable upon approach; two permits required.

(4) Devices commonly referred to as side-by-sides or double-decks are classified as either single face, back-to-back, or v-type, as provided in this paragraph. However, provisions do not exist for panels of copy which may be oriented in the same direction, but which are not lined up on the same vertical and horizontal planes, or which are not physically connected to the same structure with more than two feet of distance between them, or which are owned by different entities.

(5) Tri-face devices are classified as v-type devices for permitted purposes from the primary highway in which the two faces are visible. If visibility of the third face exists due to a turn in the highway or another primary highway exists in the vicinity, a third permit is required.

(6) Tri-vision devices, with a rotation occurring not more rapidly than four seconds for each display, are classified as either single face, back-to-back, or v-type, as provided in this paragraph, depending upon the structure.

761—117.6(306C) Outdoor advertising permits and fees required.

117.6(1) *Application.* Application for a permit for any advertising device subject to subrule 117.2(1) shall be made in accordance with Iowa Code section 306C.18 within the following time frames:

a. On or before July 31, 1972, for advertising devices in existence on July 1, 1972.

b. Prior to the erection of the advertising device, if erected after July 1, 1972.

c. Within 30 days of receiving notice from the department that a lawfully erected advertising device which was not subject to subrule 117.2(1) has become subject to subrule 117.2(1) for reasons including but not limited to the establishment of a new primary highway or a change in the designation of a roadway to a primary highway.

117.6(2) *Fees.* Fees are applicable to all advertising devices measuring over 32 square feet in size.

a. The initial fee, payable at the time of application, is $100 per permit. This fee is not refundable unless the application is withdrawn prior to the department's field review of the proposed location.

b. The annual renewal fee for each permit, due on or before June 30 of each year, is as follows:

Area of Sign	Annual Renewal Fee
33 to 375 square feet	$15
376 to 999 square feet	$25
1,000 square feet or more	$50

c. The payment of an annual renewal fee, if postmarked on or before June 30 of each year or otherwise delivered to the department on or before June 3 of each year, automatically renews the existing permit for the device for which the fee was paid.

d. A permit for which the fee was not paid in a timely manner expires on July 1 of each year. If an advertising device is still in existence, it is considered abandoned. If the owner wishes to reapply for a permit to retain the device, the device and location will be reviewed in the same way that a review is conducted for a newly proposed advertising device.

e. Renewal fees are not refundable and are not prorated.

117.6(3) *Highway improvement projects.* The department shall not prevent nor unnecessarily delay the issuance of a permit for the reason of a proposed future highway improvement project, except under any of the following conditions:

a. The property upon which the advertising device is proposed has been appraised for the purposes of acquisition.

b. Contact by department staff has been made with the property owner regarding compensation for the affected area.

c. The placement of the advertising device would fail to meet the requirements of an existing corridor preservation plan in effect for the proposed location.

d. A construction contract for the project has been initiated by the department.

117.6(4) *Permit plate.* Upon approval of the application, the department will issue a numbered metal permit plate for the advertising face. This permit plate shall be securely attached to the advertising device in a manner that the plate is unobstructed from view from the highway. If the plate is not displayed, the department may provide notice to the owner that the plate is to be displayed within 90 days. If after that period of time the plate is not displayed, the department may cancel the permit.

117.6(5) *Reconstruction or modification.* A new permit is required from the department prior to the reconstruction or modification of a permitted advertising device.

a. Permit applications will be reviewed for compliance with Iowa Code chapter 306C and this chapter; nonconforming signs are not eligible for permit approval for reconstruction or modification.

b. Reconstruction or modification of an advertising device prior to the issuance of the permit needed to conduct such action shall result in revocation of the existing permit that has been issued for the advertising device. This may result in the removal of the advertising device in the manner specified in subrule 117.8(1) if the device is not eligible for permitting in accordance with this chapter or Iowa Code chapter 306B or 306C.

117.6(6) *Access.* Access to the private property upon which an advertising device is located shall be gained only from legal accessways through private property, local streets, secondary roads, or from the primary highway right-of-way through access points designated or allowed by the department in accordance with 761—Chapter 112. Unauthorized use of the primary highway right-of-way for the purpose of constructing or maintaining an advertising device may be cause for permit revocation and removal of the device. The department will issue a warning letter to the owner of the permit following the first instance of unauthorized use; a second instance will result in the revocation of the permit followed by a 12-month period where no new permits may be issued to that person or entity in the same location, or within 500 feet of the same location. The existing device for which the permit was revoked is subject to removal in accordance with Iowa Code section 306C.19.

117.6(7) *Vegetation in the right-of-way.* No vegetation in the right-of-way may be removed, trimmed, poisoned, or altered so that the viewing time can be improved for an advertising device, unless written authorization is received from the department and the conditions included in the authorization are followed. Proceeding to remove, trim, poison, or alter vegetation without such authorization may result in the revocation of the permit for the device and the removal of the device in accordance with subrule 117.8(1). In addition, the department may suspend permit approvals for a 12-month period for any location within 500 feet of the location of the former permit.

117.6(8) *Use and condition.*

a. The maximum period of time in which an advertising device may qualify as a blank sign is six months.

b. The maximum period of time in which an advertising device may have illegible copy or be in a state of disrepair is 90 days.

c. If the department determines that an advertising device has been blank for a period of time exceeding six months, or has illegible copy or is in a state of disrepair for a period of time exceeding 90 days, the department may issue a notice pursuant to rule 761—117.8(306B,306C) in which the owner has 30 days to either cause it to conform or to remove it.

117.6(9) *Destroyed sign.*

a. The permit for an advertising device which has been destroyed will automatically be revoked.

b. An advertising device which has been destroyed is in a condition which, if repaired, would meet the definition of reconstruction in Iowa Code section 306C.10 and is subject to subrule 117.6(5). Whether the device can be reconstructed will depend upon whether it conforms to this chapter and Iowa Code chapters 306B and 306C.

c. An advertising device which has been damaged, but not destroyed, may be repaired. The repair is not deemed an act of reconstruction.

761—117.7 Reserved.

761—117.8(306B,306C) Removal procedures.

117.8(1) Advertising devices subject to this chapter which have been abandoned, or illegally erected or maintained, may be removed, or caused to be removed, by the department after 30 days' notice in accordance with Iowa Code section 306C.19.

117.8(2) Advertising devices removed by the department may be reused, scrapped or disposed of by the department with no compensation paid to the owner.

117.8(3) Revocation of a permit may be included as part of the 30 days' notice, if served by restricted certified mail or by personal service.

761—117.9(306B,306C) Acquisition of advertising devices that have been issued provisional permits.

117.9(1) The department will acquire an advertising device for which a provisional permit has been issued only if all of the following conditions are met:

a. Acquisition is required by federal law.

b. All necessary federal and state funding is available for the purpose.

c. The permit has not been revoked.

117.9(2) If the advertising device will be acquired, the department will use the following procedure:

a. A written notice of the department's intent to revoke the provisional permit and acquire the device will be mailed or delivered to the owner of the advertising device and to the owner of the land upon which the device is located. The notice will include an offer to purchase the advertising device. If good-faith negotiations with the owner of the device and the owner of the land upon which the device is located do not result in a mutually agreeable sale price, the department may revoke the provisional permit and initiate condemnation proceedings as provided in Iowa Code chapter 6B.

b. In the event of condemnation, possession will be taken of the advertising device as soon as the award has been deposited with the sheriff.

761—117.10(17A,306C) Contested cases.

117.10(1) An applicant who has been denied an outdoor advertising permit by the department may timely contest the decision in accordance with 761—Chapter 13. A request is considered timely if submitted in writing to the director of the traffic and safety bureau at the address in subrule 117.2(3) and delivered or postmarked within 30 days of the department's mailing of the letter denying the application.

117.10(2) The owner of an outdoor advertising permit which has been revoked or canceled by the department may timely contest the decision in accordance with 761—Chapter 13. A request is considered timely if submitted in writing to the director of the traffic and safety bureau at the address in subrule

117.2(3) and delivered or postmarked within 30 days of the owner's receipt of the revocation notice issued by the department.

117.10(3) Failure to timely request a hearing on the denial, revocation, or cancellation of a permit is a waiver of the right to a hearing and a failure to exhaust administrative remedies.

These rules are intended to implement Iowa Code chapters 306B and 306C and section 306D.4, 23 U.S.C. Section 131, and 23 CFR Section 750.705.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 42
"Crossing of Railroad Rights-of-Way"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3, 476.1, 476.1A, 476.1B and 476.27

State or federal law(s) implemented by the rulemaking: Iowa Code sections 476.1, 476.1A, 476.1B and 476.27

Public Hearing

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

April 24, 2024
10 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Iowa Utilities Board no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

IT Support
1375 East Court Avenue
Des Moines, Iowa
Phone: 515.725.7300
Email: ITsupport@iub.iowa.gov

Purpose and Summary

The purpose of this proposed chapter is to implement Iowa Code section 476.27 by providing backstop terms and conditions for crossing railroad rights-of-way by public utilities.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Proposed Chapter 42 imposes no direct costs on the public, railroad companies, or utility companies and does not prevent a railroad company and utility from negotiating other terms and conditions applicable to a crossing or agreeing to a different dispute resolution mechanism.

- Classes of persons that will benefit from the proposed rulemaking:

Railroad companies and utilities that are unable to agree to terms for crossing benefit by having a dispute resolution process available will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Utilities pay railroads a one-time standard crossing fee of $750 for placing facilities within a railroad's right-of-way.

- Qualitative description of impact:

This chapter allows utilities to construct critical infrastructure across railroad rights-of-way by providing backstop terms and conditions.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no additional costs to any agency other than the normal everyday costs of the operation of the Board.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because Iowa Code section 476.27 compels the Board to adopt rules prescribing the terms and conditions for railroad crossings by utilities, the cost of inaction would be the Board's inability to carry out its obligations under the law. There are no benefits to inaction.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Because Chapter 42 imposes no direct costs, the agency does not believe that there is a less costly or less intrusive method.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

Because Iowa Code section 476.27 compels the Board to adopt rules prescribing the terms and conditions for railroad crossings by utilities, there are no alternative methods available for the Board to seriously consider.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Because Iowa Code section 476.27 compels the Board to adopt rules prescribing the terms and conditions for railroad crossings by utilities, there are no alternative methods available for the Board to reject.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The Board does not believe that proposed Chapter 42 will have an adverse impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 42 and adopt the following **new** chapter in lieu thereof:

CHAPTER 42
CROSSING OF RAILROAD RIGHTS-OF-WAY

199—42.1(476) Definitions. The following words and terms, when used in these rules, have the meanings set forth in Iowa Code section 476.27: "board," "crossing," "direct expenses," "electric transmission owner," "facility," "public utility," "railroad" or "railroad corporation," "railroad right-of-way," and "special circumstances."

In addition, as used in this chapter, the following definitions apply:

"Complainant" means a person who complains to the board by written complaint regarding any of the issues identified in Iowa Code section 476.27(2) or these rules.

"Petitioner" means a person who files a written petition with the board seeking a determination of special circumstances pursuant to Iowa Code section 476.27(4).

"Respondent" means a person against whom a complaint or petition is filed.

"Small utility" means a public utility and all affiliates of the public utility that collectively serve fewer than 20,000 customers. For purposes of this definition, a customer means the party responsible for payment of the utility services. When the specification exhibit is filed with the railroad, the small utility will certify on the specification exhibit that it meets the definition of a small utility as contained in this rule. The specification exhibit will also state that at such time that the small utility no longer meets the small utility definition, that it will have an affirmative duty to so notify the railroad.

199—42.2(476) Applicability and purpose. These rules provide terms and conditions for the crossing of railroad rights-of-way by public utilities. However, these rules shall not prevent a railroad and public utility from negotiating other terms and conditions applicable to a crossing or agreeing to a different dispute resolution mechanism than that provided for in Iowa Code section 476.27 and these rules. These rules do not apply to longitudinal occupancy of railroad right-of-way but only to the crossing of railroad right-of-way.

199—42.3(476) General notice and specification exhibit requirements and payment of fee.

42.3(1) *Notice and exhibit.* Any time a public utility intends to construct a crossing across railroad right-of-way, the utility shall submit to the railroad a notification of intent to construct, along with a specification exhibit that shows the location of the crossing and the railroad's property, tracks, and wires that the public utility's facilities will cross. The notice and exhibit shall be submitted to the railroad by certified mail, return receipt requested. The one-time standard crossing fee of $750, unless otherwise agreed to by the railroad and public utility, shall accompany the notice and exhibit. The public utility shall use its best efforts to submit the specification exhibit on a form provided or approved by the railroad. The specification exhibit constitutes the public utility's warranty that the public utility facilities that are the subject of the exhibit will be constructed and installed as shown on the exhibit. Railroad Crossing Specification Exhibit forms are available on the board's website, iub.iowa.gov.

42.3(2) *Exhibit—overhead wireline crossings.* For overhead wireline crossings, the specification exhibit shall contain, at a minimum, the location of the poles supporting the crossing span and adjoining spans on each side of the crossing span on the proposed facilities; the number, kind, and size of wires; and the clearance between the facilities and any existing railroad tracks, wires, or fiber-optic lines.

42.3(3) *Exhibit—underground crossings.* For underground crossings, the specification exhibit shall contain, at a minimum, the number, kind, and size of wires, pipes, and conduit and casing to be used; the commodity conveyed; and the depth to which the public utility facilities will be placed below the base of the rail track and at other locations on the right-of-way. Multiple wires to be contained within a single conduit may be combined on a single exhibit and notice of intent to construct. Both cased and uncased natural gas pipeline crossings shall be provided for on the specification exhibit form or forms.

42.3(4) *Authorization to commence construction.* After 35 days from the mailing of the notice, specification exhibit, and fee, the public utility, absent a claim of special circumstances or objection

from the railroad that the information contained in the specification exhibit is inadequate or incomplete, shall be deemed to have authorization to commence construction of the facilities that are the subject of the specification exhibit. In the event the public utility does not commence construction within 120 days from the mailing of the notice or any changes to the specification exhibit, whichever is later, the notice shall expire and the fee may be retained by the railroad. If the public utility subsequently desires to proceed with construction of the facilities subject to the notice, the public utility must again comply with the notice, specification exhibit, and fee requirements of these rules.

42.3(5) *Crossing notice and payment of flagging costs.* In addition to any other required notice, a public utility, except for emergency repair or maintenance, shall provide the railroad written notice at least ten days prior to commencing any construction, maintenance, or repair of facilities within the railroad's right-of-way. Such notice is to enable the railroad to make any appropriate flagging arrangements. The public utility shall reimburse the railroad for actual flagging expenses within 30 days of receipt of a bill for flagging services.

42.3(6) *Securing damages—special circumstances.* Pending a board resolution of a claim of special circumstances raised in a petition filed by the railroad pursuant to Iowa Code section 476.27(4) and subrule 42.18(2), a public utility may, upon compliance with these rules and securing the payment of an amount sufficient for the removal of any facilities constructed by the public utility in a manner approved by the board, proceed with construction unless the board intervenes to prevent construction pursuant to Iowa Code section 476.27(6).

42.3(7) *Inductive interference study.* If the railroad reasonably determines through its initial review of the specification exhibit and engineering analysis that a proposed public utility facility has a material possibility of posing an induction problem with railroad property, the public utility, if it wishes to proceed with the facility, shall cause a formal inductive interference study to be performed by a qualified engineer approved by the railroad. The public utility shall make and pay for any modifications to the proposed facility, or to the railroad's property, that are necessary to ensure safe and reliable operations of the railroad's property that are recommended by the qualified engineer. No public utility facility that has undergone an inductive interference study pursuant to this subrule shall be energized until the railroad has had an opportunity to conduct any appropriate tests to ensure that, after the facility is energized, there will not be any interference with the operation of the railroad's property. Any appropriate tests shall be conducted by the railroad within 30 days after receipt of a notice from the public utility that the facility is ready to be energized.

199—42.4(476) Emergency notice and repairs.

42.4(1) *Notice.* In the event a public utility or railroad needs to perform emergency or nonroutine maintenance or repair within a railroad right-of-way and the maintenance or repair may affect the operations of the other entity, immediate notification of the maintenance or repair being performed shall be given.

42.4(2) *Notification plan filing.* Each railroad and public utility with a facility crossing railroad right-of-way shall establish, and file with the board, a mechanism or plan for receiving emergency notifications 24 hours per day, seven days per week.

42.4(3) *Scope of emergency work and reimbursement of expenses.* Unless permission from the affected railroad or public utility has been received, the railroad and public utility may only perform maintenance or repair work of their own respective property. If the emergency maintenance or repair performed by the railroad or public utility causes reasonable expenses to be incurred by the other entity, those reasonable expenses shall be reimbursed.

199—42.5(476) Relocation of public utility facilities.

42.5(1) *Standard for relocation.* The railroad may require that the public utility, at the public utility's expense, relocate facilities on railroad right-of-way whenever such relocation is necessary to accommodate railroad operations. The decision that relocation is required is made solely by the railroad, although the railroad may not act arbitrarily or unreasonably. The public utility shall not have to pay a standard crossing fee for such relocations.

42.5(2) *Completion of relocation.* In the event relocation of facilities is required, the relocation shall be to a location mutually agreed upon by the railroad and utility, within the railroad right-of-way. The relocation shall be completed within a reasonable period of time.

42.5(3) *Statement of reasons.* Upon the request of the public utility, the railroad shall provide within 15 days a statement or other supporting documentation indicating the operational reasons for requiring relocation of facilities.

199—42.6(476) Engineering standards for electric and communications lines. These engineering standards apply to crossings that do not involve special circumstances such that additional or more stringent engineering standards may be warranted. The determination of such additional or more stringent standards will be determined on a case-by-case basis, according to the procedures in rule 199—42.18(17A,476), depending on the facts and circumstances associated with the particular crossing.

42.6(1) *General.*

a. Except as provided for in this chapter, electric and communications lines crossing railroads shall be constructed in accordance with 199—Chapter 25, the Iowa electrical safety code.

b. Crossings should be made as near as possible at an angle of 90 degrees to the railroad tracks, but in no event shall any crossing be at less than a 60-degree angle to the railroad track.

c. Aboveground facilities at road or pedestrian crossings shall be located or constructed in a manner that minimizes interference with lines of sight for observing oncoming trains.

42.6(2) *Additional requirements for overhead crossings.*

a. In determining the line height needed to meet the clearance requirements of the Iowa electrical safety code, the height of a rail car shall be assumed to be 23 feet.

b. Electric and communications lines shall be installed with at least four feet of clearance above overhead railroad signal and communications lines.

c. The perpendicular distance of poles from the centerline of the tracks shall not be less than the largest of the following:

(1) Unguyed poles shall be located a minimum distance equal to the height of the pole above the ground line plus ten feet. If guys are installed, they shall be placed in a manner that would prevent the pole from leaning or falling in the direction of the tracks.

(2) Fifty feet near straight tracks, except for industry track where ten feet is permitted. If the pole is located adjacent to curved track, the clearance shall be increased by 1.5 inches per degree of track curvature.

(3) Towers for electric lines capable of operating at 34,500 volts or more shall not be located on railroad right-of-way.

d. Poles shall be located a minimum distance from overhead railroad signal or communications lines equal to the height of the pole above ground line, or poles must be guyed at a right angle away from such lines.

e. Crossings shall not be installed under or within 500 feet of a railroad bridge, or 300 feet from the centerline of a culvert or switch area.

42.6(3) *Additional requirements for underground crossings.*

a. The minimum depth below the base of the rail shall be 4.5 feet except for fiber-optic cables, which shall be 5.0 feet.

b. The minimum depth at other locations on the right-of-way shall be:

(1) Five feet for fiber-optic cables;

(2) Four feet for conductors operating at more than 750 volts; and

(3) Three feet for all other lines.

c. Crossings shall not be installed within 50 feet of the end of a railroad bridge, the centerline of a culvert, or a switch area.

d. Casings must extend at least 30 feet from the centerline of the nearest track, measured at a right angle, except that casings for electrical conductors operating at more than 750 volts shall extend the full width of the right-of-way. At burial depths of less than 15 feet below the track, the casing material shall

be steel or rigid metal conduit. At depths of 15 feet or more, polyvinyl chloride (PVC) casing pipe may be used.

e. Except for the track and ballast area, warning tape shall be installed one foot below ground level over conductors operating at more than 750 volts, except that tape is not required for lines installed using horizontal directional drilling.

f. Bored crossings shall not be installed using water jetting or other methods that might leave cavities beneath a railroad embankment. Horizontal directional drilling techniques that use drilling mud are permitted. Pits for boring or drilling crossings shall be beyond the limits of the railroad embankment.

g. Unless otherwise authorized by the railroad, a railroad representative must be present during installation of buried crossings if there are underground railroad signal lines in the vicinity of the crossing.

199—42.7(476) Engineering standards for pipelines. These engineering standards apply to crossings that do not involve special circumstances such that additional or more stringent engineering standards may be warranted. The determination of such additional or more stringent standards will be determined on a case-by-case basis, according to the procedures in rule 199—42.18(17A,476), depending on the facts and circumstances associated with the particular crossing.

42.7(1) *General.*

a. Except as provided for in this chapter, pipelines crossing railroads shall be constructed in accordance with Part 5, "Pipelines," of the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering—2001.

b. For pipelines subject to 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," or 49 CFR Part 195, "Transportation of Hazardous Liquids by Pipeline," the appropriate federal standard shall control for pipeline marker signs, valves, corrosion control, welding and weld testing, and pressure testing. The design stress level in such pipelines shall not exceed that permitted by the appropriate federal standard.

c. Polyethylene (PE) pipe may be used as carrier pipe for natural gas pipelines. PE and PVC pipe may be used as carrier pipe for water and wastewater. Such pipe shall be manufactured of materials approved for its intended use by an appropriate standards organization.

d. Slip jointed carrier pipe may be used only for encased water or wastewater pipelines, and the ends of such casings shall be oriented such that drainage from any internal leakage will not endanger the railroad embankment.

e. Casings of material other than steel may be used with railroad company approval.

f. Cathodic protection test boxes located on railroad right-of-way shall be attached to casing vents or installed flush with the ground surface.

42.7(2) *Installation methods.*

a. Pipe shall be installed using boring, drilling, or jacking methods. Open cut crossings are permitted only with the specific authorization of the railroad company.

b. Pits for boring or jacking shall not disturb the railroad embankment and shall be located at least 30 feet from the track centerline where practical. Pits shall be of the minimum size necessary.

c. Bored crossings shall not be installed using water jetting or other drilling methods that might leave cavities beneath a railroad embankment. Horizontal directional drilling techniques that use drilling mud are permitted.

d. Pipe or casing shall be installed with at least one foot of separation from any other pipe or wire in the right-of-way.

e. When boring for pipe greater than 20 inches in diameter is proposed, and the pipe would be installed less than ten feet below the base of the rail, if the railroad has knowledge of soil conditions in the vicinity that could lead to deterioration of track support if the soil is disturbed, the railroad company may require that a geotechnical study be performed by the public utility to determine whether the proposed crossing site is undesirable or requires special construction methods or monitoring.

f. For unusually large pipeline crossings that do not involve special circumstances, or for crossings where geotechnical study has identified potentially destabilizing soil conditions, the railroad company

may require that a railroad representative be present during installation and may also require the presence of a survey crew to monitor the tracks for any change in alignment.

199—42.8(476) Liability. Each railroad and public utility shall maintain and repair its respective property within the railroad right-of-way, and the railroad and public utility shall bear responsibility for each person's own acts and omissions, except the public utility shall be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy.

199—42.9(476) Insurance.

42.9(1) Unless otherwise agreed upon by the railroad and public utility, the public utility shall maintain, or cause to be maintained, the following minimum insurance coverage with respect to each railroad crossing:

a. General public liability insurance with limits of not less than $500,000 for injury or death of a single person, or not less than $1 million for any one accident, and not less than $250,000 per accident for property damage. The exclusion or limitations for railroads shall be removed.

b. Comprehensive automobile liability insurance with limits of not less than $500,000 for injury or death of a single person, or not less than $1 million for any one accident, and not less than $250,000 for property damage.

c. Excess liability coverage with limits of not less than $5 million, except that the required limits shall be $1 million for small utilities for railroad crossings by facilities other than gas or hazardous materials pipelines.

d. Railroad protective liability insurance with a combined single limit of $4 million per occurrence and $6 million aggregate, except that the required limits shall be a combined single limit of $2 million per occurrence and $4 million aggregate for small utilities for railroad crossings by facilities other than gas or hazardous materials pipelines. Such coverage shall be required only during the period of construction, repair, or replacement of the facilities and may be provided by a blanket railroad protective liability insurance policy provided that the coverage, including the coverage limits, applies separately to each individual crossing on each individual railroad.

42.9(2) The coverage in paragraphs 42.9(1)*"a"* through *"d"* must be by blanket insurance policies covering other property or risks, or self-insurance. In the event the public utility desires to self-insure, it must maintain a minimum long-term rating of A- and net assets of not less than $100 million, unless the railroad agrees to different amounts. If the public utility's long-term rating is lowered below an A- rating, the public utility will provide commercial insurance as required in this rule and will notify the railroad that its long-term rating was lowered below A-.

42.9(3) The coverage in paragraphs 42.9(1)*"a"* through *"d"* must be in place prior to the commencement by the public utility of any work within the railroad's right-of-way in order to secure payment for any damages for which the public utility bears responsibility.

42.9(4) Before commencing construction of any facility, the public utility must provide to the railroad proof that the public utility has procured the insurance coverage as required in this rule.

199—42.10(476) Removal of equipment. Upon completion of any facility, the public utility shall remove, or cause to be removed, all tools, equipment, or other property used in the construction and, if railroad property was moved or disturbed, restore that property to the same condition it was in prior to being moved or disturbed.

199—42.11(476) Assignment. The public utility may assign or otherwise transfer any rights to cross railroad right-of-way to any financially responsible entity controlled by, controlling, or under common control with the public utility or to any entity into or with which the public utility is merged or consolidated or that acquires ownership or control of all or substantially all of the transmission assets of the public utility. Notice of the assignment or transfer shall be given to the railroad within 30 days.

No other transfer or assignment may take place without the written permission of the railroad, which permission shall not be unreasonably withheld.

199—42.12(476) Prohibition against mechanic's liens. The public utility shall not create, permit, or suffer any mechanic's lien or other lien of any kind or any nature to be created or enforced against the railroad's property for any work performed by the public utility in connection with its facilities that are located in the railroad's right-of-way. The railroad shall not create, permit, or suffer any mechanic's lien or other lien of any kind or any nature to be created or enforced against the public utility's property located in the railroad's right-of-way for any work performed by the railroad in connection with the railroad's facilities.

199—42.13(476) Taxes. The public utility shall promptly pay or discharge all taxes and charges levied upon its facilities located in the railroad's right-of-way. Where any such tax or charge may not be separately made or assessed to the public utility, but is included in the taxes or charges assessed to the railroad, the public utility shall pay to the railroad an equitable portion of such taxes determined by the value of the public utility's facilities located on railroad right-of-way as compared with the entire value of the railroad property.

199—42.14(476) Protection of signal systems. Prior to penetrating the surface of any railroad right-of-way, the public utility shall contact the railroad to determine whether any of the railroad's signal systems are located in the area. If signal systems are located in the area, the public utility, at its expense, shall arrange for a cable locator and make arrangements for relocation or other protection of the signal system. The public utility shall also contact Iowa One Call for locating other underground facilities and shall comply with all other applicable statutes, regulations, and rules pertaining to such underground facilities.

199—42.15(476) Safety regulations. The public utility shall ensure compliance with all applicable local, state, and federal safety rules and regulations during the time any work is being performed on a facility within the railroad's right-of-way. Any personal injury arising during work being performed on a facility shall be promptly reported by the public utility to the railroad.

199—42.16(476) Recording. The public utility, at its own expense, may record a memorandum of its rights pursuant to Iowa Code section 476.27 and these rules. A legal description of the crossing that has been approved by both the railroad and public utility shall be attached to the memorandum. Upon termination of the public utility's rights, the public utility shall file an appropriate document to evidence such termination.

199—42.17(17A,476) Complaints and petitions for relief—general information. These rules are promulgated under Iowa Code chapter 17A and section 476.27 as guides for procedures when railroads or public utilities file with the board complaints regarding crossings pursuant to Iowa Code section 476.27(2)*"a"*(9) or petitions for relief pursuant to Iowa Code section 476.27(4). The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Any procedural rules in 199—Chapter 7 that are in conflict with these rules do not apply to contested cases under this chapter.

199—42.18(17A,476) Complaints and petitions for relief.

42.18(1) *Complaints.* A railroad or public utility that has a complaint regarding any of the issues identified in Iowa Code section 476.27(2) that cannot be resolved without intervention by the board may file a complaint with the board.

42.18(2) *Petitions for relief.* A railroad or public utility that believes special circumstances exist for a particular crossing pursuant to Iowa Code section 476.27(4) may file a petition for relief with the board if the railroad and the public utility have been unable to resolve their differences without intervention by the board.

42.18(3) *Information to be filed.* The written complaint or petition should include the following information:

a. The name, address, telephone number, and contact person for the complainant or petitioner and the complainant's or petitioner's attorney, if any;

b. The basis for the board's jurisdiction over the matter;

c. A statement of the complainant's or petitioner's position and a detailed discussion of the facts that support the complainant's or petitioner's position, including a description of the issues involved, why special circumstances exist for the particular crossing, the relief requested, and the facts supporting the relief requested;

d. The particular provisions of the statutes and rules involved;

e. A description of the attempts made to informally resolve the issues involved in the petition;

f. All documentation relied on to support the facts alleged in the petition and the requested relief; and

g. The name, address, telephone number, contact person and attorney, if any, for the other railroad or public utility involved and a statement that the petition was served on the other railroad or public utility involved and the consumer advocate, the method of service, and the date served.

42.18(4) *Expedited timeline.* The board recognizes that the parties will ordinarily require a swift decision. Therefore, the shortened time limits applicable to expedited proceedings described in 199—paragraph 7.4(10)*"c"* shall apply to contested cases brought under this chapter.

These rules are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and 476.27.

ARC 7721C

CULTURAL AFFAIRS DEPARTMENT[221]

Notice of Intended Action

Proposing rulemaking related to agency reorganization and providing an opportunity for public comment

The Iowa Economic Development Authority (IEDA) hereby proposes to rescind Chapter 1, "Organization and Operation," Chapter 2, "Public Records and Fair Information Practices," Chapter 3, "Declaratory Orders," and Chapter 4, "Department Procedure for Rule Making," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 15.106A and 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), IEDA has been directed to propose this Notice of Intended Action. IEDA was assigned responsibilities and duties that were previously assigned to the Department of Cultural Affairs (DCA) by 2023 Iowa Acts, Senate File 514. This rulemaking proposes to rescind DCA chapters that are redundant or duplicative of existing rules adopted by IEDA.

IEDA proposes to rescind the following chapters:

221—Chapter 1, which describes the organization and operation of DCA. The responsibilities of DCA were assigned to IEDA and the Department of Administrative Services by 2023 Iowa Acts, Senate File 514.

221—Chapter 2, which describes DCA's public records and fair information practices and duplicates 261—Chapter 195.

221—Chapter 3, which describes the process by which DCA issued declaratory orders and duplicates 261—Chapter 198.

221—Chapter 4, which describes DCA's procedure for rulemaking and duplicates 261—Chapter 196.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by IEDA no later than 4:30 p.m. on April 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **221—Chapter 1**.

ITEM 2. Rescind and reserve **221—Chapter 2**.

ITEM 3. Rescind and reserve **221—Chapter 3**.

ITEM 4. Rescind and reserve **221—Chapter 4**.

ARC 7722C

HISTORICAL DIVISION[223]

Notice of Intended Action

Proposing rulemaking related to agency reorganization and providing an opportunity for public comment

The Iowa Economic Development Authority (IEDA) hereby proposes to rescind Chapter 3, "Public Records and Fair Information Practices," Chapter 4, "Agency Procedure for Rule Making," Chapter 5, "Petitions for Rule Making," Chapter 6, "Declaratory Rulings," and Chapter 46, "Main Street Linked Investments Loan Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 15.106A and 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), IEDA has been directed to propose this Notice of Intended Action. IEDA was assigned responsibilities and duties that were previously assigned to the Department of Cultural Affairs (DCA), including the Historical Division, by 2023 Iowa Acts, Senate File

HISTORICAL DIVISION[223](cont'd)

514. This rulemaking proposes to rescind Historical Division chapters that are redundant or duplicative of existing rules adopted by IEDA.

IEDA proposes to rescind the following chapters:

223—Chapter 3, which describes the Division's public records and fair information practices and duplicates 261—Chapter 195.

223—Chapter 4, which describes the Division's procedure for rulemaking and duplicates 261—Chapter 196.

223—Chapter 5, which describes the Division's process for addressing petitions for rulemaking and duplicates 261—Chapter 197.

223—Chapter 6, which describes the process by the Division for issuing declaratory rulings and duplicates 261—Chapter 198.

223—Chapter 46, which addresses the Main Street Linked Investments Loan Program. The program has been repealed.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by IEDA no later than 4:30 p.m. on April 9, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

HISTORICAL DIVISION[223](cont'd)

ITEM 1. Rescind and reserve **223—Chapter 3**.

ITEM 2. Rescind and reserve **223—Chapter 4**.

ITEM 3. Rescind and reserve **223—Chapter 5**.

ITEM 4. Rescind and reserve **223—Chapter 6**.

ITEM 5. Rescind and reserve **223—Chapter 46**.

ARC 7724C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rulemaking related to contracting out department of human services employees and property and providing an opportunity for public comment

The Department of Health and Human Services (HHS) hereby proposes to rescind Chapter 2, "Contracting Out Department of Human Services Employees and Property," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 23A.2 and 225C.13.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 23A.2 and 225C.13 and Executive Order 10 (January 10, 2023).

Purpose and Summary

This chapter describes legacy Department of Human Services procedures for entering into contracts with service providers (contractors) for the use of Department of Human Services employees in a service program or the use of buildings and grounds of state institutions. However, the HHS no longer engages in the activities described in this chapter.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the HHS for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the HHS no later than 4:30 p.m. on April 15, 2024. Comments should be directed to:

Joe Campos
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: compliancerules@idph.iowa.gov

Public Hearing

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

April 10, 2024 11 to 11:30 a.m.	Microsoft Teams meeting ID: 266 326 244 672 Passcode: RSVaFR
April 15, 2024 12 noon to 12:30 p.m.	Microsoft Teams meeting ID: 260 668 126 347 Passcode: jcaKdL

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **441—Chapter 2**.

ARC 7739C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rulemaking related to foster care placement and services and providing an opportunity for public comment

The Department of Health and Human Services (HHS) hereby proposes to amend Chapter 202, "Foster Care Placement and Services," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 237.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 584.

Purpose and Summary

Chapter 202 outlines foster care placement and services, including services to foster parents. The proposed amendments to this chapter implement 2023 Iowa Acts, House File 584, which established a Foster Parent Bill of Rights designed to inform foster parents of their rights within the child welfare system.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the HHS for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the HHS no later than 4:30 p.m. on April 12, 2024. Comments should be directed to:

Joe Campos
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: compliancerules@idph.iowa.gov

Public Hearing

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

April 9, 2024 11:30 a.m. to 12 noon	Microsoft Teams meeting ID: 227 039 897 635 Passcode: bTZJ9E
April 12, 2024 11:30 a.m. to 12 noon	Microsoft Teams meeting ID: 241 334 884 463 Passcode: C9aN7m

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Amend rule 441—202.1(234) as follows:

441—202.1(234) Definitions.

"Age- or developmentally appropriate activities" means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific

child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

"Case permanency plan" ~~shall mean~~ means the plan identifying goals, needs, strengths, problems, services, time frames for meeting goals and for delivery of the services to the child and parents, objectives, desired outcomes, and responsibilities of all parties involved and reviewing progress. This includes information describing efforts to retain existing medical and mental health care providers for a child entering or in foster care and activities to evaluate service needs to avoid inappropriate diagnoses of mental illness, other emotional or behavioral disorders, medically fragile conditions, or developmental disabilities.

"Child" ~~shall mean~~ means the same as defined ~~by~~ in Iowa Code section 234.1.

"Department" ~~shall mean~~ means the Iowa department of health and human services and includes the local offices of the department.

"Eligible child" ~~shall mean~~ means a child for whom the court has given guardianship to the department or has transferred legal custody to the department or for whom the department has agreed to provide foster care services on the basis of a signed placement agreement or who has been placed in emergency care for a period of not more than 30 days upon the approval of the director or the director's designee.

"Facility" means the personnel, program, plant and equipment of a person or agency providing child foster care.

~~*"Family safety, risk, and permanency service"* means a service provided under 441—Chapter 172 that uses strategies and interventions designed to achieve safety and permanency for a child with an open department child welfare case, regardless of the setting in which the child resides.~~

"Family-centered services" means the same as defined in 441—Chapter 172.

"Fictive kin" means the same as defined in 441—Chapter 172.

"Foster care" ~~shall mean substitute care furnished on a 24-hour-a-day basis to an eligible child in a licensed or approved facility by a person or agency other than the child's parent or guardian but does not include care provided in a family home through an informal arrangement for a period of 20 days or less. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision, and health care~~ means the same as defined in Iowa Code section 237.1(3).

"Kinship caregiver" means~~, for this chapter only, a person to whom a child is related by blood, marriage, or adoption, or a person who has a significant, committed, positive relationship with the child,~~ a relative or fictive kin who is caring for a child in foster care, under court-ordered supervision pursuant to Iowa Code chapter 232.

~~*"Natural parent"* shall mean a parent by blood, marriage, or adoption.~~

"Person" or *"agency"* ~~shall mean~~ means individuals, institutions, partnerships, voluntary associations, and corporations, other than institutions under the management or control of the department, who are licensed by the department as a foster family home, child caring agency or child placing agency, or approved as a shelter care facility.

"Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encourage the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities. For the purposes of this definition, "caregiver" means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution (including group homes, residential treatment, shelters, or other congregate care settings) in which a child in foster care has been placed.

"Relative" means an individual related to a child within the fourth degree of consanguinity or affinity, by marriage, or through adoption.

"Resource family" means an individual person or married couple who is licensed to provide foster family care or approved for adoption.

"Safety-related information" means information that indicates whether the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse.

"Service area manager" ~~shall mean~~ means the department employee responsible for managing department offices and personnel within the service area and for implementing policies and procedures of the department.

"Social history" or *"child study"* means a written description of the child that includes strengths and needs; medical, mental, social, educational, placement and court history; and the child's relationships with the birth family and significant others.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

ITEM 2. Amend subrule 202.4(4) as follows:

202.4(4) ~~If the child cannot be placed with a relative or a suitable person who has a kinship bond with the child, foster~~ Foster family care shall be used for a child unless the child has problems ~~which~~ that require specialized services that cannot be provided in a family setting. Reasons for using a more restrictive placement shall be documented in the child's case permanency plan.

ITEM 3. Amend subrule 202.5(2) as follows:

202.5(2) Before placement, the ~~worker~~ department shall provide the facility with general information regarding the child, including a description of the child's medical needs, behavioral patterns including safety-related information, educational plans, and permanency goal. The department or the department's agent may share otherwise confidential information about a child with a licensed resource parent being considered as a possible placement for the child to the extent such disclosure is relevant to the placement decision and the proper care of the child. This may also include facilitating the sharing of contact information of the previous licensed resource parent with the potential licensed resource parent in an effort to support the continuity of care for a child. Safety-related information shall be withheld only if:

a. Withholding the information is ordered by the court; or

b. The department or the agency developing the service plan determines that providing the information would be detrimental to the child or to the family with whom the child is living or pose a risk to the safety of the licensed resource parent.

ITEM 4. Amend subparagraph **202.6(1)"a"(12)** as follows:

(12) If the child is ~~an Indian~~ a Native American, the identification of the child's tribe and tribal social service agency, including telephone number and contact person.

ITEM 5. Amend subrule 202.6(5) as follows:

202.6(5) In conjunction with the case plan review, the case shall be presented every six months to a review committee ~~which~~ that conforms to the requirements in subrule 202.2(5). The service area manager may also approve a review by a local foster care review board authorized in Iowa Code section 237.19 or the court as meeting this requirement as long as the review conforms to ~~subrule 202.2(5), paragraphs *"b"* to *"h,"* and to subrule 202.6(5), paragraphs *"a"* to *"e."*~~ paragraphs 202.2(5)*"b"* to *"h"* and 202.6(5)*"a"* to *"e."* The review committee shall:

a. to *e.* No change.

ITEM 6. Amend rule **441—202.6(234)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 234.6(6)*"b,"* and 237.19.

ITEM 7. Amend rule 441—202.10(234) as follows:

441—202.10(234) Services to foster parents. Foster parents shall be provided necessary supportive services for the purpose of aiding them in the care and supervision of the child. These services shall include~~,~~ but not be limited to:

202.10(1) Availability of social service staff on a 24-hour basis in case of emergency.

202.10(2) Conferences to develop in-depth planning regarding family visits, expectations of the department, future objectives and time frames, use of resources, and termination of placements. The

department or the department's agent shall consider the needs and scheduling demands of a child, the child's parents, the child's siblings, and the resource parent caring for the child when scheduling supervised or any other visitation between the child and the child's siblings, family members, or fictive kin. The department shall not require a resource parent to conduct or be present during scheduled supervised visits.

202.10(3) Visitation by the service worker at least monthly regardless of the duration of the placements.

202.10(4) Notifying a resource parent of any appropriate meetings relating to the case permanency plan of a child that are known to the department, including individualized education program meetings and any medical appointments required or scheduled.

~~**202.10(4)**~~ **202.10(5)** Making available all known pertinent information needed for the care of the child with a communicable disease, including ~~HIV status,~~ safety-related information~~,~~ and special confidentiality requirements.

a. Before releasing specific information about ~~HIV~~ a communicable disease, the department shall use ~~Form 470-3225, Authorization to Release HIV-Related Information,~~ a Communicable Diseases General Agreement to obtain a release from the child or the child's parent or guardian, or a court order permitting the release of the information. ~~The person receiving this information shall complete Form 470-3227, Receipt of HIV-Related Information, to document understanding of the confidentiality of this knowledge.~~

b. Safety-related information shall be withheld only if:

(1) Withholding the information is ordered by the court; or

(2) The department or the agency developing the service plan determines that providing the information would be detrimental to the child or to the family with whom the child is living.

c. When continued breastfeeding of the child is determined to be in the best interest of the child, the service worker and the foster parents shall make reasonable efforts to support the continued breastfeeding of the child by the mother.

202.10(6) Notifying a resource parent of any change in law or regulation that is known to the department that would have a substantive impact on the resource parent's obligations and responsibilities relating to family foster care.

202.10(7) Providing a resource parent with a written report that details the conclusions of any investigation conducted by the department that may affect a resource parent's ability to provide family foster care.

202.10(8) Maintaining a process to allow a resource parent to file complaints with the department electronically.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

ITEM 8. Amend subrule 202.11(2) as follows:

202.11(2) The assigned department service worker shall personally visit each child in out-of-home care at least once every calendar month, with the frequency of the ~~vists~~ visits based upon the needs of the child.

a. and *b.* No change.

ITEM 9. Amend subrule 202.11(4) as follows:

202.11(4) When a child is in continuous foster care, a new physical examination shall not be required when the child transfers from one foster care placement to another unless there is some indication that an examination is necessary. The service worker shall obtain from the health practitioner or practitioners an annual medical review of treatment the child has received.

~~This rule is intended to implement Iowa Code section 234.6(6)*"b."*~~

ITEM 10. Amend subrule 202.11(5) as follows:

202.11(5) Throughout the provision of care, the foster care provider shall actively ensure that the child stays connected to the child's kin, culture, and community as documented in the child's case permanency plan. A resource parent shall be allowed to provide family foster care according to the resource parent's own culture and beliefs if such resource parent does not actively discourage a child

to disregard the child's own culture and beliefs and if a biological parent whose parental rights have not been terminated or a legal guardian for the child does not object to the practice or activity that is consistent with the resource parent's own culture and beliefs.

ITEM 11. Adopt the following **new** implementation sentence in rule **441—202.11(234)**:

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

ITEM 12. Amend rule 441—202.13(234) as follows:

441—202.13(234) Removal of the child.

202.13(1) When the department plans to remove a child from a facility or foster home, the facility or foster home shall be informed in writing of the date of the removal, the reason for the removal, the recourse available to the facility or foster home, if any, and that the ~~chapter 17A~~ contested case proceeding pursuant to Iowa Code chapter 17A is not applicable to the removal. The department shall inform the facility or foster home ten days in advance of the removal, except that the facility or foster home may be informed less than ten days prior to the removal in the following instances:

a. When the parent or guardian removes the child from voluntary placement.

b. When the court orders removal of a child from placement.

c. When there is evidence of neglect or physical or sexual abuse.

202.13(2) The department may remove a child from a facility or foster home when any of the following conditions exist:

a. There is evidence of abuse, neglect, or exploitation of the child.

b. The child needs a specialized service that the facility does not offer.

c. The child is unable to benefit from the placement as evidenced by lack of progress of the child.

d. There is evidence the facility is unable to provide the care needed by the child and fulfill its responsibilities under the case plan.

e. There is lack of cooperation of the facility or foster home with the department.

202.13(3) If a foster family objects in writing within seven days from the date that the department furnishes notice of plans to remove the child, the service area manager or designee shall grant a conference to the foster family to determine whether the removal is in the child's best interest.

a. This conference shall not be construed to be a contested case under ~~the Iowa administrative procedure Act,~~ Iowa Code chapter 17A.

b. The conference shall be provided before the child is removed except in instances listed in paragraphs 202.13(1)*"a"* to *"c."* The service area manager or designee shall review the propriety of the removal and explain the decision to the foster family.

c. The service area manager or designee, on finding that the removal is not in the child's best interests, may overrule the removal decision unless a court order or parental decision prevents the department from doing so.

202.13(4) When the facility or foster home requests a child be removed from its care, it shall give a minimum of ten days' notice to the department so planning may be made on behalf of the child. This does not apply to a situation where the health or safety of the child or another person in the foster home is threatened by the child's presence in the child's current placement home.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

ITEM 13. Amend rule 441—202.15(234) as follows:

441—202.15(234) Case permanency plan.

202.15(1) The department worker shall ensure that a case permanency plan is developed for each child who is placed in foster care if the department has agreed to provide foster care through a voluntary placement agreement, if a court has transferred custody or guardianship to the department for the purpose of foster care, or if a court has placed the child in foster care and ordered the department to supervise the placement.

202.15(2) The department worker shall develop the case permanency plan with the child's parents, unless the child's parents are unwilling to participate in the plan's development, and with the child, unless

the child is unable or unwilling to participate. For a child 14 years of age or older in foster care, the case permanency plan must be developed in consultation with the child. The child may choose up to two members of the case planning team who are not the child's foster parent or caseworker. The department may reject an individual selected by a child at any time if the department has good cause to believe the individual would not act in the best interests of the child. One individual selected by the child to be a member of a child's case planning team may be designated to be the child's advisor and, as necessary, advocate with respect to the use of the reasonable and prudent parent standard.

202.15(3) The department shall consider information regarding medical appointments, treatment needs, educational progress, and services from a resource parent when developing or modifying a child's case permanency plan and in the coordination of care and decisions related to services and care necessary for the child. The information the department receives from a resource parent will be reviewed and considered as decisions about the child's progress and needs are made.

~~**202.15(3)**~~ **202.15(4)** The department worker shall be responsible for ensuring the development of the case permanency plan within the time frames specified in rule 441—130.7(234). In all cases, the case permanency plan shall be completed within 60 days of the date the child entered foster care.

~~**202.15(4)**~~ **202.15(5)** Copies of the initial and subsequent case permanency plans shall be provided to the child, the child's parents, and the foster care provider. Copies shall also be provided to the following, if involved in services to the child: the juvenile court officer, the judge, the child's attorney, the child's guardian ad litem, the child's guardian, the child's custodian, the child's court-appointed special advocate, the parents' attorneys, the county attorney, the state foster care review board, and any other interested parties identified in the plan.

~~**202.15(5)**~~ **202.15(6)** The initial and subsequent case permanency plans shall be completed on the forms specified in rule 441—130.7(234).

~~**202.15(6)** Rescinded IAB 4/28/04, effective 6/2/04.~~

This rule is intended to implement Iowa Code section 135H.6.

ITEM 14. Amend paragraph **202.16(2)"e"** as follows:

e. The limits on the number of beds found in Iowa Code section ~~135H.6, subsection 5~~ 135H.6(5).

ITEM 15. Amend subrule 202.17(2) as follows:

202.17(2) *Plan for achieving target.* For each of the departmental service areas, representatives appointed by the department and juvenile court services shall establish a plan for containing the expenditure for children placed in group care within the budget target allocated to that service area. The plan shall include monthly targets and strategies for developing alternatives to group care placements.

The plans shall also ensure potential group care referrals are reviewed by the review organization prior to submission of a recommendation for group care placement to the court.

Each area plan shall be established in advance of the fiscal year to which the plan applies. To the extent possible, the department and the juvenile court shall coordinate the planning required under this subrule with planning for services paid under Iowa Code section ~~232.141, subsection 4~~ 232.141(4). The department's service area manager shall communicate regularly, as specified in the area plan, with the juvenile courts within the service area concerning the current status of the plan's implementation.

ITEM 16. Amend rule **441—202.18(235)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~Supplement~~ section 235.7.

ARC 7727C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rulemaking related to tobacco use prevention and control funding process and providing an opportunity for public comment

The Department of Health and Human Services (HHS) hereby proposes to rescind Chapter 152, "Tobacco Use Prevention and Control Funding Process," Iowa Administrative Code.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 142A.6.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and Executive Order 10 (January 10, 2023).

Purpose and Summary

This chapter sets forth procedures of the Iowa Tobacco Use Prevention and Control Commission for conducting competitive procurement on behalf of the tobacco initiative. The Commission may engage in its own procurement under the Iowa Code. The activity in this chapter no longer matches Commission and HHS procedure. Under current practice, the Commission utilizes HHS procedures to engage in procurement under the auspices of the HHS.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the HHS for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the HHS no later than 4:30 p.m. on April 15, 2024. Comments should be directed to:

Joe Campos
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: compliancerules@idph.iowa.gov

Public Hearing

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

April 10, 2024 11 to 11:30 a.m.	Microsoft Teams meeting ID: 266 326 244 672 Passcode: RSVaFR
April 15, 2024 12 noon to 12:30 p.m.	Microsoft Teams meeting ID: 260 668 126 347 Passcode: jcaKdL

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

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

Review by Administrative Rules Review Committee

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **641—Chapter 152**.

ARC 7725C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rulemaking related to criteria for awards or grants and providing an opportunity for public comment

The Department of Health and Human Services (HHS) hereby proposes to rescind Chapter 176, "Criteria for Awards or Grants," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 135 and Executive Order 10 (January 10, 2023).

Purpose and Summary

This chapter describes legacy Department of Public Health procedures for the competitive awarding of funds to entities throughout the state in support of public health programs. However, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514. HHS competitive procurement procedures have been merged across the legacy departments and are recorded in the HHS's internal policy, with the exception of rule 641—176.7(135,17A) related to the HHS's use of Iowa grants. Rule 641—176.7(135,17A) will be moved to the appropriate chapter in HHS rules under agency number [441].

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the HHS for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the HHS no later than 4:30 p.m. on April 15, 2024. Comments should be directed to:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Joe Campos
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: compliancerules@idph.iowa.gov

Public Hearing

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

April 10, 2024 11 to 11:30 a.m.	Microsoft Teams meeting ID: 266 326 244 672 Passcode: RSVaFR
April 15, 2024 12 noon 12:30 p.m.	Microsoft Teams meeting ID: 260 668 126 347 Passcode: jcaKdL

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **641—Chapter 176**.

ARC 7726C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rulemaking related to advisory bodies of the department and providing an opportunity for public comment

The Department of Health and Human Services (HHS) hereby proposes to rescind Chapter 191, "Advisory Bodies of the Department," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 135.11 and Executive Order 10 (January 10, 2023).

Purpose and Summary

This chapter describes procedures for those public health advisory bodies established by the legacy Department of Public Health not governed by other administrative rule or statute. However, this chapter is outdated upon implementation of the government realignment in 2023 Iowa Acts, Senate File 514.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the HHS for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the HHS no later than 4:30 p.m. on April 15, 2024. Comments should be directed to:

Joe Campos
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: compliancerules@idph.iowa.gov

Public Hearing

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

April 10, 2024 11 to 11:30 a.m.	Microsoft Teams meeting ID: 266 326 244 672 Passcode: RSVaFR
April 15, 2024 12 noon to 12:30 p.m.	Microsoft Teams meeting ID: 260 668 126 347 Passcode: jcaKdL

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **641—Chapter 191**.

ARC 7723C

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Proposing rulemaking related to carrier regulations and providing an opportunity for public comment

The Public Safety Department hereby proposes to amend Chapter 22, "Regulations Applicable to Carriers," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 321.449 and 321.450.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 321.1, 321.449 and 321.450.

Purpose and Summary

This is an annual update in which the Department proposes to adopt the most recent updates to federal regulations. A summary of changes to the Code of Federal Regulations (CFR) is as follows:

Part 385 (FR Vol. 87, No. 245, Pages 78579-78582, 12-22-22)

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends its Hazardous Materials Safety Permits regulations to incorporate by reference the April 1, 2022, edition of the Commercial Vehicle Safety Alliance's (CVSA's) handbook (the handbook) containing inspection procedures and Out-of-Service Criteria (OOSC) for the inspection of commercial motor vehicles used in the transportation of transuranic waste and highway route-controlled quantities of radioactive material. The OOSC provide enforcement personnel nationwide, including FMCSA's state partners, with uniform enforcement tolerances for these inspections. Through this rule, FMCSA incorporates by reference the April 1, 2022, edition of the handbook.

Effective Date: January 23, 2023.

Parts 107, 110, 171, 172, 173, 174, 176, 177, 178, and 180 (FR Vol. 87, No. 247, Pages 79752-79785, 12-27-22)

SUMMARY: This final rule corrects editorial errors and improves the clarity of certain provisions in the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) program and procedural regulations and in the Hazardous Materials Regulations. The intended effect of this rulemaking is to enhance accuracy and reduce misunderstandings of the regulations. The amendments contained in this final rule are nonsubstantive changes and do not impose new requirements.

Effective Date: January 26, 2023.

Parts 107, 171, 172, 173, 175, 177, and 178 (FR Vol. 88, No. 16, Pages 4756-4761, 01-25-23)

SUMMARY: PHMSA is correcting the final rule that appeared in the Federal Register on December 27, 2022. The final rule made editorial revisions and clarifications to the hazardous materials regulations, including the hazardous materials table. The corrections address several errors to the hazardous material entries in the hazardous materials table.

Effective Date: January 26, 2023.

Additionally, Iowa needs to adopt 49 CFR Part 386 to ensure safe commercial motor vehicle operations on its roadways. Doing so would ensure that FMCSA carrier review auditors have the proper documentation when performing carrier audits to remove unsafe or unfit carriers from Iowa's roadways and would allow state troopers to cite the correct federal regulation and place unsafe or unfit carriers out of service roadside when those carriers are found operating on Iowa's roadways.

Failure to cite the proper CFR section in Motor Carrier Safety Assistance Program (MCSAP) inspections affects Iowa's data quality rating, which could have a negative impact on obtaining future grant funding.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on April 9, 2024. Comments should be directed to:

Josie Wagler
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: wagler@dps.state.ia.us

Public Hearing

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

April 9, 2024 8 to 8:30 a.m.	First Floor Public Conference Room 125 Oran Pape State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Amend subrule 22.1(1) as follows:

22.1(1) *Regulations.*

a. Motor carrier safety regulations. The Iowa department of public safety adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385, 386 and 390-399 (October 1, ~~2022~~ 2023).

b. Hazardous materials regulations. The Iowa department of public safety adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~2022~~ 2023).

c. Copies of regulations. Copies of the federal regulations may be reviewed at the state law library or through the Internet at www.fmcsa.dot.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 Roby Smith, Superintendent of Credit Unions Katie Averill, Superintendent of Banking James Johnson, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for March is 6.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of 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 March 9, 2024, 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 1.95%
180-364 days	Minimum 1.80%
One year to 397 days	Minimum 1.75%
More than 397 days	Minimum 1.35%

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 Roby Smith, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2(3)"a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

USURY(cont'd)

April 1, 2023 — April 30, 2023	5.75%
May 1, 2023 — May 31, 2023	5.75%
June 1, 2023 — June 30, 2023	5.50%
July 1, 2023 — July 31, 2023	5.50%
August 1, 2023 — August 31, 2023	5.75%
September 1, 2023 — September 30, 2023	6.00%
October 1, 2023 — October 31, 2023	6.25%
November 1, 2023 — November 30, 2023	6.50%
December 1, 2023 — December 31, 2023	6.75%
January 1, 2024 — January 31, 2024	6.50%
February 1, 2024 — February 29, 2024	6.00%
March 1, 2024 — March 31, 2024	6.00%
April 1, 2024 — April 30, 2024	6.25%

ARC 7718C

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Rulemaking related to complaints, investigations, and contested case hearings

The Educational Examiners Board hereby amends Chapter 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.146.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 430.

Purpose and Summary

2023 Iowa Acts, House File 430, directed the Board to adopt rules related to retention of records, public notice, the evaluation of past complaints, and investigations. This rulemaking implements that legislation.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7194C**. A public hearing was held on January 31, 2024, at 1 p.m. in the Board of Educational Examiners Board Room, 701 East Court Avenue, Suite A, Des Moines, Iowa. No one attended the public hearing. No public comments were received.

Two changes from the Notice have been made to update the Iowa Code citations in rule 282—11.5(256) and to remove the references to 2023 Iowa Acts, House File 430, since that House File has been codified.

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 23, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 282—Chapter 6.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Amend subrule 11.4(9) as follows:

11.4(9) *Confidentiality.* All complaint files, investigation files, other investigation reports, and other investigation information in the possession of the board or its employees or agents, which relate to licensee discipline, are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of the board or its employees or agents ~~which~~ that is related to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authorities in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. Records related to written complaints shall be collected and retained and shall be evaluated if a similar complaint has been filed against the same licensed practitioner. A finding of probable cause, a final written decision, and a finding of fact by the board in a disciplinary proceeding ~~is~~ constitute a public record.

ITEM 2. Amend rule 282—11.5(272) as follows:

282—11.5(~~272~~ 256) Investigation of complaints or license reports. The chairperson of the board or the chairperson's designee may request an investigator to investigate the complaint or report received by the board from another state, territory or other jurisdiction concerning license or certificate revocation or suspension pursuant to subrule 11.4(7); providing that the jurisdictional requirements have been met on the face of the complaint. The investigation shall be limited to the allegations contained on the face of the complaint. The investigator may consult an assistant attorney general concerning the investigation or evidence produced from the investigation. Upon completion of the investigation, the investigator shall prepare a report of the investigation for consideration by the board in determining whether probable cause exists. The investigation of the complaint shall be finalized even if the licensed practitioner resigns or surrenders the practitioner's license, certificate, authorization, or statement of recognition during the investigation. The board shall investigate whether or not an administrator who is employed by the school that employs a licensed practitioner who is the subject of an investigation initiated under Iowa Code section 256.160(1)*"a"* filed a written complaint and whether or not the administrator was required to report to the board pursuant to Iowa Code section 256.160.

[Filed 2/27/24, effective 4/24/24]
[Published 3/20/24]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7719C

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Rulemaking related to renewal or extension fees

The Educational Examiners Board hereby amends Chapter 12, "Fees," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 17A.6C as enacted by 2023 Iowa Acts, House File 688.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 256, subchapter VII, part 3.

Purpose and Summary

2023 Iowa Acts, House File 672, created a new renewal option with a reduced fee. 2023 Iowa Acts, House File 688, directed all agencies to adopt rules related to fees. This rulemaking implements the legislation.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7193C**. A public hearing was held on January 31, 2024, at 1 p.m. in the Board of Educational Examiners Board Room, 701 East Court Avenue, Suite A, Des Moines, Iowa. No one attended the public hearing. No public comments were received.

One change from the Notice has been made to update the Iowa Code reference in the parenthetical implementation statute in rule 282—12.2(256).

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 23, 2024.

Fiscal Impact

No new costs are anticipated; however, agency revenues will be reduced by an estimated $116,000 per year. Twenty-five percent of fees collected annually by the Board are credited to the General Fund, and the reduction in fees will result in a decrease of approximately $37,000 to the General Fund annually.

Jobs Impact

This rulemaking will help with recruitment and retention for educators.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 282—Chapter 6.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Amend rule 282—12.2(272) as follows:

282—12.2(~~272~~ 256) Fees for the renewal or extension of licenses, certificates, statements of professional recognition, and authorizations. The fee for the renewal or extension of a license, certificate, statement of professional recognition, or authorization shall be $85 unless otherwise specified below:

1. The renewal of the paraeducator certificate shall be $40.
2. The renewal of the behind-the-wheel authorization shall be $40.
3. A one-year extension for renewal of a coaching authorization shall be $40.

4. A one-year extension of the initial license shall be $25. This extension may be issued if the applicant needs one additional year to meet the experience requirement for the standard license, but has met Iowa teaching standards, pursuant to rule 282—20.4(272).

5. ~~A~~ The fee shall be $25 ~~fee~~ for an extension of the initial administrator license, which may be issued instead of renewing the initial administrator license if the applicant verifies one of the criteria listed in 282—subrule 20.8(2).

6. The fee for the renewal of a license, certificate, statement of professional recognition, or authorization for practitioners with a master's degree or higher who have ten or more years of experience in education shall be $50.

[Filed 2/27/24, effective 4/24/24]
[Published 3/20/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7728C

INSURANCE AND FINANCIAL SERVICES DEPARTMENT[181]

Adopted and Filed

Rulemaking related to organization and operation

The Insurance and Financial Services Department hereby rescinds Chapter 1, "Organization and Operation," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapters 17A and 546.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 546.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 1 and adopt a new Chapter 1 with revisions. The chapter provides the organizational structure for the Department.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7343C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to Iowa Code chapter 17A.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 181—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
ORGANIZATION AND OPERATION

181—1.1(546,17A) Purpose. This chapter describes the organization and operation of the department of insurance and financial services (department).

181—1.2(546,17A) Scope of rules. The rules for the department are promulgated under Iowa Code chapters 17A and 546 and shall apply to all matters before the department. No rule shall, in any way, relieve a person affected by or subject to these rules or any person affected by or subject to the rules promulgated by the various divisions of the department from any duty under the laws of this state.

181—1.3(546,17A) Duties of the department. The department administers and coordinates the various regulatory, service, and licensing functions of the state relating to the conducting of business or commerce in the state. The department consists of the following divisions: banking, credit union, and insurance.

1.3(1) *Banking division.* The banking division regulates and supervises state banks, regulated loan companies, industrial loan companies, mortgage bankers, mortgage brokers, real estate closing agents, debt management companies, money services companies, and delayed deposit service businesses and performs other duties assigned to it by law.

1.3(2) *Credit union division.* The credit union division regulates and supervises the operation of credit unions within the state; the credit union review board performs duties assigned to it by Iowa Code chapter 533.

1.3(3) *Insurance division.* The insurance division regulates and supervises the conduct of the business of insurance within the state and enforces the laws promulgated under Title XIII of the Iowa Code and Iowa Code chapters 502, 502A, 505, 505A through 523A, 523C, 523D, and 523I. The division performs other duties assigned to it by law.

181—1.4(546,17A) Definitions.

"Administrator" means the commissioner of insurance, the superintendent of banking, or the superintendent of credit unions.

"Commissioner of insurance" means the same as defined in Iowa Code section 505.2.

"Department" means the department of insurance and financial services.

"Person" means an individual, corporation, partnership, association, professional corporation, licensee or permittee.

"Superintendent of banking" means the same as defined in Iowa Code section 524.201.

"Superintendent of credit unions" means the same as defined in Iowa Code section 533.104.

181—1.5(546,17A) Central offices and communications. Correspondence and communications with the department shall be addressed or directed to the department's director. The department director is the commissioner of insurance. The department's website is iowa.gov/difs.

181—1.6(546,17A) Custodians of records, filings and requests for public information. Unless otherwise specified by the department or the rules of its various divisions, each division is the principal custodian of its own divisional orders, statements of law or policy issued by the respective divisions, legal documents and other public documents on file with the department or its respective divisions. This is true in particular for the Iowa fair information practices Act. The responsibility for complying with that Act shall be upon the individual divisions. Each division shall promulgate rules pursuant to Iowa Code chapter 17A governing the manner in which documents may be filed with the respective divisions.

181—1.7(546,17A) Division administrators' responsibilities.

1.7(1) *Rulemaking.* Each division administrator has the authority to promulgate rules pursuant to Iowa Code chapter 17A to implement the duties of the division. Such rules are not subject to review by the department director. All applicable rules previously promulgated by the divisions shall remain in effect until amended by the divisions.

1.7(2) *Decision making.* Decisions of the division administrator with respect to duties assigned to the division under the law are final agency actions pursuant to Iowa Code chapter 17A. Decisions by either the commissions or division administrators are not subject to review by the department director.

1.7(3) *Supervision.* Each division administrator has the authority to hire, allocate, develop, and direct employees and other resources assigned to the division by law.

1.7(4) *Establish fees.* Each division administrator has the authority to establish fees assessed to the regulated industry. The fees so established are not reviewable by the department director.

1.7(5) *Expenditure authorization.* Each division administrator may authorize expenditures from accounts for that division or office within the department of commerce revolving fund established in Iowa Code section 546.12, or otherwise use funds as permitted by Iowa Code section 546.12.

181—1.8(17A) Petitions for rulemaking—uniform rules adopted. The department hereby adopts the Uniform Rules on Agency Procedure relating to petitions for rulemaking, which are published on the general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf, as rules 181—1.9(17A) to 181—1.12(17A) below, with amendments and exceptions specified therein.

181—1.9(17A) Petition for rulemaking. Rule X.1 is adopted by reference with the following amendments: Any person or agency may file a petition for rulemaking with the respective division at the address disclosed on the department's website. A petition is deemed filed when it is received. The respective division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the respective division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

181—1.10(17A) Briefs. Rule X.2 is adopted by reference.

181—1.11(17A) Inquiries. Rule X.3 is adopted by reference.

181—1.12(17A) Agency consideration. Rule X.4 is adopted by reference.

These rules are intended to implement Iowa Code sections 17A.3 and 546.2.

[Filed 3/1/24, effective 4/24/24]
[Published 3/20/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7729C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to organization

The Insurance Division hereby rescinds Chapter 1, "Administration," and adopts a new Chapter 1, "Organization," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 17A.3, 502.601, 502.605, 505.1 and 505.30.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 502 and 505.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 1 and adopt a new Chapter 1 with revisions. This chapter describes the organizational structure for the Division.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7344C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 1 and adopt the following **new** chapter in lieu thereof:

ORGANIZATION AND PROCEDURES

CHAPTER 1
ORGANIZATION

191—1.1(502,505) Definitions. For rules of the insurance division, the following definitions apply:

"Commissioner" means the commissioner of insurance or the commissioner's designee.

"Division" means the Iowa insurance division.

"Division's website" means the information and related content found at iid.iowa.gov.

191—1.2(502,505) Mission. The division protects consumers through consumer education and enforcement while effectively and efficiently providing a fair, flexible, and positive regulatory environment.

191—1.3(502,505) General course and method of operations. The division is the state regulator that supervises all insurance business transacted in the state of Iowa as well as securities and other regulated industries.

191—1.4(502,505) Contact information and business hours. The division's office and mailing address is 1963 Bell Avenue, Suite 100, Des Moines, Iowa 50315. The general telephone number for the division is 515.654.6600 or 1.877.955.1212. The division's facsimile number is 515.654.6500. The division's website address is iid.iowa.gov. The division's hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

191—1.5(502,505) Information, forms, and requests. Information, applications, and forms may be obtained from the division's website, in person at the division's offices, or by telephone using the division's general telephone number. Specific instructions, forms and guidance may be provided in administrative rules or on the division's website. Submissions and requests can be submitted through the division's website, in person, or by telephone.

191—1.6(502,505) Organization. The division is headed by the commissioner, who is assisted by a first deputy commissioner, a second deputy commissioner, a deputy commissioner for supervision, and other deputy commissioners and assistant commissioners. The functions of the division are divided into eight bureaus.

1.6(1) *Administrative bureau.* The administrative bureau provides staff support to the commissioner and the division and is responsible for budget, personnel, procurement, communication, legislative, and other services.

1.6(2) *Company regulation bureau.* The company regulation bureau is responsible for the following:

a. Regulating domestic and foreign insurance companies licensed in Iowa, through licensure, analysis and financial and market examinations.

b. Examining the financial condition of domestic insurance companies not less than once every five years. Foreign companies are examined as deemed appropriate. The bureau ensures compliance with National Association of Insurance Commissioners accreditation mandates and with financial examination and analysis standards.

c. Serving as a general insurance information repository and resource for both insurers and consumers and publishing the division's annual report to the governor, required by Iowa Code section 505.12.

d. Reviewing and approving filed company transactions, including but not limited to approval of acquisitions and mergers of domestic insurers, intercompany contractual agreements and assumption reinsurance agreements.

e. Authorizing and overseeing individual and group workers' compensation self-insurance.

f. Authorizing, examining and analyzing benevolent associations and fraternal benefit societies.

g. Authorizing and reviewing multiple employer welfare arrangements.

h. Registering and verifying compliance for risk retention groups.

i. Supervising the rehabilitation and liquidation of insurance companies.

j. Auditing and monitoring premium tax remittances for admitted companies and supervising statutory deposits.

k. Reviewing and approving admission applications for foreign surplus lines insurers, as well as conducting premium tax audits associated with the nonadmitted insurance industry.

l. Implementing and maintaining the division's information technology resources.

1.6(3) *Securities and regulated industries bureau.* The securities and regulated industries bureau is responsible for administering and enforcing the Iowa uniform securities Act through enforcement, licensing, and securities registration to ensure investor protection and a positive climate for capital formation. The bureau is also responsible for protecting the public by administering and enforcing rules related to motor vehicle service contracts, residential service contracts, retirement facilities, cemeteries, and preneed purchase agreements for cemetery merchandise, funeral merchandise and funeral services.

1.6(4) *Consumer advocate bureau.* The consumer advocate bureau consists of the consumer advocate and, in addition to being responsible for the duties described in Iowa Code section 505.8(6)*"b,"* is responsible for providing outreach to consumers, assisting in creation of consumer protection laws and regulations, and reviewing complaints. In order to fulfill the prescribed duties, the commissioner has delegated investigation and enforcement duties to the market regulation, enforcement, and fraud bureaus.

1.6(5) *Market regulation bureau.* The market regulation bureau is responsible for the following:

a. Ensuring fair treatment of consumers.

b. Investigating unfair or deceptive trade practices in the business of insurance.

c. Reviewing, investigating and responding to inquiries and complaints from the public regarding insurance producers and insurers.

d. When requested by consumers, coordinating external reviews of health insurance claim decisions if insurance companies deny benefits either on the basis that the services were not medically necessary or on the basis that the services were investigational or experimental.

e. When requested by consumers, coordinating independent reviews of long-term care insurance claim decisions if insurance companies deny benefits on the basis that insureds did not meet benefit trigger requirements.

1.6(6) *Enforcement bureau.* The enforcement bureau takes administrative action against individuals and entities regulated by the division for violations of insurance, securities, and other laws under the authority of the division and provides legal counsel to the division.

1.6(7) *Fraud bureau.* The fraud bureau confronts the problem of insurance and securities fraud by prevention, investigation, and prosecution of fraudulent insurance acts in an effort to reduce the amount of premium dollars used to pay fraudulent insurance claims, as set forth in Iowa Code chapter 507E, and may refer such matters to the appropriate jurisdiction for action or prosecution.

1.6(8) *Product and producer regulation bureau.* The product and producer regulation bureau is responsible for the following:

a. Reviewing, approving or disapproving property, casualty, life and health forms and, where provided by law, premium rates of certain types of insurance.

b. Performing actuarial analysis of life and health insurance plans funded by certain public bodies.

c. Licensing, registering, and monitoring entities and individuals under the authority of the commissioner.

d. Overseeing the senior health insurance information program (SHIIP) and senior Medicare patrol (SMP) and other Medicare beneficiaries and their families and caregivers. These programs include providing information needed to make informed decisions about care and benefits; accessing financial assistance to cover related costs; and preventing Medicare fraud, errors and abuse.

191—1.7(505) Service of process. Certain individuals and entities under the jurisdiction of the commissioner are required by law to consent to having the commissioner serve as agent for the individual or entity for the purpose of receiving service of process.

1.7(1) *Request for service.* A party to a proceeding who requests that the commissioner accept service of process as allowed by law must submit to the division, at the address stated in rule 191—1.4(502,505), all of the following:

a. For each individual or entity to be served, one original and one copy of the documents to be served by the division.

b. A cover letter indicating the name of each individual or entity to be served by the division.

c. A check for service fees, made payable to Iowa Insurance Division, for $50 for each individual or entity to be served, unless another amount is required by law.

1.7(2) *Division actions.* After the division receives the items listed in paragraph 1.7(1)*"a,"* the division must do the following:

a. Accept the service of process on behalf of the individual or entity.

b. Forward, by certified mail, the original documents to the individual or entity to be served.

c. File a notice of acceptance electronically through the Iowa court electronic filing system.

1.7(3) *Types of documents the division will serve.*

a. The division will serve documents related to the initiation of a case, such as original notices, petitions, and jury demands. The division will not serve documents related to later processes in a case, including but not limited to subpoenas and garnishments, unless required to do so by law.

b. The division will serve documents related to matters in the Iowa court system. The division will not serve documents related to matters in other courts, including but not limited to the federal court system, or matters in other administrative systems, except for workers' compensation cases filed with the Iowa division of workers' compensation.

These rules are intended to implement Iowa Code sections 17A.3, 502.601, 502.605, 505.1 and 505.30.

[Filed 3/1/24, effective 4/24/24]
[Published 3/20/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7730C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to public records and fair information practices

The Insurance Division hereby rescinds Chapter 2, "Public Records and Fair Information Practices," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapters 17A and 22.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 22.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 2 and adopt a new Chapter 2 with revisions. The chapter provides rules about public records and fair information practices.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7345C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

191—2.1(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound division determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This division is committed to the policies set forth in Iowa Code chapter 22. The division's website provides access to all public records. Division staff will cooperate with members of the public in implementing the provisions of that chapter.

191—2.2(17A,22) Definitions. The definitions in Iowa Code section 22.1 are incorporated into this chapter by this reference. In addition to the definitions in rule 191—1.1(502,505), the following definitions apply:

"Confidential record" means a record that is not available as a matter of right for inspection and copying by members of the public under applicable provisions of law. Confidential records may be specified as confidential by Iowa Code section 22.7 or other provisions of law but may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release

the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Division" means the insurance division of the department of insurance and financial services created by Iowa Code section 505.1. The division is both the "government body" and the "lawful custodian" as defined in Iowa Code sections 22.1(1) and 22.1(2), respectively. The division is also the "agency" as defined in Iowa Code chapter 17A and referenced in Iowa Code chapter 22. For purposes of this chapter, "division" includes both the commissioner of insurance and the administrator as defined in Iowa Code chapters 502 and 505.

"File," "filed," or *"filing,"* when used as a verb, means submitting or having submitted to the division a record or information. "File" or "filing," when used as a noun, means a record or information.

"Inspect" or *"inspection"* means the same as "examine" or "examination" in Iowa Code chapter 22. The term "examination" in this chapter does not mean the same as "examination" as used in Iowa Code chapter 22.

"Lawful custodian," as used in Iowa Code section 22.1(2), is the division, the division's record officer, or an employee lawfully delegated authority by the division to act for the division in implementing Iowa Code chapter 22.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record that identifies the individual and that is contained in a record system.

"Record" means all or part of a "public record," as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the division.

"Record system" means any group of records under the control of the division from which a record may be retrieved by a personal identifier.

191—2.3(17A,22) General provisions.

2.3(1) *Entities holding division records covered by this rule.* This rule applies to records belonging to, required by, or created by the division, as well as records held by third parties, including other state agencies, that do any of the following:

a. Perform division functions on behalf of the division;

b. Store records for the division;

c. Perform services for the division; or

d. Otherwise handle records that would be governed by this rule if they were in the possession of the division.

2.3(2) *Existing records.* A request for access shall apply only to records that exist at the time the request is made and access is provided. The division is not required to create, compile or procure a record solely for the purpose of making it available except as described in Iowa Code section 22.3A and subrule 2.4(5).

2.3(3) *Public records.* All of the division's records are open records available to the public except for records that are confidential under rule 191—2.12(17A,22) or redactable under rule 191—2.11(17A,22).

2.3(4) *Availability of open records.* Open records of the division are available to the public for examination and copying unless otherwise provided by state or federal law, regulation or rule.

2.3(5) *Office hours.* Open records are available for inspection during customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

2.3(6) *Scope.* This chapter does not:

a. Require the division to index or retrieve records that contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of or access to records in the possession of the division that are governed by the regulations of another agency.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings.

f. Make any warranty of the accuracy or completeness of a record.

191—2.4(17A,22) Requests for access to records.

2.4(1) *Request for access.* Requests for access to open records not available on the division's website may be made in writing, by mail, by email, or online as instructed on the division's website. Requests must identify the particular records sought by name or description in order to facilitate the location of the record. Requests must include the name, address, email address if available, and telephone number of the person requesting the information. A person is not required to give a reason for requesting an open record. If the division has records in its possession that may be public records but that are copies of materials from another agency or public organization, the division may refer individuals to the originating agency or entity.

2.4(2) *Response to requests.*

a. Access. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the division must comply with the request as soon as feasible.

b. Delay. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4), for redaction by the division of confidential information, or for search and review of requested records. The division must promptly give written notice to the requester of the reason for any delay and an estimate of the length of that delay.

c. Deny. The division may deny access to the record by members of the public when warranted under Iowa Code chapter 22 or other applicable law or when the record's disclosure is prohibited by a court order.

2.4(3) *Security of record.* No person may, without permission from the division, search or remove any record from division files. Inspection and copying of division records must be supervised by the division or a designee of the division in order for the records to be protected from damage and disorganization.

2.4(4) *Fees.* The division may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law. Under Iowa Code section 22.3, the fee for the copying service, whether electronic or hard copy, or mailing shall not exceed the cost of providing the service. An hourly fee may be estimated in advance and charged for actual division expenses in the inspection, reviewing, and copying of requested records when the total staff time dedicated to fulfilling the request requires an excess of two hours.

2.4(5) *Information released.* If a person is provided access to less than an entire record, the division shall take measures to ensure that the person is furnished only the information that is to be released. This may be done by providing to the person either an extraction of the information to be released or a copy of the record from which the information not to be released has been otherwise redacted.

191—2.5(17A,22) Access to confidential records.

2.5(1) *Procedure.* The following provisions are in addition to those specified in rule 191—2.4(17A,22) and are minimum requirements. A statute or another administrative rule may impose additional requirements for access to certain classes of confidential records. A confidential record may, due to its nature or the way it is compiled or stored, contain a mixture of confidential and nonconfidential information. The division shall not refuse to release the nonconfidential information simply because of the manner in which the record is compiled or stored.

a. Form of request. The division shall ensure that there is sufficient information to provide reasonable assurance that access to a confidential record may be granted. Therefore, the division may require the requester to:

(1) Submit the request in writing.

(2) Provide proof of identity and authority to secure access to the record.

b. Response to request. The division must notify the requester of approval or denial of the request for access. The notice must include:

(1) The name and title or position of the person responding on behalf of the division; and

(2) A brief statement of the grounds for denial, including a citation to the applicable statute or other provision of law.

c. Reconsideration of denial. A requester whose request is denied by the division may apply to the commissioner of insurance for reconsideration of the request.

2.5(2) *Release of confidential records by the division.* The division may release a confidential record or a portion of it to:

a. The legislative services agency pursuant to Iowa Code section 2A.3.

b. The ombudsman pursuant to Iowa Code section 2C.9.

c. Other governmental officials and employees only as needed to enable them to discharge their duties.

d. The public information board pursuant to Iowa Code section 23.6.

191—2.6(17A,22) Requests for confidential treatment. The division may treat a record as a confidential record and withhold it from inspection or refuse to disclose that record to members of the public only to the extent that the division is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order. All other information submitted to the division shall be treated as if that person has no objection to its disclosure to members of the public.

2.6(1) *Request.* A person may request that all or a portion of a record be confidential. The request for confidential treatment must be submitted in writing to the division and:

a. Identify the information for which confidential treatment is sought.

b. Cite the legal and factual basis that justifies confidential treatment.

c. Identify the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

d. Specify the precise period of time for which the confidential treatment is requested should the request be only for a limited time period.

2.6(2) *Additional information.* The division may request additional factual information from the person to justify treatment of the record as a confidential record.

2.6(3) *Decision.* The division must notify the requester in writing of the granting or denial of the request and, if the request is denied, the reasoning for the denial.

2.6(4) *Request denied.* If the request for confidential treatment of a record is denied, the requester may apply to the commissioner for reconsideration of the request.

2.6(5) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the division from treating it as a confidential record.

191—2.7(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, the person who is the subject of a record may have a written statement of additions, dissents or objections entered into that record. The statement shall be filed with the division. The statement must be dated and signed by the person who is the subject of the record and include the person's current address and telephone number. This rule does not authorize the person who is the subject of the record to alter the original record or to expand the official record of any division proceeding.

191—2.8(17A,22) Disclosures without the consent of the subject.

2.8(1) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject.

2.8(2) Authority to release confidential records. The division may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect these records withheld from inspection under a statute that authorizes limited or discretionary disclosure as provided in rule 191—2.6(17A,22). If the division

initially determines that it will release such records, the division may notify interested persons and withhold the records from inspection as provided in rules 191—2.6(17A,22) and 191—2.7(17A,22).

191—2.9(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record may consent to have a copy of the portion of that record that concerns the subject disclosed to a third party. A request for such a disclosure must be in writing, and the person to whom the record is to be disclosed may be required to provide proof of identity. Appearance of counsel before the division on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the division to disclose records about that person to the person's attorney.

191—2.10(17A,22) Notice to suppliers of information. When the division requests a person to supply information about that person, the division must notify the person by reasonable means of the use that will be made of the information, which persons outside the division might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested.

2.10(1) *Notice.* The notice shall generally be given at the first contact with the division and need not be repeated. Where appropriate, the notice may be given to a person's legal or personal representative. Notice may be withheld in an emergency or when it would compromise the purpose of a department investigation.

2.10(2) *License and examination applicants.* License and examination applicants are requested to supply a wide range of information depending on the qualifications for licensure or sitting for an examination, as provided by division statutes, rules and application forms. Failure to provide requested information may result in denial of the application. Some requested information, such as social security numbers, home addresses, examination scores, and criminal histories, is confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information and is freely available for public examination.

2.10(3) *License renewal.* Licensees are requested to supply a wide range of information in connection with license renewal, both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information may be confidential under state or federal law.

2.10(4) *Investigations.* Persons and entities regulated by the division are required to respond to division requests for information as part of the investigation of a complaint or inquiry. Failure to timely respond may result in disciplinary action against the person or entity to which the request is made. Information provided in response to such a request is confidential pursuant to the Iowa Code, including but not limited to Iowa Code sections 502.607(2), 505.8(8)*"a,"* 507E.5, and 523A.803, but may become public if introduced at a hearing that is open to the public, contained in a final order, or filed with a court of judicial review.

2.10(5) *Discovery request, subpoenas, and investigations.* Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law or similar demands for information.

2.10(6) *Other requested information.* In general, pursuant to state or federal law, the division requests information necessary for its regulation of insurance, securities, and regulated industries that is required to be provided to the division. This required information may be shared outside the division when required by state or federal law or division rules. Failure of a regulated entity or person to provide this information may result in the denial of the licensure or regulatory approval, as appropriate, for which the information was requested.

191—2.11(17A,22) Personally identifiable information collected by the division. The division collects and maintains open records, some of which may contain personally identifiable information, and some of which may be shared with other state or federal agencies or organizations or vendors. This

rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the division. Unless otherwise stated, the authority for the collection of the record is provided by Iowa Code chapter 502 or 505. Some personally identifiable information is protected by Iowa Code sections 502.607(2)*"e"* and 505.8(9).

2.11(1) *Nature and extent.* The following records may contain personally identifiable information:

a. Confidential records. Records listed as confidential records are described in rule 191—2.12(17A,22).

b. Rulemaking records. Rulemaking records may contain information about people who make written or oral comments about proposed rules.

c. Contested case records. Contested case records contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a contested case are contained in contested case records.

d. Licensing records. Licensing records of individuals and entities regulated by the division contain names and identifying numbers of the regulated individual or individuals designated as responsible for the regulated entity.

e. Complaint, inquiry, investigation, and examination records. Complaint, inquiry, investigation, and examination records contain names and identifying numbers of the people who submit, are the subject of, or are otherwise involved in the complaint, inquiry, investigation or examination.

f. Personnel files. The division maintains files containing information about employees of the division and applicants for positions with the division.

2.11(2) *Redaction.* To the extent that the division finds it necessary to allow inspection of records containing personally identifiable information, the division must, when allowed by law, redact the personally identifiable information prior to allowing the inspection.

2.11(3) *Means of storage.* Paper and various electronic means of storage are used to store records containing personally identifiable information.

191—2.12(17A,22) Confidential records. This rule describes the types of agency information or records that are confidential. This rule is not exhaustive. The following records shall be kept confidential.

2.12(1) Records that are exempt from disclosure under Iowa Code section 22.7.

2.12(2) Records that constitute attorney work product or attorney-client communications, or that are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11; Iowa R.C.P. 122(c); Fed. R. Civ. P. 26(b)(3); and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

2.12(3) Those portions of the division's staff manuals, instructions or other statements issued by the division that set forth criteria or guidelines to be used by division staff in auditing, making inspections, settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when the disclosure of such statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the division, pursuant to Iowa Code sections 17A.2 and 17A.3.

2.12(4) All information obtained and prepared in the course of an inquiry, complaint, or investigation, including but not limited to communications, insurer documents, data, reports, analysis, and notes, pursuant to Iowa Code section 505.8 and chapters 502, 502A, 505, 507A, 507E, 522B, 523C, and 523I.

2.12(5) Information of insurers designated as confidential by applicable law, including but not limited to information and reports that are part of an examination, pursuant to Iowa Code sections 505.17 and 507.14.

2.12(6) Information of the Iowa life and health guaranty association, pursuant to Iowa Code chapters 508C and 515B.

2.12(7) Insurance holding company systems registration and holding company examinations, pursuant to Iowa Code section 522.7.

2.12(8) Information related to the uniform securities Act that is designated nonpublic pursuant to Iowa Code section 502.607.

2.12(9) Information filed with the division related to preneed sellers and sales agents of cemetery and funeral merchandise and funeral services pursuant to Iowa Code chapter 523A.

2.12(10) Information obtained in the course of an examination of a cemetery pursuant to Iowa Code chapter 523I.

2.12(11) All records relating to prearranged funeral contracts, except upon approval by the commissioner of insurance or the attorney general, pursuant to Iowa Code section 523A.204(3).

2.12(12) Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"e."*

2.12(13) Sealed bids received prior to the time set for public opening of bids, pursuant to Iowa Code section 72.3.

2.12(14) Information related to external review of health care coverage decisions, pursuant to Iowa Code chapter 514J.

2.12(15) Information related to automobile insurance cancellation, pursuant to Iowa Code chapter 515D.

2.12(16) Determination of any suspension of an insurance producer's or other licensee's pending application for licensure, pending request for renewal, or current license, when the suspension is related to failure to pay child support, foster care, or state debt, pursuant to rule 191—10.21(252J).

2.12(17) All other information or records that by law are or may be confidential.

These rules are intended to implement Iowa Code section 22.11.

[Filed 3/1/24, effective 4/24/24]
[Published 3/20/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7731C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to contested cases

The Insurance Division hereby rescinds Chapter 3, "Contested Cases," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 3 and adopt a new Chapter 3 with revisions to remove unnecessary restrictive terms and provide additional clarity. The chapter provides rules about contested cases.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7346C**. Public hearings were held on February 15, 2024, at 10 a.m. and

3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
CONTESTED CASES

191—3.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the insurance division.

191—3.2(17A) Definitions. In addition to the definitions in rule 191—1.1(502,505), and except where otherwise specifically defined by law or the context otherwise requires, the following definitions apply:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"File," "filed," or *"filing,"* when used as a verb, means the actions set forth in subrules 3.12(3) and 3.12(4), except otherwise specifically defined by law. "Filing," when used as a noun, means the documents filed.

"Issuance" means the date of mailing of a decision or order or the date of delivery if service is by other means, unless another date is specified in the order.

"License" means the whole or a part of any permit, certificate, approval, registration, charter or similar form of permission required by statute.

"Licensee" means a person or entity to whom the division has issued a license.

"Party" means the same as defined in Iowa Code section 17A.2.

"Person" means the same as defined in Iowa Code section 17A.2.

"Presiding officer" means the commissioner, the commissioner's designee or an administrative law judge from the department of inspections, appeals, and licensing.

"Proposed decision" means the administrative law judge's or the commissioner's designee's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commissioner did not preside.

"Provision of law" means the same as defined in Iowa Code section 17A.2.

191—3.3(17A) Time requirements.

3.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

3.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer may afford all parties an opportunity to be heard or to file written arguments.

191—3.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the division action in question. The request shall be filed with the division at the address disclosed in rule 191—1.4(502,505).

The request for a contested case proceeding shall state the name and address of the requester; identify the specific division action that is disputed if applicable; include a short and plain statement of the issues of material fact in dispute; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing a contested case proceeding in the particular circumstances involved.

191—3.5(17A,507B) Commencement of hearing; service; delivery; notice of hearing; answer.

3.5(1) *Service and delivery of the notice of hearing.*

a. Commencement of hearing. Delivery of the notice of hearing referred to in this rule constitutes commencement of the contested case proceeding.

b. Delivery of the notice of hearing. Delivery shall be accomplished by personal service as provided in the Iowa Rules of Civil Procedure or by certified mail, return receipt requested, at least 15 days before the hearing date unless the parties agree to a shorter time period, or unless otherwise provided by statute. Proof of delivery by mail is the same as proof of mailing specified in subrule 3.12(5).

c. Consent to service upon the commissioner. For persons who have consented in writing to have the commissioner accept service of process on their behalf, delivery of the notice of hearing referred to in this rule is accomplished at the time the notice of hearing is signed by the commissioner, unless otherwise provided by law.

3.5(2) *Notice of hearing.* The notice of hearing shall be prepared in the form of an order and contain the following information in the notice of hearing or accompanying charging document:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the division or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the division and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing settlement;

h. Identification of the presiding officer and address, if known. If not known, a general description of the type of person who will serve as presiding officer;

i. Notification of the time period in which a party may request, under rule 191—3.6(17A), that the presiding officer be an administrative law judge;

j. Notification that failure to file an answer within 20 days of service may result in default pursuant to rule 191—3.22(17A); and

k. Reference to the procedural rules governing discovery.

3.5(3) *Answer.* An answer shall be filed within 20 days of service of the notice of hearing unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement of the matters asserted or charging document when appropriate.

a. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the notice of hearing or accompanying charging document. The answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

b. An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

c. Any allegation in the notice of hearing or accompanying charging document not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

d. The answer shall be filed with the division pursuant to rule 191—3.12(17A).

3.5(4) *Amendments.* Any notice of hearing or other charging document may be amended before a responsive pleading has been filed. Amendments to a notice of hearing or charging document after a responsive pleading has been filed and amendments to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

3.5(5) *Timing of hearing.* The hearing in a contested case proceeding shall be held within 90 days after the commencement of the contested case unless a continuance is granted by the presiding officer.

191—3.6(17A) Presiding officer.

3.6(1) If the presiding officer is not an administrative law judge, any party wishing to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request with the division within 20 days after service of a notice of hearing identifying or describing the presiding officer as the commissioner or commissioner's designee.

3.6(2) The commissioner may deny the request only upon a finding that one or more of the following apply:

a. Neither the commissioner nor any designee under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge with the qualifications identified in subrule 3.6(4) is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

i. A statute requires the commissioner or designee to serve as presiding officer.

j. The contested case arises from matters asserted pursuant to Iowa Code chapter 507A, 507B, 508B, 515G or 521A.

3.6(3) The commissioner or designee shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 3.6(4), the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

3.6(4) An administrative law judge assigned to act as presiding officer in insurance and securities matters shall be admitted to practice law before the courts of the state of Iowa.

3.6(5) Except as otherwise provided by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commissioner. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

191—3.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the division may exercise discretion to refuse to give effect to such a waiver when the waiver is inconsistent with the public interest.

191—3.8(17A) Telephone, video, or electronic proceedings.

3.8(1) The presiding officer may resolve preliminary procedural motions by telephone conference, videoconference or other electronic means in which all parties have been afforded notice and an opportunity to participate.

3.8(2) The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference, videoconference or other electronic means in which all parties have an opportunity to participate. Any party may call witnesses by telephone conference, videoconference or other electronic means with 14 days' advance notice to all parties and the presiding officer. Failure of a party to make timely disclosure may result in the disallowance of testimony by telephone conference, videoconference or other electronic means.

191—3.9(17A) Disqualification.

3.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, another factually related contested case with common disputed facts, or a pending controversy with common disputed facts that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a factually related contested case with common disputed facts or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that is (1) a party to the case, or an officer, director or trustee of a party; (2) a lawyer in the case; (3) known to have an interest that could be substantially affected by the outcome of the case; or (4) likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in the case.

3.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information that is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual

information while performing other agency functions, including fact gathering for purposes other than investigation of the matter that culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 3.9(3) and 3.23(8).

3.9(3) In a situation where a presiding officer or other person knows of information that might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

3.9(4) To request disqualification of a presiding officer, a party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion shall be filed as soon as practical after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but shall establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party requesting disqualification may seek an interlocutory appeal under rule 191—3.25(17A) and seek a stay under rule 191—3.29(17A).

191—3.10(17A) Consolidation—severance.

3.10(1) The presiding officer may consolidate contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law, (b) consolidation would expedite and simplify consideration of the issues involved, and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

3.10(2) The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

191—3.11 Reserved.

191—3.12(17A) Service and filing of pleadings and other papers.

3.12(1) *Required service.* Every pleading, motion, document, or other paper that is filed in a contested case proceeding and every discovery request or response in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the division, no later than the time of filing, if filing is required. Except for an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

3.12(2) *Methods of service.* Service upon a party represented by an attorney shall be made upon the attorney of record unless otherwise ordered. Service is made by delivering or mailing a copy to the attorney at the attorney's last-known mailing address. Service upon an unrepresented party shall be made by delivering or mailing a copy to the party's last-known mailing address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order. Service may also be made upon a party or attorney by email if the party or attorney consents in writing to be served in that manner in that case. The party or attorney may consent by providing an email address for service to the other party or by filing a document with the division by email as specified in subrule 3.12(4). The consent may be withdrawn by written notice served on all other parties or attorneys. Service by electronic means is complete upon transmission to the provided email address unless the party making service received an electronic rejection or delivery failure.

3.12(3) *Required filing.* After the notice of hearing, all pleadings, motions, and notices of discovery in a contested case proceeding shall be filed with the division's designated filing clerk. If a contested case is assigned to an administrative law judge with the department of inspections, appeals, and licensing, filing shall be conducted in accordance with the rules of the department of inspections, appeals, and licensing, unless ordered otherwise.

3.12(4) *Methods of filing.* Except where otherwise provided by law, a document is deemed filed at the time it is hand-delivered to the division at the address disclosed in rule 191—1.4(502,505) during normal business hours, delivered to an established courier service for immediate delivery to that office during normal business hours, mailed by first-class mail or state interoffice mail to that office so long as there is proof of mailing, or emailed to the designated filing clerk at enforcement.filings@iid.iowa.gov.

3.12(5) *Proof of mailing and emailing.* Proof of mailing and emailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Insurance Division at the address disclosed in 191—1.4(502,505) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail). I emailed copies of (describe document) addressed to the Insurance Division at the email address disclosed in subrule 3.12(4) and to the names and email addresses of the parties listed below by transmitting the same from (sending email address).
>
> (Date) (Signature)

191—3.13(17A) Discovery.

3.13(1) *Discovery permitted.* Where statutory time limitations permit, discovery may be conducted as permitted by the Iowa Rules of Civil Procedure and these rules. Discovery shall be conducted in an expedited manner to prevent unnecessary delays to the hearing.

3.13(2) *Scope of discovery.* Parties may obtain discovery regarding any matter, not privileged or confidential, which is relevant to the claim or defense of the party in the pending action seeking discovery or to the claim or defense of any other party. Discovery responses are subject to the confidentiality provisions of Iowa Code section 22.7, chapters under the jurisdiction of the commissioner, and rule 191—3.12(17A), in accordance with applicable law, including, but not limited to, Iowa Code sections 17A.13(2) and 522B.11(6), unless otherwise permitted by the presiding officer for good cause shown.

3.13(3) *Notice of discovery.* Discovery is only permitted after a party has filed, pursuant to rule 191—3.12(17A), a notice of discovery no later than 15 days after the filing of an answer unless extended by the presiding officer for good cause shown or by agreement of the parties. The notice of discovery shall be a general notice that the party is serving discovery. The notice should include a statement regarding the type of discovery being conducted and the due date.

3.13(4) *Discovery responses.* Parties must respond to discovery within 15 days of receipt unless the parties mutually agree there is good cause to lengthen the response period or by order of the presiding officer. Time periods for compliance with discovery may be lengthened or shortened by order of the presiding officer.

3.13(5) *Discovery completion.* All discovery must be completed no later than 30 days before the prehearing conference.

3.13(6) *Discovery motions.* Any motion relating to discovery must allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party in a timely manner. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of any such motion unless the time is shortened as provided in subrule 3.13(4). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

191—3.14(17A,505) Subpoenas.

3.14(1) A subpoena shall be issued by the presiding officer at a party's request.

a. A request for a subpoena must be in writing and submitted to the presiding officer or designated filing clerk by mail, email, or in-person delivery in accordance with the filing requirements of rule 191—3.12(17A).

b. The request shall include the names of the parties, the case number, the name and address of the requested witness, and a description or list of any documents or other items requested. The request shall also note the nature of the proceeding at which the witness is requested to testify (e.g., deposition, telephone hearing, or in-person hearing), the date and time of the proceeding, whether the witness is requested to appear in person or by telephone, the location of the proceeding, and the method of recording any deposition.

c. In the absence of good cause for permitting later action, a request for a subpoena must be received at least ten days before the scheduled proceeding.

3.14(2) The requesting party is responsible for arranging service of a subpoena prior to the proceeding at which the testimony is commanded or the time at which the requested documents must be produced. The requesting party is responsible for any cost associated with serving a subpoena and for the payment of witness fees and mileage expenses. Subpoenaed witnesses shall be entitled to receive witness fees for attendance, paid pursuant to Iowa Code section 622.69, and mileage shall be paid for each mile actually traveled for a subpoenaed witness to participate in an in-person hearing or deposition pursuant to Iowa Code section 622.69. Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, may receive additional compensation, to be fixed by the presiding officer, with reference to the value of the time employed and the degree of learning or skill required, but such additional compensation shall not exceed the sum set forth in Iowa Code section 622.72.

3.14(3) The presiding officer may quash or modify a subpoena upon motion as provided in the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be promptly set for hearing.

191—3.15(17A) Motions.

3.15(1) No technical form for motions is required. However, prehearing motions must be in writing and must state the grounds for relief and relief sought.

3.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. In ruling on a motion, the presiding officer may consider the motion unresisted, if no response is timely filed.

3.15(3) The presiding officer may schedule oral argument on any motion.

3.15(4) Motions pertaining to the hearing, except motions for summary judgment and requests for continuances, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by an order of the presiding officer.

3.15(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment may be filed and served within a reasonable time prior to the hearing, as determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days from the date a copy of the motion was served unless otherwise ordered by the presiding officer. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 191—3.28(17A) and appeal pursuant to rule 191—3.27(17A).

191—3.16(17A) Prehearing conference.

3.16(1) A prehearing conference shall be scheduled not less than seven business days prior to the hearing date. The presiding officer shall give written notice of the prehearing conference to all parties.

3.16(2) Prehearing conferences may be conducted by telephone conference or videoconference or in person as stated in the notice of hearing, unless otherwise ordered by the presiding officer.

3.16(3) Each party shall exchange and receive prior to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for failure to include their names; and

b. A final list and copies of exhibits that the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for failure to include them.

3.16(4) Witness or exhibit lists may be amended subsequent to the prehearing conference within time limits established by the presiding officer at the prehearing conference. If no time limits are established at the prehearing conference, subsequent amendments to a witness or exhibit list may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms and time limits. Any such amendments must be served on all parties.

3.16(5) In addition to the requirements of subrule 3.16(3), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;
b. Enter into stipulations on the admissibility of exhibits;
c. Identify matters that the parties intend to request be officially noticed;
d. Enter into stipulations for waiver of any provision of law; and
e. Consider any additional matters that will expedite the hearing.

191—3.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

3.17(1) An application for a continuance shall:

a. Be made at the earliest possible time and no less than 14 days before the hearing except in case of unanticipated emergencies or consent of all parties, and

b. State the specific reasons for the request.

3.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;
b. The interests of all parties;
c. The likelihood of informal settlement;
d. The existence of an emergency;
e. Any objection;
f. Any applicable time requirements;
g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
h. The timeliness of the request;
i. Failure to timely provide discovery responses; and
j. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

191—3.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing.

191—3.19(17A,507B) Intervention.

3.19(1) A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, including any statutory grounds, and the position and interest of the proposed intervenor. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

3.19(2) Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case.

3.19(3) The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties; or (d) there exists a statutory right to intervene.

3.19(4) If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

191—3.20(17A) Hearing procedures.

3.20(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure orderly conduct of the proceedings.

3.20(2) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. Parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer, the court reporter, or a person otherwise authorized by law and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law; and

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

3.20(3) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel a person whose conduct is disorderly.

3.20(4) Parties have the right to participate and to be represented by an attorney in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law, subject to Iowa Court Rule 31.14.

3.20(5) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

3.20(6) All objections shall be timely made and stated on the record.

3.20(7) Witnesses may be sequestered during the hearing. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to presentation of the cause.

191—3.21(17A,507B) Evidence.

3.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with applicable requirements of law.

3.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

3.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, may receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

3.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should be provided to

opposing parties no later than the time they are proffered to the presiding officer. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

3.21(5) A party may object to specific evidence. A party may request limits on the scope of any examination or cross-examination. Objections shall be accompanied by a brief statement of the grounds upon which the objections are based. The objection and the ruling on the objection 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, if appropriate.

3.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

191—3.22(17A) Default.

3.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice as provided in subrule 3.5(1), the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

3.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and failed to file a required pleading or has failed to appear after proper service.

3.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate constitute final division action unless one of the following occurs: (1) the presiding officer otherwise orders, (2) a motion to vacate the default decision is filed within 15 days after the date of notification or mailing of the decision in accordance with rule 191—3.12(17A), or (3) an appeal to the commissioner of a proposed default decision is filed in accordance with rule 191—3.27(17A). A motion to vacate must be filed and served on all parties and state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

3.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

3.22(5) A motion to vacate shall be granted only when it is timely filed, is properly substantiated, and demonstrates good cause for the party's failure to appear or participate. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

3.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

3.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 191—3.25(17A).

3.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall schedule another hearing on the merits and the contested case shall proceed accordingly.

3.22(9) A default decision may award any relief authorized by statute or rule.

3.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 191—3.29(17A).

191—3.23(17A) Ex parte communication.

3.23(1) Unless required for the disposition of ex parte matters specifically, through communication either written, oral, or other forms authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the division or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 3.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

3.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

3.23(3) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 191—3.12(17A) and may be supplemented by telephone, facsimile, email or other means of notification.

3.23(4) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

3.23(5) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 191—3.16(17A).

3.23(6) A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record, either under seal by protective order or in the public file, at the discretion of the presiding officer. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

3.23(7) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery.

3.23(8) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the division. Violation of ex parte communication prohibitions by division personnel shall be reported to the first deputy commissioner or designee for possible sanctions including censure, suspension, dismissal or other disciplinary action.

191—3.24(17A) Recording costs. Upon request, the presiding officer with notice to all parties shall provide a copy of the whole or any portion of the record at a reasonable cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

191—3.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commissioner or designee may review an interlocutory order of the presiding officer. In determining whether to do so, the commissioner or designee shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order at the time the proposed decision of the presiding officer is reviewed would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

191—3.26(17A) Final decision.

3.26(1) When the commissioner presides over the reception of evidence at the hearing, the commissioner's decision is a final decision.

3.26(2) When the commissioner does not preside over the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the division when adopted by the commissioner or without further proceedings after the time provided in rule 191—3.27(17A) unless there is a timely appeal to the commissioner or motion by the division to review the proposed decision.

3.26(3) The presiding officer's decision shall specify in bold print either that the decision is final or that the decision shall become final without further proceedings after the time provided in rule 191—3.27(17A).

3.26(4) Any administrative law judge serving as a presiding officer in a contested case shall report to the commissioner on a monthly basis all matters taken under advisement for longer than 60 days, together with an explanation of the reasons for the delay and an expected date of a proposed decision. A matter shall be reported when all hearings have been completed and the matter awaits decision without further appearance of the parties or their attorneys, even though briefs or transcripts have been ordered but have not yet been filed. The report shall be due on the tenth day of each calendar month for the period ending with the last day of the preceding calendar month. The report shall be signed by the administrative law judge. All reports received will be filed with the Iowa insurance division as records available for public inspection.

3.26(5) Parties shall be promptly notified of each proposed or final decision or order by delivery to them of a copy of such decision or order in the manner provided by Iowa Code section 17A.12(1) unless the party has consented to an alternative form of delivery.

191—3.27(17A) Appeals and review by the commissioner of proposed decisions.

3.27(1) Any adversely affected party may appeal a proposed decision to the commissioner within 30 days after issuance of the proposed decision.

3.27(2) The division may initiate review of a proposed decision on its own motion at any time within 30 days following issuance of such a decision.

3.27(3) An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commissioner. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The proposed decision or order appealed from;

b. The parties initiating the appeal;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The grounds for relief; and

e. The relief sought.

3.27(4) On appeal from a proposed decision of a presiding officer, the issues shall be limited to those raised before the presiding officer. No new issues will be considered for the first time on appeal.

3.27(5) On appeal, a party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within ten days of service

of the notice of appeal. The commissioner may remand a case to the presiding officer for further hearing or the commissioner may preside at the taking of additional evidence.

3.27(6) The commissioner shall issue a schedule for consideration of the appeal.

3.27(7) Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Any written requests to present oral argument shall be filed with the briefs. The commissioner may resolve the appeal on the briefs or provide an opportunity for oral argument. The commissioner may shorten or extend the briefing period as appropriate.

191—3.28(17A) Applications for rehearing.

3.28(1) Any party to a contested case proceeding may file an application for rehearing from a final order.

3.28(2) The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the division decision on the existing record and whether, on the basis of the grounds enumerated in subrule 3.27(5), the applicant requests an opportunity to submit additional evidence.

3.28(3) The application shall be filed with the commissioner within 20 days after issuance of the final decision.

3.28(4) A copy of the application shall be timely mailed by the division to all parties of record not joining therein if the application does not contain a certificate of service demonstrating service on all parties.

3.28(5) Any application for a rehearing shall be deemed denied unless the commissioner grants the application within 20 days after its filing.

191—3.29(17A) Stay of division action.

3.29(1) Petition requirements for stay of division action.

a. Any party to a contested case proceeding may petition the commissioner for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the division. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The commissioner may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the commissioner for a stay or other temporary remedy pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

3.29(2) In determining whether to grant a stay, the presiding officer or commissioner shall consider the factors listed in Iowa Code section 17A.19(5).

3.29(3) Any petition for stay of division action shall be deemed denied unless the commissioner grants the application within 20 days after its filing.

3.29(4) A stay may be vacated by the issuing authority upon application of the commissioner or any other party.

191—3.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as is practicable.

191—3.31(17A) Emergency adjudicative proceedings.

3.31(1) To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the division may issue a

written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the division by emergency adjudicative order. Before issuing an emergency adjudicative order, the division shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the division is proceeding on the basis of reliable information;

b. Whether the specific circumstances that pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare;

e. Whether the specific action contemplated by the insurance division is necessary to avoid the immediate danger; and

f. Whether the proposed emergency adjudicative order is sufficiently limited in scope and narrowly tailored to protect the public health, safety or welfare.

3.31(2) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the division's decision to take immediate action.

a. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing the procedures specified in subrule 3.5(1).

b. If practical, the division shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

3.31(3) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the division shall make reasonable, immediate efforts to contact by telephone the persons who are required to comply with the order.

3.31(4) After issuance of an emergency adjudicative order, the division shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

3.31(5) A written emergency adjudicative order shall include notification of the date on which division proceedings are scheduled for completion. After an emergency adjudicative order is issued, continuance of further division proceedings to a later date will be granted only in compelling circumstances and upon written application.

3.31(6) This rule does not preclude issuance of summary cease and desist orders as authorized by Iowa Code sections 502.604, 502A.12, 523A.805, and 523D.13 and chapters 505, 507B, 507C, 508, and 515 and rule 191—3.32(502,505).

191—3.32(502,505,507B) Summary cease and desist orders. When a statute authorizes action to be taken without a prior hearing, the commissioner's order shall be sent to the last-known address of the party by certified mail, return receipt requested, unless the party is a licensee, in which case the order shall be sent by restricted certified mail. The order shall include a brief statement of findings of fact, conclusions of law and policy reasons for the decision; direct the person or insurer to cease and desist from engaging in the act or practice or to take other affirmative action as is necessary, in the judgment of the commissioner, to comply with the statute; and state that the party will be afforded a contested case proceeding and a hearing if a request is filed with the commissioner at least 30 days from the date that the order is issued, unless a different time is specified by statute. The commissioner shall issue a notice of hearing no later than 30 days from the date of receipt of a timely request for a contested case proceeding and hearing. If a statute requires a hearing to be held following issuance of a summary order, the date and time of that hearing shall be set forth in the order. Summary orders shall remain effective during the pendency of proceedings.

191—3.33(17A,502,505) Settlement.

3.33(1) A party to a controversy that may culminate or has culminated in contested case proceedings may attempt settlement by complying with the procedures set forth in this subrule. No party shall be required to settle the controversy or contested case by submitting to settlement procedures.

3.33(2) Parties desiring settlement shall set forth in writing the various points of a proposed settlement, including findings of facts.

3.33(3) When signed by the parties and approved by the commissioner, a settlement shall represent final disposition of the matter.

3.33(4) When there is more than one party adverse to the division, a separate settlement between one party and the division is permissible.

3.33(5) A proposed settlement that is not accepted or signed by the parties and the commissioner shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 3/1/24, effective 4/24/24]
[Published 3/20/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7732C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to waivers and declaratory orders

The Insurance Division hereby rescinds Chapter 4, "Agency Procedure for Rule Making, Waiver of Rules, and Declaratory Orders," and adopts a new Chapter 4, "Waiver of Rules and Declaratory Orders," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 4 and adopt a new Chapter 4 with revisions to remove unnecessary restrictive terms and provide additional clarity. The chapter provides rules about the waiver process and declaratory orders.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7347C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
WAIVER OF RULES AND DECLARATORY ORDERS

191—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules proposed or adopted by the division are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

191—4.2(17A) Definitions. The definitions in Iowa Code section 17A.2 are incorporated into this chapter by this reference. In addition to those definitions and the definitions in rule 191—1.1(502,505), the following definitions apply:

"Commissioner" means the commissioner of insurance or the commissioner's designee. For the purposes of this chapter, "commissioner" includes both the commissioner of insurance and the administrator as defined in Iowa Code chapter 502.

"Waiver" means action by the division that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

191—4.3(17A) Severability. If any provision of any rule adopted by the division, or if the application of any such rule to any person or circumstance, is for any reason held to be invalid, illegal or unenforceable by any court of law, the validity, legality and enforceability of the remainder of the rule and its application to other persons or circumstances shall not be affected or impaired thereby.

191—4.4(17A) Public rulemaking docket. The division shall maintain on the division's website a current public rulemaking docket listing each pending rulemaking proceeding and relevant rulemaking information, including the information required by Iowa Code sections 17A.3(1)*"d"* and 17A.6A(2). If a rulemaking docket for all agencies is maintained on the Iowa legislature's website, the division may utilize the legislature's docket, in whole or in part, instead of creating a duplicative separate docket.

DIVISION I
WAIVER OF RULES

191—4.5(17A) Waivers.

4.5(1) *Scope.* This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. This chapter shall not preclude the division from granting waivers in other contexts or on the basis of other standards if a statute or agency rule authorizes the division to do so and the division deems it appropriate to do so.

4.5(2) *Authority to grant waivers.* The division may grant a waiver from a rule only if the division has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The division may not waive the following categories of rules:

a. Rules setting requirements that are created or duties that are imposed by statute.

b. Rules that provide definitions or interpretations, set fees, clarify enforcement authority, deal with fraud or are the subject of prosecutorial discretion.

c. Rules that merely define the meaning of a statute or other provision of law or precedent if the commissioner does not possess delegated authority to bind the courts to any extent with the commissioner's definition.

4.5(3) *Criteria for order for waiver.* The division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

a. Application of the rule would impose an undue hardship on the person for whom the waiver is requested;

b. Waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. Provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

191—4.6(17A) Petition for waiver. A petition for a waiver must be submitted in writing to the division as follows:

4.6(1) Applications. If the petition relates to an application or license, the petition must be made in accordance with the filing requirements for the application or license in question.

4.6(2) Contested cases. If the petition relates to a pending contested case, the petition must be filed in the contested case proceeding, using the caption of the contested case. The waiver petition shall be decided within the context of the contested case unless the presiding officer, other than the commissioner, determines that the petition should be referred directly to the commissioner.

4.6(3) Other. If the petition does not relate to an application or a pending contested case, the petition must be submitted to the division at the address in rule 191—1.4(502,505) or as instructed on the division's website.

4.6(4) Content of petition. A petition for waiver must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER

In the matter of: (Name of Person Requesting Waiver)	}	REQUEST FOR WAIVER OF RULE (Specify number of rule for which waiver is requested)

4.6(5) The petition shall provide the following information in separate numbered paragraphs:

1. The name, address and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the criteria described in subrule 4.5(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes justify a waiver.

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

6. Any information known to the petitioner regarding the division's treatment of similar cases.

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

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

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

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

4.6(6) Notice. The division must acknowledge a petition upon receipt and ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the division attesting that notice has been provided.

191—4.7(17A) Waiver hearing procedures and ruling.

4.7(1) *Procedures.* The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute.

4.7(2) *Additional information.* Prior to issuing an order granting or denying a waiver, the division 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 division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the division.

4.7(3) *Division discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division, upon consideration of all relevant factors. Each petition for a waiver must be evaluated by the division based on the unique, individual circumstances set out in the petition.

4.7(4) *Ruling.* An order granting or denying a waiver must be in writing and must contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

4.7(5) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver from a division rule.

4.7(6) *Narrowly tailored exception.* A waiver, if granted, must provide the narrowest exception possible to the provisions of a rule.

4.7(7) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the division must balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

4.7(8) *Conditions.* The division may place any condition on a waiver that the division finds desirable to protect the public health, safety, and welfare.

4.7(9) *Time period of waiver.* A waiver must not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the division, a waiver may be renewed if the division finds that grounds for a waiver continue to exist.

4.7(10) *Time for ruling.* The division must grant or deny a petition for a waiver as soon as practicable but, in any event, must do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the division must grant or deny the petition no later than the time at which the final decision in that contested case is issued.

4.7(11) *When deemed denied.* Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver.

4.7(12) *Service of order.* Within seven days of its issuance, any order issued under this chapter must be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

4.7(13) *Cancellation of a waiver.* A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, modified or revoked if, after appropriate notice and hearing, the division issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order; or

d. The waiver is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

4.7(14) *Violations.* Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

The rules in this division are intended to implement Iowa Code section 17A.9A and Executive Order Number 11 (September 14, 1999).

DIVISION II
DECLARATORY ORDERS

191—4.8(17A) Petition for declaratory order.

4.8(1) Any person or agency may file a petition with the division for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the division.

4.8(2) The petition must be submitted to the division at the address provided in rule 191—1.4(502,505) or as instructed on the division's website.

4.8(3) The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER		
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

4.8(4) The petition for declaratory order must provide the following information in separate numbered paragraphs:

1. The petitioner's name, address, and telephone number.
2. The citation to and the exact words, passages, sentences, or paragraphs of the statute, rule, or order that is the subject of the petition.
3. A clear and concise statement of all relevant facts upon which the declaratory order is requested.
4. The questions the petitioner wants answered, stated clearly and concisely.
5. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
6. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
7. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
8. Any request by the petitioner for a meeting provided for by rule 191—4.14(17A).

4.8(5) The petition for declaratory order must be dated and signed by the petitioner or the petitioner's representative.

4.8(6) If applicable, the petition must also include the name, mailing address, and telephone number of the petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.8(7) A petition is deemed filed when it is received by the division. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose.

191—4.9(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division must give notice of the petition to all persons not served by the petitioner pursuant to rule 191—4.13(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons deemed appropriate.

191—4.10(17A) Intervention.

4.10(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order (after time for notice under rule 191—4.9(17A) and before 30-day time for division action under rule 191—4.15(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

4.10(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the division.

4.10(3) A petition must be typewritten or legibly handwritten in ink and shall state in separately numbered paragraphs the following:

a. Facts supporting the intervenor's standing and qualifications for intervention.

b. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

c. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

d. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

e. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by or interested in the questions presented.

f. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

4.10(4) The petition must be dated and signed by the intervenor or the intervenor's representative and include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

191—4.11(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

191—4.12(17A) Inquiries. Inquiries concerning the status of a declaratory proceeding may be made to the division at the address disclosed in rule 191—1.4(502,505).

191—4.13(17A) Service and filing of petitions and other papers.

4.13(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

4.13(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the division at the address disclosed in rule 191—1.4(502,505). All petitions, briefs, or other papers required to be served upon a party shall be filed simultaneously with the division.

4.13(3) *Method of service, time of filing, proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 191—3.12(17A).

191—4.14(17A) Consideration. Upon request by the petitioner, the division must schedule an informal meeting between the original petitioner, all intervenors, and the commissioner, or a member of the commissioner's staff, to discuss the questions raised.

191—4.15(17A) Action on petition.

4.15(1) Within the time allowed by Iowa Code section 17A.9(5), after receiving a petition for a declaratory order, the division shall take action on the petition as required by Iowa Code section 17A.9(5).

4.15(2) The date of issuance of an order is as defined in rule 191—3.2(17A).

191—4.16(17A) Refusal to issue order.

4.16(1) The division shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for any of the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by failure of the division to issue an order.

c. The division does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rulemaking, contested case, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

j. The petition requests the division to determine whether a statute is unconstitutional on its face.

4.16(2) A refusal by the division to issue a declaratory order must indicate the specific grounds for refusal and constitutes final agency action on the petition.

4.16(3) Refusal to issue a declaratory order pursuant to this rule does not preclude a petitioner from filing a new petition that seeks to eliminate the grounds for refusal to issue a ruling.

191—4.17(17A) Contents of declaratory order—effective date.

4.17(1) In addition to the order itself, a declaratory order must contain the date of its issuance; the name of the petitioner and all intervenors; the specific statutes, rules, policies, decisions, or orders involved; the particular facts upon which it is based; and the reasons for its conclusion.

4.17(2) A declaratory order is effective on the date of issuance.

191—4.18(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order must be mailed or emailed by the division promptly to the original petitioner and all intervenors.

191—4.19(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the division. Issuance of a declaratory order constitutes final agency action on the petition.

The rules in this division are intended to implement Iowa Code section 17A.9.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7733C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to life insurance illustrations model regulation

The Insurance Division hereby rescinds Chapter 14, "Life Insurance Illustrations Model Regulation," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 507B.12.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 507B.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 14 and adopt a new Chapter 14 with revisions to remove unnecessarily restrictive terms and provide additional clarity. The chapter provides illustration formats, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7348C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 14 and adopt the following **new** chapter in lieu thereof:

UNFAIR TRADE PRACTICES

CHAPTER 14
LIFE INSURANCE ILLUSTRATIONS MODEL REGULATION

191—14.1(507B) Purpose. The purpose of this chapter is to provide rules for life insurance policy illustrations that will protect consumers and foster consumer education. These rules provide illustration formats, prescribe standards to be followed when illustrations are used, and specify the disclosures that are required in connection with illustrations. The goals of these rules are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

191—14.2(507B) Authority. These rules are issued based upon the authority granted the commissioner under Iowa Code section 507B.4.

191—14.3(507B) Applicability and scope. These rules apply to all group and individual life insurance policies and certificates except:

1. Variable life insurance;
2. Individual and group annuity contracts;
3. Credit life insurance; or
4. Life insurance policies or certificates with initial face amounts of $10,000 or less.

191—14.4(507B) Definitions. For the purposes of these rules:

"Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

"Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

"Currently payable scale" means a scale of nonguaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next 95 days.

"Disciplined current scale" means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

1. Are consistent with all provisions of these rules;
2. Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;
3. Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and
4. Do not permit assumed expenses to be less than minimum assumed expenses.

"Generic name" means a short title descriptive of the policy being illustrated such as "whole life," "term life" or "flexible premium adjustable life."

"Guaranteed elements" and *"nonguaranteed elements."*

1. "Guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.
2. "Nonguaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

"Illustrated scale" means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policyowner than the lesser of:

1. The disciplined current scale; or
2. The currently payable scale.

"Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:

1. "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements.
2. "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this regulation, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.
3. "In-force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

"Illustration actuary" means an actuary meeting the requirements of rule 191—14.11(507B) who certifies illustrations based on the standard of practice promulgated by the Actuarial Standards Board.

"Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in these rules, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100 percent policy persistency thereafter.

"Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

1. Fully allocated expenses;
2. Marginal expenses; and
3. A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners.

Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

"Nonterm group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

1. Every plan of coverage was selected by the employer or other group representative;
2. Some portion of the premium is paid by the group or through payroll deduction; and
3. Group underwriting or simplified underwriting is used.

"Policyowner" means the owner named in the policy or the certificate holder in the case of a group policy.

"Premium outlay" means the amount of premium assumed to be paid by the policyowner or other premium payer out of pocket.

"Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policyowner value available. For this purpose, policyowner value will include cash surrender values and any other illustrated benefits amounts available at the policyowner's election.

191—14.5(507B) Policies to be illustrated.

14.5(1) Each insurer marketing policies to which these rules are applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For policy forms filed after February 1, 1997, the illustration identification shall be made at the time of filing.

14.5(2) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

14.5(3) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with these rules is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration given an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

14.5(4) Potential enrollees of nonterm group life subject to these rules shall be given a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of these rules, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for nonterm group life who enroll for pure death benefit protection. In addition, the insurer shall make a basic illustration available to any nonterm group life enrollee upon request.

191—14.6(507B) General rules and prohibitions.

14.6(1) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of these rules, be clearly labeled "life insurance illustration" and contain the following basic information:

a. Name of insurer;

b. Name and business address of producer or insurer's authorized representative, if any;

c. Name, age and sex of proposed insured, except where a composite illustration is permitted under these rules;

d. Underwriting or rating classification upon which the illustration is based;

e. Generic name of policy, the company product name, if different, and form number;

f. Initial death benefit; and

g. Dividend option election or application of nonguaranteed elements, if applicable.

14.6(2) When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives shall not:

a. Represent the policy as anything other than a life insurance policy;

b. Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

c. State or imply that the payment or amount of nonguaranteed elements is guaranteed;

d. Use an illustration that does not comply with the requirements of these rules;

e. Use an illustration that at any policy duration depicts policy performance more favorable to the policyowner than that produced by the illustrated scale of the insurer whose policy is being illustrated;

f. Provide an applicant with an incomplete illustration;

g. Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;

h. Use the term "vanish" or "vanishing premium" or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;

i. Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or

j. Use an illustration that is not "self-supporting."

14.6(3) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

191—14.7(507B) Standards for basic illustrations.

14.7(1) *Format.* A basic illustration shall conform with the following requirements:

a. The illustration shall be labeled with the date on which it was prepared.

b. Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").

c. The assumed dates of payment receipt and benefit payout within a policy year shall be clearly identified.

d. If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.

e. The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.

f. Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

g. If the illustration shows any nonguaranteed elements, they cannot be based on a scale more favorable to the policyowner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.

h. The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (e.g., "see page 1 for guaranteed elements").

i. The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

j. The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policyowner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.

k. Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

l. Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

(1) The benefits and values are not guaranteed;

(2) The assumptions on which they are based are subject to change by the insurer; and

(3) Actual results may be more or less favorable.

m. If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

n. If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

14.7(2) *Narrative summary.* A basic illustration shall include the following:

a. A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

b. A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

c. A brief description of any policy features, riders or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

d. Identification and a brief definition of column headings and key terms used in the illustration; and

e. A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

14.7(3) *Numeric summary.*

a. Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years 5, 10 and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies, the summary shall show policy years 5, 10, 20 and 30.

(1) Policy guarantees;

(2) Insurer's illustrated scale;

(3) Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

1. Dividends at 50 percent of the dividends contained in the illustrated scale used;

2. Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

3. All nonguaranteed charges, including but not limited to term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

b. In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three bases.

14.7(4) *Statements.* Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policyowner in the case of an illustration provided at time of delivery, as required in these rules.

a. A statement to be signed and dated by the applicant or policyowner reading as follows: "I have received a copy of this illustration and understand that elements illustrated are subject to change and could be either higher or lower. The producer has told me they are not guaranteed."

b. A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

14.7(5) *Tabular detail.*

a. A basic illustration shall include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(1) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(2) The corresponding guaranteed death benefit, as provided in the policy; and

(3) The corresponding guaranteed value available upon surrender, as provided in the policy.

b. For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

c. Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any nonguaranteed elements are shown, they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

191—14.8(507B) Standards for supplemental illustrations.

14.8(1) A supplemental illustration may be provided so long as:

a. It is appended to, accompanied by or preceded by a basic illustration that complies with these rules;

b. The nonguaranteed elements shown are not more favorable to the policyowner than the corresponding elements based on the scale used in the basic illustration;

c. It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and

d. For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

14.8(2) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

191—14.9(507B) Delivery of illustration and record retention.

14.9(1) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with these rules, shall be submitted to the insurer at the time of policy application. A copy shall also be provided to the applicant.

If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this rule, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policyowner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policyowner.

14.9(2) If no illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policyowner.

14.9(3) If the basic illustration or revised illustration is sent to the applicant or policyowner by mail from the insurer, it shall include instructions for the applicant or policyowner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subrule shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

14.9(4) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification either that no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

191—14.10(507B) Annual report; notice to policyowners.

14.10(1) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policyowner with an annual report on the status of the policy that shall contain at least the following information:

a. For universal life policies, the report shall include the following:

(1) The beginning and end date of the current report period;

(2) The policy value at the end of the previous report period and at the end of the current report period;

(3) The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (i.e., interest, mortality, expense and riders);

(4) The current death benefit at the end of the current report period on each life covered by the policy;

(5) The net cash surrender value of the policy as of the end of the current report period;

(6) The amount of outstanding loans, if any, as of the end of the current report period; and either

(7) For fixed premium policies: If, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(8) For flexible premium policies: If, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

b. For all other policies, where applicable:
(1) Current death benefit;
(2) Annual contract premium;
(3) Current cash surrender value;
(4) Current dividend;
(5) Application of current dividend; and
(6) Amount of outstanding loan.

c. Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

14.10(2) If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICYOWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's telephone number], writing to [insurer's name] at [insurer's address] or contacting your agent. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in-force illustration.

14.10(3) Upon the request of the policyowner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of subrules 14.6(1), 14.6(2), 14.7(1) and 14.7(5). No signature or other acknowledgment of receipt of this illustration shall be required.

14.10(4) If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.

191—14.11(507B) Annual certifications.

14.11(1) The board of directors of each insurer shall appoint one or more illustration actuaries.

14.11(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of these rules**.**

14.11(3) The illustration actuary shall:

a. Be a member in good standing of the American Academy of Actuaries;

b. Be familiar with the standard of practice regarding life insurance policy illustrations;

c. Not have been found by the commissioner, following appropriate notice and hearing, to have:

(1) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of dealings as an illustration actuary;

(2) Been found guilty of fraudulent or dishonest practices;

(3) Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(4) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

d. Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under paragraph 14.11(3)*"c"*;

e. Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification.

If nonguaranteed elements illustrated for both new and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged or credited to the same or similar forms, this must be disclosed in the annual certification; and

f. Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(1) Fully allocated expenses;

(2) Marginal expenses; or

(3) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners.

14.11(4) The illustration actuary shall file a certification with the board and with the commissioner:

a. Annually for all policy forms for which illustrations are used; and

b. Before a new policy form is illustrated.

If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

14.11(5) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of the actuary's inability to certify.

14.11(6) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

a. That the illustration formats meet the requirements of these rules and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

b. That the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in paragraph 14.11(3)*"f."*

14.11(7) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

14.11(8) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.

191—14.12(507B) Penalties. In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of these rules shall be found to have committed a violation of Iowa Code section 507B.4.

191—14.13(507B) Severability. If any provision of these rules or their application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the rules and their application to other persons or circumstances shall not be affected.

191—14.14(507B) Effective date. These rules are effective as of April 24, 2024, and apply to policies sold on or after February 1, 1997.

These rules are intended to implement Iowa Code chapter 507B.

[Filed 3/1/24, effective 4/24/24]

[Published 3/20/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7734C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to unfair trade practices

The Insurance Division hereby rescinds Chapter 15, "Unfair Trade Practices," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 507B.12.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 507B.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 15 and adopt a new Chapter 15 with revisions to remove unnecessarily restrictive terms and provide additional clarity. The chapter establishes certain minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance as prohibited by Iowa Code chapter 507B.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7349C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15
UNFAIR TRADE PRACTICES

DIVISION I
SALES PRACTICES

191—15.1(507B) Purpose. This chapter is intended to establish certain minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as prohibited by Iowa Code chapter 507B.

191—15.2(507B) Definitions.

"Advertisement" for the purpose of these rules means material designed to create public interest in insurance or an insurer, or to induce the public to purchase, increase, modify, reinstate or retain a policy including:

1. Printed and published material, audio and visual material, and descriptive literature of an insurer or producer used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards, computer online networks and similar displays and descriptive literature and sales aids of all kinds issued by an insurer or producer for presentation to members of the public.

2. However, for the purpose of these rules "advertisement" shall not include: communications or materials used within an insurer's own organization and not intended for dissemination to the public; communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate, or retain a policy; and a general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.

"Aftermarket crash parts" means replacement parts as defined in Iowa Code section 537B.4.

"Certificate" means a statement of the coverage and provisions of a policy of group accident and sickness insurance that has been delivered or issued for delivery in this state and includes riders, endorsements and enrollment forms, if attached.

"Duplicate Medicare supplement insurance" means the sale or the attempt to knowingly sell to an individual a policy of insurance designed to supplement Medicare benefits as provided in Title XVIII, Health Insurance for the Aged and Disabled, of the Social Security Amendments of 1965 as then constituted or later amended, when the individual is already insured under such a policy.

"Duplication" means policies of the same coverage type according to minimum standards classifications outlined in rule 191—36.6(514D) that overlap to the extent that a reasonable individual would not consider the ownership of the policies to be beneficial.

"Exception" for the purpose of these rules shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.

"Illustrated scale" means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policyholder than the lesser of the disciplined current scale or the currently payable scale as defined in rule 191—14.4(507B).

"Institutional advertisement" means an advertisement having as its sole purpose the promotion of the reader's, viewer's or listener's interest in the concept of accident and sickness insurance, or the promotion of the insurer as a seller of accident and sickness insurance.

"Insurer" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's, fraternal benefit society, and any other legal entity engaged in the business of insurance.

"Invitation to contract" means an advertisement for accident and sickness insurance that is neither an invitation to inquire nor an institutional advertisement.

"Invitation to inquire" means an advertisement having as its objective the creation of a desire to inquire further about accident and sickness insurance and that is limited to a brief description of the loss for which benefits are payable. An invitation to inquire must not refer to cost but may contain the dollar amount of benefits payable and the period of time during which benefits are payable.

"Limitation" for the purpose of these rules means any provision that restricts coverage under the policy other than an exception or a reduction.

"Limited benefit health coverage" means the same as defined in 191—subrule 36.6(10).

"Person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including insurance producers and adjusters. "Person" also means any corporation operating under the provisions of Iowa Code chapter 514 and any benevolent association as defined and operated under Iowa Code chapter 512A. For purposes of this chapter, corporations operating under the provisions of Iowa Code chapters 514 and 512A shall be deemed to be engaged in the business of insurance.

"Policy" includes any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement that provides for insurance benefits.

"Preneed funeral contract or prearrangement" means an agreement by or for an individual before the individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

"Producer" means a person who solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance for risks residing, located or to be performed in this state.

"Prominently" or *"conspicuously"* means that the information to be disclosed will be presented in a manner that is noticeably set apart from other information or images in the advertisement.

"Reduction" for the purpose of these rules means any provision that reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

"Twisting" means any action by a producer or insurer to induce or attempt to induce any individual to lapse, forfeit, surrender, terminate, retain, assign, borrow, or convert a policy or an annuity in order that such individual procure another policy or annuity, when such action would operate to the overall detriment of the interests of the individual.

191—15.3(507B) Advertising.

15.3(1) *Form and content of advertisements.* The format and content of an advertisement shall be truthful and sufficiently complete and clear to avoid deception or the capacity or tendency to misrepresent or deceive. Whether an advertisement has a capacity or tendency to misrepresent or deceive shall be determined by the overall impression that the advertisement may be reasonably expected to create upon an individual in the segment of the public to which it is primarily directed and who has average education, intelligence and familiarity with insurance terminology for products in that market.

Information regarding exceptions, limitations, reductions and other restrictions required to be disclosed by this rule shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisements so as to be confusing or misleading.

15.3(2) *Prohibited terms and disclosure requirements for health insurance.*

a. No advertisement shall contain or use words or phrases such as "all"; "full"; "complete"; "comprehensive"; "unlimited"; "up to"; "as high as"; "this policy will help fill some of the gaps that Medicare and your present insurance leave out"; "this policy will help to replace your income" (when used to express loss of time benefits); or similar words and phrases in a manner that exaggerates any benefits beyond the terms of the policy.

b. No advertisement shall contain descriptions of a policy limitation, exception, or reduction, worded in a positive manner to imply that it is a benefit, such as describing a waiting period as a "benefit builder" or stating "even preexisting conditions are covered after two years." Words and phrases used in an advertisement to describe such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions and reductions of the policy offered.

c. No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as "tax free," "extra cash" and substantially similar phrases that have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable an individual to make a profit from being hospitalized.

d. No advertisement shall use the words "only"; "just"; "merely"; "minimum" or similar words or phrases to describe the applicability of any exceptions and reductions, such as: "This policy is subject to the following minimum exceptions and reductions."

e. An advertisement that refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, shall also disclose those exceptions, reductions, and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.

f. An advertisement may contain a brief description of coverage in an invitation to inquire so long as it is limited to a brief description of the loss for which benefits are payable. The brief description may not refer to the cost of the policy.

g. An advertisement for a policy that contains a waiting, elimination, probationary, or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss shall prominently disclose the existence of such periods.

h. An invitation to inquire shall contain a provision in the following or substantially similar form:

"This policy has [exclusions] [limitations] [reduction of benefits] [terms under which the policy may be continued in force or discontinued]. For costs and complete details of the coverage, call [or write] your insurance agent or the company [whichever is applicable]."

15.3(3) *Prohibited terms in life insurance and annuity policies.* No advertisement for a life insurance or annuity policy shall use the terms "investment," "investment plan," "founder's plan," "charter plan," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan," "retirement plan," or other similar term that has the capacity or tendency to mislead an insured or prospective insured to believe that the insurer is offering something other than an insurance policy or some benefit not available to other individuals of the same class and equal expectation of life. An advertisement shall not state that there are "no more premiums" or that premiums will "vanish" or "disappear" or use similar terms when such statement is not based on the guaranteed rates.

15.3(4) *Exclusions, limitations, exceptions and reductions.* Words and phrases used in an advertisement to describe policy exclusions, limitations, exceptions and reductions shall clearly, prominently and accurately indicate the negative or limited nature of the exclusions, limitations, exceptions and reductions.

An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or other policies providing benefits that are limited in nature shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be worded in language identical to or substantially similar to the following: "THIS IS A LIMITED POLICY," "THIS POLICY PROVIDES LIMITED BENEFITS," or "THIS IS A CANCER-ONLY POLICY."

15.3(5) *Use of statistics.* An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified therein.

15.3(6) *Introductory, initial or special offers.*

a. An advertisement shall not directly or by implication represent that a policy is an introductory, initial or special offer, or that a person will receive advantages not available at a later date, or that the offer is available only to a specified group of persons, unless such is the fact.

b. An advertisement shall not offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the initial reduced premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, the advertisement shall not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium, and both the initial reduced premium

and the renewal premium must be stated in each portion of the advertisement where the initial reduced premium appears. This paragraph shall not apply to annual renewable term policies.

15.3(7) *Testimonials or endorsements by third parties.*

a. Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using a testimonial, makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to these rules.

b. If the person making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, such fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial or endorsement, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." The payment of substantial amounts, directly or indirectly, for "travel and entertainment" for filming or recording of TV or radio advertisements constitutes compensation and requires disclosure.

c. An advertisement that states or implies that an insurer or an insurance product has been approved or endorsed by any person or other organizations must also disclose any proprietary or other relationship between the parties.

15.3(8) *Disparaging and incomplete comparisons and statements.* An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of noncomparable policies of other insurers, and shall not disparage other insurers, their policies, services or business methods, and shall not disparage or unfairly minimize competing methods of marketing insurance. An advertisement shall not contain statements that are untrue in fact, or by implication misleading, with respect to the assets, corporate structure, financial standing, age or relative position of an insurer in the insurance business.

15.3(9) *Identity of insurer.*

a. The name of the actual insurer shall be clearly identified in all advertisements for a particular policy. An advertisement shall not use a trade name, insurance group designation, name of a parent company, name of a particular company division, service mark, slogan, symbol or other device that would have the capacity and tendency to misrepresent the true identity of an insurer.

b. No advertisement shall use any combination of words, symbols, or physical materials that by its content, phraseology, shape, color or other characteristics is so similar to combinations of words, symbols, or physical materials used by a municipal, state or federal agency that it would lead a reasonable individual to believe that the advertisement is approved, endorsed or accredited by an agency of the municipal, state, or federal government.

15.3(10) *Disclosure requirements for life insurance and annuities.*

a. An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact shall be prominently disclosed.

b. An advertisement for a policy with nonlevel premiums shall prominently describe the premium changes.

c. Dividends.

(1) An advertisement shall not state or imply that the payment or amount of dividends is guaranteed. If dividends for an annuity are illustrated, the illustration must be based on the insurer's illustrated scale and must contain a statement that the illustration is not to be construed as a guarantee or estimate of dividends to be paid in the future.

(2) An advertisement shall not state or imply that the illustrated scale under a participating policy or pure endowments will be or can be sufficient at any future time to ensure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains (1) what benefits or coverage would be provided at such time and (2) under what conditions this would occur.

d. An advertisement of a deferred annuity shall not state the net premium accumulation interest rate unless it discloses in close proximity thereto and with equal prominence the actual relationship between the gross and net premiums.

e. An advertisement that states the projected values of a policy must use the guaranteed interest rates in determining such projected values and, in addition, may show other projected values based on interest rates that comply with the illustrated scale. Any statements containing or based upon an interest rate higher than the guaranteed accumulation interest rates shall likewise set forth with equal prominence comparable statements containing or based upon the guaranteed accumulation interest rates. If the policy does not contain a provision for a guaranteed interest rate, any advertisement showing projected values must clearly state that the rates are not guaranteed. This subrule does not apply to an illustration or supplemental illustration subject to the provisions of the Life Insurance Illustrations Model Regulation, 191—Chapter 14.

f. An advertisement or presentation that does not recognize the time value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such advertisement may be used for the purpose of demonstrating the cash flow pattern of a policy if such advertisement is accompanied by a statement disclosing that the advertisement does not recognize that, because of interest, a dollar in the future may not have the same value as a dollar at the time of the presentation.

g. An advertisement of benefits shall not display guaranteed and nonguaranteed benefits as a single sum unless they are also shown separately in close proximity thereto.

h. A statement regarding the use of life insurance cost indexes shall include an explanation that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

i. A life insurance cost index that reflects dividends or an equivalent level annual dividend shall be accompanied by a statement that it is based on the insurer's illustrated scale and is not guaranteed.

15.3(11) *Special offers.* Advertisements, applications, requests for additional information and similar materials are prohibited if they state or imply that the recipient has been individually selected to be offered insurance or has had the recipient's eligibility for the insurance individually determined in advance when the advertisement is directed to all individuals in a group or to all individuals whose names appear on a mailing list.

15.3(12) *Disclosure requirement.* In an advertisement that is an invitation to contract for an accident and sickness insurance policy that is guaranteed renewable, cancelable or renewable at the option of the company, the advertisement shall disclose that the insurer has the right to increase premium rates if the policy so provides.

15.3(13) *Group or quasi-group implications.*

a. An advertisement of a particular policy shall not state or imply that prospective insureds become group or quasi-group members covered under a group policy and, as members, enjoy special rates or underwriting privileges, unless that is the fact.

b. This rule prohibits the solicitation of a particular class, such as governmental employees, by use of advertisements that state or imply that the class membership entitles the member to reduced rates on a group or other basis when, in fact, the policy being advertised is sold only on an individual basis at regular rates.

c. Advertisements that indicate that a particular coverage or policy is exclusively for "preferred risks" or a particular segment of the population or that a particular segment of the population is an acceptable risk, when the distinctions are not maintained in the issuance of policies, are prohibited.

d. An advertisement to join an association, trust or discretionary group that is also an invitation to contract for insurance coverage shall clearly disclose that the applicant will be purchasing both membership in the association, trust or discretionary group and insurance coverage. The insurer shall solicit insurance coverage on a separate and distinct application that requires a separate signature. The separate and distinct application required need not be on a separate document or contained in a separate mailing. The insurance program shall be presented so as not to conceal the fact that the prospective members are purchasing insurance as well as applying for membership, if that is the case. Similarly, the use of terms such as "enroll" or "join" to imply group or blanket insurance coverage is prohibited when that is not the fact.

e. Advertisements for group or franchise group plans that provide a common benefit or a common combination of benefits shall not imply that the insurance coverage is tailored or designed specifically for that group, unless that is the fact.

15.3(14) *Compliance with Medicare supplement advertising rules.* Insurers and producers shall comply with the Medicare supplement advertising rules set forth in 191—Chapter 37.

191—15.4(507B) Life insurance cost and benefit disclosure requirements.

15.4(1) The definition of terms applicable to this rule and its appendices will be found in Appendix I.

15.4(2) Except as hereafter exempted, this rule shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This rule shall apply to any insurer issuing life insurance contracts including fraternal benefit societies.

Unless otherwise specifically included, this rule shall not apply to:

a. Annuities.

b. Credit life insurance.

c. Group life insurance, except for disclosures relating to preneed funeral contracts or prearrangements as provided herein. These disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy.

d. Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA).

e. Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

15.4(3) Prior to or at delivery of a life insurance policy, an insurer or producer shall provide the prospective purchaser the following:

a. A life insurance buyer's guide in the current form prescribed by the National Association of Insurance Commissioners or language approved by the commissioner of insurance, and

b. A policy summary as defined in Appendix I.

15.4(4) A policy summary is not required to include information available in the policy form or illustration. If an illustration subject to the provisions of 191—Chapter 14, Life Insurance Illustrations Model Regulation, is used in the sale of a policy, delivery of a policy summary is not required. A policy summary may not include any element that is not guaranteed.

191—15.5(507B) Health insurance sales to individuals 65 years of age or older. The sale of duplicate Medicare supplement insurance is prohibited.

191—15.6 Reserved.

191—15.7(507B) Twisting prohibited. No insurer or producer shall engage in the act of twisting.

191—15.8(507B) Producer responsibilities.

15.8(1) *Required disclosures.* A producer shall inform the prospective purchaser, prior to commencing an insurance sales presentation, that the producer is acting as an insurance producer and inform the prospective purchaser of the producer's full name and the full name of the insurance company that the producer will represent in the insurance sales presentation. In sales situations in which a producer is not involved, the insurer shall identify the insurer's full name to a prospective purchaser.

15.8(2) *Improper sales tactics.*

a. Producers and insurers shall not employ any method of marketing or tactic that uses undue pressure, force, fright, threat, whether explicit or implied, to solicit the purchase of insurance.

b. A producer shall not:

(1) Execute a transaction for an insurance customer without authorization by the customer to do so; or

(2) Commit any act that shows that the producer has exerted undue influence over a person.

c. Producers and insurers shall not, without good cause:

(1) Fail or refuse to furnish any individual, upon reasonable request, information to which that individual is entitled, or to respond to a formal written request or complaint from any individual.

(2) Sell an insurance policy or rider to an individual that is a duplication of a policy or rider that the individual owns or for which the individual has applied at the time of the sale.

15.8(3) *Prohibited designations and fees.*

a. When an insurance producer is engaged only in the sale of insurance policies or annuities, the insurance producer shall not hold the producer out, directly or indirectly, to the public as a "financial planner," "investment adviser," "consultant," "financial counselor," or any other specialist solely engaged in the business of financial planning or giving advice relating to investments, insurance, real estate, tax matters or trust and estate matters. This provision does not preclude insurance producers who hold some form of formal recognized financial planning or consultant certification or designation from using this certification or designation when they are only selling insurance.

b. An insurance producer shall not engage in the business of financial planning without disclosing to the client prior to the execution of the agreement required by paragraph 15.8(3)*"c"* or to the solicitation of the sale of a product or service that the producer is also an insurance producer and that a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case. The disclosure requirement under this paragraph may be met by including the disclosure in any disclosure required by federal or state securities law.

c. An insurance producer shall not charge fees other than commissions unless such fees are based upon a written agreement signed by the client in advance of the performance of the services under the agreement. A copy of the agreement must be provided to the client at the time the agreement is signed by the client. The agreement must specifically state:

(1) The service for which the fee is to be charged;

(2) The amount of the fee to be charged or how it will be determined or calculated; and

(3) That the client is under no obligation to purchase any insurance product through the insurance producer or consultant.

The insurance producer shall retain a copy of the agreement for not less than three years after completion of services, and a copy shall be available to the commissioner upon request.

d. Producers shall not charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies. This prohibition shall not apply to assigned risk policies and commercial property and casualty policies. Any additional fee that a producer intends to charge for assigned risk policies and commercial property and casualty policies must be fully disclosed to the insured.

e. Producers shall comply with rule 191—10.19(522B) in using senior-specific certifications and professional designations in the sale of life insurance and annuities.

15.8(4) *Suitability.* A producer shall not recommend to any person the purchase, sale or exchange of any life insurance policy, or any rider, endorsement or amendment thereto, without reasonable grounds to believe that the transaction or recommendation is not unsuitable for the person based upon reasonable inquiry concerning the person's insurance objectives, financial situation and needs, age and other relevant information known by the producer. For purposes of this subrule, when a producer recommends a group life insurance policy, "person" shall refer to the intended group policyowner.

15.8(5) *Prohibited acts.*

a. For purposes of this subrule:

"Gift" means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.

"Immediate family" shall include parent, mother-in-law, father-in-law, spouse, former spouse, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, child and stepchild. In addition, "immediate family" shall include any other person who is supported, directly or indirectly, to a material extent by a producer.

"Loan" means an agreement to advance property, including but not limited to money, in return for the promise that payment will be made for use of the property.

b. A producer shall not:

(1) Solicit or accept, directly or indirectly, at any time, a personal loan from an insurance customer that in the aggregate exceeds $250, unless the customer is:

1. A bank, savings and loan, credit union or other recognized lending entity; or
2. A member of the producer's immediate family.

(2) Solicit or accept, directly or indirectly, at any time, a gift to the producer or to a member of the producer's immediate family from an insurance customer that in the aggregate exceeds $250, unless the customer is a member of the producer's immediate family. A gift to a member of the producer's immediate family shall be included in calculating the aggregate amount. A gift received by a member of the producer's immediate family from a customer that is not a member of the producer's immediate family in excess of the aggregate amount shall be deemed a violation of this subrule by the producer.

(3) Solicit or accept being named as a beneficiary, executor or trustee in a will, trust, insurance policy or annuity of a customer, unless the customer is a member of the producer's immediate family.

(4) Evade or otherwise violate the spirit of this subrule by terminating a producer relationship with an insurance customer for the purpose of soliciting or accepting a loan or a gift, or for the purpose of being named as a beneficiary, executor or trustee in a will, trust, insurance policy or annuity that the producer otherwise would have been prohibited from soliciting or accepting by this subrule. A producer will not be in violation of this subrule if the producer has made a bona fide termination of the producer relationship with the insurance customer and has conducted no insurance or other business with the insurance customer for a period of three years.

c. Transactions that involve nominal interim ownership immediately precedent to transfer of ownership into a trust are exempt from this subrule.

191—15.9(507B) Right to return a life insurance policy or annuity (free look). The owner of an individual policy has the right, within ten days after receipt of a life insurance policy or annuity, to a free-look period. During this period, the policyowner may return the life insurance policy or annuity to the insurer at its home office, branch office, or to the producer through whom it was purchased. If so returned, the premium paid will be promptly refunded, the policy or annuity voided and the parties returned to the same position as if a policy or annuity had not been issued. If the transaction involved a replacement, the length of the free-look period will be determined according to 191—Chapter 16.

If the transaction involved a variable product, the amount to be refunded shall be determined according to the policy language. The calculations must comply with the relevant rule in either 191—Chapter 16, Replacement of Life Insurance and Annuities, or 191—Chapter 33, Variable Life Insurance Model Regulation.

191—15.10(507B) Uninsured/underinsured automobile coverage—notice required.

15.10(1) *Contents of notice.* Automobile insurance policies delivered in this state shall include a notice that contains and is limited to the following language:

NOTICE REGARDING UNINSURED/UNDERINSURED COVERAGE

Uninsured/underinsured coverage does not cover damage done to your vehicle. It provides benefits only for bodily injury caused by an uninsured or underinsured motorist. If you wish to be insured for damage done to your vehicle, you must have collision coverage. Please check your policy to make sure you have the coverage desired.

15.10(2) *Form of notice.* Notice may be provided on a separate form or may be stamped on the declaration page of the policy. The notice shall be provided in conjunction with all new policies issued. Notice may be provided at the time of application but shall in no case be provided later than the time of delivery of the new policy. Insurers may inform applicants that the notice in this rule is required by the insurance division.

191—15.11(507B) Unfair discrimination.

15.11(1) *Sex discrimination.*

a. A contract shall not be denied to an individual based solely on that individual's sex or marital status. No benefits, terms, conditions or type of coverage shall be restricted, modified, excluded, or

reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent permitted under the Iowa Code or Iowa Administrative Code. An insurer may consider marital status for the purpose of defining individuals eligible for dependents' benefits. This subrule does not apply to group life insurance policies or group annuity contracts issued in connection with pension and welfare plans that are subject to the federal ERISA.

b. Specific examples of practices prohibited by this subrule include, but are not limited to, the following:

(1) Denying coverage to individuals of one sex employed at home, employed part-time or employed by relatives when coverage is offered to individuals of the opposite sex similarly employed.

(2) Denying policy riders to persons of one sex when the riders are available to persons of the opposite sex.

(3) Denying a policy under which maternity coverage is available to an unmarried female when that same policy is available to a married female.

(4) Denying, under group contracts, dependent coverage to spouses of employees of one sex, when dependent coverage is available to spouses of employees of the opposite sex.

(5) Denying disability income coverage to employed members of one sex when coverage is offered to members of the opposite sex similarly employed.

(6) Treating complications of pregnancy differently from any other illness or sickness under the contract.

(7) Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex.

(8) Offering lower maximum monthly benefits to members of one sex than to members of the opposite sex who are in the same underwriting and occupational classification under a disability income contract.

(9) Offering more restrictive benefit periods and more restrictive definitions of disability to members of one sex than to members of the opposite sex in the same underwriting and occupational classifications under a disability income contract.

(10) Establishing different contract conditions based on gender that limit the benefit options a policyholder may exercise.

(11) Limiting the amount of coverage due to an insured's or prospective insured's marital status unless such limitation applies only to coverage for dependents and is uniformly applied to males and females.

c. When rates are differentiated on the basis of sex, an insurer must, upon the request of the commissioner of insurance, justify the rate differential in writing to the satisfaction of the commissioner. All rates shall be based on sound actuarial principles or a valid classification system and actual experience statistics, if available.

d. This subrule shall not affect the right of fraternal benefit societies to determine eligibility requirements for membership. If a fraternal benefit society does, however, admit members of both sexes, this subrule is applicable to the insurance benefits available to its members.

15.11(2) *Physical or mental impairment.* No contract, benefits, terms, conditions or type of coverage shall be denied, restricted, modified, excluded or reduced solely on the basis of physical or mental impairment of the insured or prospective insured except where based on sound actuarial principles or related to actual or reasonably anticipated experience. For purposes of this subrule, both blindness and partial blindness shall be considered a physical impairment.

15.11(3) *Income discrimination.* An insurer shall not refuse to issue, limit the amount or apply different rates to individuals of the same class in the sale of individual life insurance based solely upon the prospective insured's legal source or level of income, unless such action is based on sound actuarial principles or is related to actual or reasonably anticipated experience. The portion of this subrule pertaining to level of income does not:

a. Apply to the sale of disability income insurance of any kind or of any insurance designed to protect against economic loss due to a disruption in the regular flow of an individual's earned income;

b. Prohibit the sale of any insurance or annuity that is made available only to employees;

c. Prohibit basing the amount of insurance sold to an employee on a multiple or a percentage of the employee's salary or prohibit limiting availability to employees who have achieved a certain employment status as defined by the employer;

d. Prohibit insurers from providing life or health insurance as an incidental benefit through a qualified pension plan;

e. Prohibit insurers from applying suitability standards that include income as a factor in the sale of any life insurance or annuity products;

f. Prohibit insurers from establishing maximum or minimum amounts of insurance that will be issued to individuals so long as this is pursuant to a preexisting specialized marketing strategy that the insurer can demonstrate is related to the financial capacity of the insurer to write business or to bona fide transaction costs.

15.11(4) *Domestic abuse.* A contract shall not be denied to an individual based solely on the fact that such individual has been or is believed to have been a victim of domestic abuse as defined in Iowa Code section 236.2.

15.11(5) *Genetic information.* Any action by an insurer that is not in compliance with Title I of the Genetic Information Nondiscrimination Act of 2008 (Public Law 110-233, 122 Stat. 881) shall be considered an unfair trade practice and shall be subject to the penalties of Iowa Code chapter 507B and of these rules.

15.11(6) *Discrimination relating to children under the age of 19.* It is an unfair trade practice to:

a. Encourage individuals or groups to refrain from filing an application with an insurer for coverage for a child under the age of 19 because of the child's health status, claims experience, industry, occupation, or geographic location;

b. Encourage or direct children under the age of 19 to seek coverage from another insurer because of the child's health status, claims experience, industry, occupation, or geographic location; and

c. Encourage an employer to exclude an employee from coverage.

191—15.12(507B) Testing restrictions of insurance applications for the human immunodeficiency virus.

15.12(1) *Written release.* No insurer shall obtain a test of any individual in connection with an application for insurance for the presence of an antibody to the human immunodeficiency virus unless the individual to be tested provides a written release on a form that contains the following information:

a. A statement of the purpose, content, use, and meaning of the test.

b. A statement regarding disclosure of the test results including information explaining the effect of releasing the information to an insurer.

c. A statement of the purpose for which test results may be used.

15.12(2) *Form.* A preapproved form is provided in Appendix II. An insurer wishing to utilize a form that deviates from the language in the appendix to these rules shall submit the form to the insurance division for approval. Any form containing, but not limited to, the language in the appendix shall be deemed approved.

15.12(3) *Test results.* A person engaged in the business of insurance who receives results of a positive human immunodeficiency virus (HIV) test in connection with an application for insurance shall report those results to a physician or alternative testing site of the applicant's or policyholder's choice or, if the applicant or policyholder does not choose a physician or alternative testing site to receive the results, to the Iowa department of health and human services.

191—15.13(507B) Records maintenance.

15.13(1) *Complaint and business records.*

a. An insurer shall maintain its books, records, documents and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner.

b. An insurer shall maintain a complete record of all the complaints received since the date of its last examination by the insurer's state of domicile or port-of-entry state. This record shall indicate the

total number of complaints, the classification of each complaint by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. Appendix III sets forth the minimum information required to be contained in the complaint record.

15.13(2) *Insurer's control over advertisements.* Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements that explain a particular policy. All such advertisements, whether written, created, designed or presented by the insurer or its appointed producer, shall be the responsibility of the insurer whose particular policies are so advertised. As part of this requirement, each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement of its policies, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to inspection by the insurance division. All such advertisements shall be maintained for a period of either four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

15.13(3) *Education and training materials.* Every insurer shall establish and maintain a system of control over the content and form of all material used by the insurer or any of its employees for the recruitment, training, and education of producers in the sale of insurance. Upon request, copies of these materials shall be made available to the commissioner.

191—15.14(505,507B) Enforcement section—cease and desist and penalty orders.

15.14(1) If, after hearing, the commissioner determines that a person has engaged in an unfair trade practice in violation of these rules, an unfair method of competition, or an unfair or deceptive act or practice in violation of Iowa Code chapter 507B, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings and an order requiring the person to cease and desist from engaging in such method of competition, act or practice. The commissioner also may order one or more of the following:

a. Payment of a civil penalty of not more than $1,000 for each act or violation, but not to exceed an aggregate penalty of $10,000, unless the person knew or reasonably should have known that the actions were in violation of these rules or of Iowa Code chapter 507B, in which case the penalty shall be not more than $5,000 for each act or violation, but not to exceed an aggregate penalty of $50,000 in any one six-month period. If the commissioner finds that a violation of these rules or of Iowa Code chapter 507B was directed, encouraged, condoned, ignored, or ratified by the employer of the person or by an insurer, the commissioner shall also assess a fine to the employer or insurer;

b. Suspension or revocation of an insurer's certificate of authority or the producer's license if the insurer or producer knew or reasonably should have known that it was in violation of these rules or of Iowa Code chapter 507B;

c. Payment of interest at the rate of 10 percent per annum if the commissioner finds that the insurer failed to pay interest as required under Iowa Code section 507B.4(3)*"p"*;

d. Full disclosure by the insurer of all terms and conditions of the policy to the policyowner;

e. Payment of the costs of the investigation and administrative expenses related to any act or violation. The commissioner may retain funds collected pursuant to any settlement, enforcement action, or other legal action authorized under federal or state law for the purpose of reimbursing costs and expenses of the division.

15.14(2) Any person who violates a cease and desist order of the commissioner while such order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or both of the following:

a. A civil penalty of not more than $10,000 for each and every act or violation.

b. Suspension or revocation of such person's license.

191—15.15 to **15.30** Reserved.

DIVISION II
CLAIMS

191—15.31(507B) General claims settlement guidelines. No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage that contains language purporting to release the insurer or its insured from total liability.

191—15.32(507B) Prompt payment of certain health claims. Effective July 1, 2002, the following provisions apply:

15.32(1) *Definitions and scope.*

a. For purposes of this rule, the following definitions apply:

"Circumstance requiring special treatment" means:

1. A claim that an insurer has a reasonable basis to suspect may be fraudulent or that fraud or a material misrepresentation may have occurred under the benefit certificate or policy or in obtaining such certificate or policy; or

2. A matter beyond the insurer's control, such as an act of God, insurrection, strike or other similar labor dispute, fire or power outage or, for a group-sponsored health plan, the failure of the sponsoring group to pay premiums to the insurer in a timely manner; or

3. Similar unique or special circumstances that would reasonably prevent an insurer from paying an otherwise clean claim within 30 days.

"Clean claim" means the same as defined in Iowa Code section 507B.4A.

"Coordination of benefits for third-party liability" means a claim for benefits by a covered individual who has coverage under more than one health benefit plan.

"Insurer" means insurer as defined in Iowa Code section 507B.4.

"Properly completed billing instrument" means:

1. In the case of a health care provider that is not a health care professional:

- The Health Care Finance Administration (HCFA) Form 1450, also known as Form UB-92, or similar form adopted by its successor Centers for Medicare/Medicaid Services (CMS) as adopted by the National Uniform Billing Committee (NUBC) with data element usage prescribed in the UB-92 National Uniform Billing Data Elements Specification Manual; or
- The electronic format for institutional claims adopted as a standard by the Secretary of Health and Human Services pursuant to Section 1173 of the Social Security Act; or

2. In the case of a health care provider that is a health care professional:

- The HCFA Form 1500 paper form or its successor as adopted by the National Uniform Claim Committee (NUCC) and further defined by the NUCC in its implementation guide; or
- The electronic format for professional claims adopted as a standard by the Secretary of Health and Human Services pursuant to Section 1173 of the Social Security Act; and

3. Any other information reasonably necessary for an insurer to process a claim for benefits under the benefit certificate or policy with the insured contract.

b. Scope. This subrule applies to claims submitted to an insurer as defined above on or after July 1, 2002, and is limited to policies issued, issued for delivery, or renewed in this state.

15.32(2) *Insurer duty to promptly pay claims and pay interest.*

a. Insurers subject to this subrule shall either accept and pay or deny a clean claim for health care benefits under a benefit certificate or policy issued by the insurer within 30 days after the insurer's receipt of such claim. A clean claim is considered to be paid on the date upon which a check, draft, or other valid negotiable instrument is written. Insurers shall implement procedures to ensure that these payments are promptly delivered.

b. Insurers or entities that administer or process claims on behalf of an insurer who fail to pay a clean claim within 30 days after the insurer's receipt of a properly completed billing instrument shall pay interest. Interest shall accrue at the rate of 10 percent per annum commencing on the thirty-first day after the insurer's receipt of all information necessary to establish a clean claim. Interest will be paid to the claimant or provider based upon who is entitled to the benefit payment.

c. Insurers shall have 30 days from the receipt of a claim to request additional information to establish a clean claim. An insurer shall provide a written or electronic notice to the claimant or health care provider if additional information is needed to establish a clean claim. The notice shall include a full explanation of the information necessary to establish a clean claim.

d. Effective January 1, 2003, when a claim involves coordination of benefits, an insurer is required to comply with the requirements of this subrule when that insurer's liability has been determined.

15.32(3) *Certain insurance products exempt.* Claims paid under the following insurance products are exempt from the provisions of this subrule: liability insurance, workers' compensation or similar insurance, automobile or homeowners insurance, medical payment insurance or disability income insurance.

This rule is intended to implement Iowa Code sections 507B.4A, 514G.102 and 514G.111.

191—15.33(507B) Audit procedures for medical claims.

15.33(1) *Prohibitions.* This rule applies to all claims paid on or after January 1, 2002:

a. Absent a reasonable basis to suspect fraud, an insurer may not audit a claim more than two years after the submission of the claim to the insurer. Nothing in this rule prohibits an insurer from requesting all records associated with the claim.

b. Absent a reasonable basis to suspect fraud, an insurer may not audit a claim with a billed charge of less than $25.

15.33(2) *Standards.*

a. In auditing a claim, the insurer must make a reasonable effort to ensure that the audit is performed by a person or persons with appropriate qualifications for the type of audit being performed.

b. In auditing a claim, the auditor must use the coding guidelines and instructions that were in effect on the date the medical service was provided.

15.33(3) *Contents of audit request.* All correspondence regarding the audit of a claim must include the following information:

a. The name, address, telephone number and contact person of the insurer conducting the audit,

b. The name of the entity performing the audit if not the insurer,

c. The purpose of the audit, and

d. If included in the audit, the specific coding or billing procedure that is under review.

This rule is intended to implement Iowa Code section 507B.4(3)*"j"*(15).

191—15.34 to **15.40** Reserved.

191—15.41(507B) Claims settlement guidelines for property and casualty insurance. For purposes of this rule, "insurer" means property and casualty insurers.

15.41(1) An insurer shall fully disclose to first-party claimants all pertinent benefits, coverages or other provisions of a policy or contract under which a claim is presented.

15.41(2) Within 30 days after receipt by the insurer of properly executed proofs of loss, the first-party property claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing, and the claim file of the insurer shall contain documentation of the denial.

When there is a reasonable basis supported by specific information available for review by the commissioner that the first-party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subrule. However, the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

15.41(3) If the insurer needs more time to determine whether a first-party claim should be accepted or denied, the insurer shall so notify the first-party claimant within 30 days after receipt of the proof of loss and give the reasons more time is needed. If the investigation remains incomplete, the insurer shall,

45 days from the initial notification and every 45 days thereafter, send to the claimant a letter setting forth the reasons additional time is needed for investigation.

When there is a reasonable basis supported by specific information available for review by the commissioner for suspecting that the first-party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subrule. However, the claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

15.41(4) Insurers shall not fail to settle first-party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

15.41(5) No insurer shall make statements indicating that the rights of a third-party claimant may be impaired if a form or release, other than a release to obtain medical records, is not completed within a given period of time unless the statement is given for the purpose of notifying the third-party claimant of the provision of a statute of limitations.

15.41(6) The insurer shall affirm or deny liability on claims within a reasonable time and shall tender payment within 30 days of affirmation of liability, if the amount of the claim is determined and not in dispute. In claims where multiple coverages are involved, payments that are not in dispute under one of the coverages and where the payee is known should be tendered within 30 days if such payment would terminate the insurer's known liability under that coverage.

15.41(7) No producer shall conceal from a first-party claimant benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

15.41(8) A claim shall not be denied on the basis of failure to exhibit property unless there is documentation of breach of the policy provisions to exhibit or cooperate in the claim investigation.

15.41(9) No insurer shall deny a claim based upon the failure of a first-party claimant to give written notice of loss within a specified time limit unless the written notice is a written policy condition. An insurer may deny a claim if the claimant's failure to give written notice after being requested to do so is so unreasonable as to constitute a breach of the claimant's duty to cooperate with the insurer.

15.41(10) No insurer shall indicate to a first-party claimant on a payment draft, check or in any accompanying letter that said payment is "final" or "a release" of any claim unless the policy limit has been paid or there has been a compromise settlement agreed to by the first-party claimant and the insurer as to coverage and amount payable under the contract.

15.41(11) No insurer shall request or require any insured to submit to a polygraph examination unless authorized under the applicable insurance contracts and state law.

191—15.42(507B) Acknowledgment of communications by property and casualty insurers. For purposes of this rule, "insurer" means property and casualty insurers.

15.42(1) Upon receiving notification of a claim, an insurer shall, within 15 days, acknowledge the receipt of such notice unless payment is made within that period of time. If an acknowledgment is made by means other than in writing, an appropriate notation of the acknowledgment shall be made in the claim file of the insurer and dated.

15.42(2) Upon receipt of any inquiry from the Iowa insurance division regarding a claim, an insurer shall, within 21 days of receipt of such inquiry, furnish the division with an adequate response to the inquiry, in duplicate.

15.42(3) The insurer shall reply within 15 days to all pertinent communications from a claimant that reasonably suggest that a response is expected.

15.42(4) Upon receiving notification of claim, an insurer shall promptly provide necessary claim forms, instructions and reasonable assistance so that first-party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subrule within 15 days of notification of a claim shall constitute compliance with subrule 15.42(1).

191—15.43(507B) Standards for settlement of automobile insurance claims.

15.43(1) Loss calculation and deviation guidelines.

a. Loss calculation. When the insurance policy provides for the adjustment and settlement of first-party automobile total losses on the basis of actual cash value or replacement with another automobile of like kind and quality, one of the following methods shall apply:

(1) The insurer may elect to offer a replacement automobile that is at least comparable in that it will be by the same manufacturer, same or newer year, similar body style, similar options and mileage as the insured vehicle and in as good or better overall condition and available for inspection at a licensed dealer within a reasonable distance of the insured's residence. All applicable taxes, license fees and other fees incident to the transfer of evidence of ownership of the automobile shall be paid by the insurer, at no cost to the insured, other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.

(2) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be derived from:

1. The cost of two or more comparable automobiles in the local market area when comparable automobiles are available or were available within the last 90 days to consumers in the local market area; or

2. The cost of two or more comparable automobiles in areas proximate to the local market area, including the closest major metropolitan areas within or without the state, that are available or were available within the last 90 days to consumers when comparable automobiles are not available in the local market area; or

3. One of two or more quotations obtained by the insurer from two or more licensed dealers located within the local market area when the cost of comparable automobiles is not available; or

4. Any source for determining statistically valid fair market values that meet all of the following criteria:

- The source shall give primary consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area.
- The source's database shall produce values for at least 85 percent of all makes and models for the last 15 model years taking into account the values of all major options for such vehicles.
- The source shall produce fair market values based on current data available from the area surrounding the location where the insured vehicle was principally garaged or a necessary expansion of parameters (such as time and area) to ensure statistical validity.

(3) If the insurer is notified within 35 days of the receipt of the claim draft that the insured cannot purchase a comparable vehicle for such market value, the insured shall have a right of recourse. The insurer shall reopen its claim file and the following procedure(s) shall apply:

1. The insurer may locate a comparable vehicle by the same manufacturer, same or newer year, similar body style and similar options and price range for the insured for the market value determined by the insurer at the time of settlement. Any such vehicle must be available through a licensed dealer; or

2. The insurer shall either pay the insured the difference between the market value before applicable deductions and the cost of the comparable vehicle of like kind and quality that the insured has located, or negotiate and effect the purchase of this vehicle for the insured; or

3. The insurer may elect to offer a replacement in accordance with the provisions set forth in subrule 15.43(1); or

4. The insurer may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or a common law.

The insurer is not required to take action under this subrule if its documentation to the insured at the time of settlement included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same or newer year, similar body style and similar options in as good or better condition as the total-loss vehicle that could have been purchased for the market value

determined by the insurer before applicable deductions. The documentation shall include the vehicle identification number.

b. Deviation. When a first-party automobile total loss is settled on a basis that deviates from the methods described in paragraph 15.43(1)*"a,"* the deviation must be supported by documentation giving particulars of the automobile's condition. Any deductions from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first-party claimant.

15.43(2) Where liability and damages are reasonably clear, an insurer shall not recommend that third-party claimants make claims under their own policies solely to avoid paying claims under the insurer's policy.

15.43(3) The insurer shall not require a claimant to travel an unreasonable distance either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

15.43(4) The insurer shall, upon the claimant's request, include the first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first-party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses shall be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro-rata share of the allocated loss adjustment expense.

15.43(5) Vehicle repairs. If partial losses are settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the insured a copy of the estimate upon which the settlement is based. The estimate prepared by or for the insurer shall be reasonable, in accordance with applicable policy provisions, and of an amount that will allow for repairs to be made in a workmanlike manner. If the insured subsequently claims, based upon a written estimate that the insured obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the insurer shall (1) pay the difference between the written estimate and a higher estimate obtained by the insured, or (2) promptly provide the insured with the name of at least one repair shop that will make the repairs for the amount of the written estimate. If the insurer designates only one or two such repair shops, the insurer shall ensure that the repairs are performed according to automobile industry standards. The insurer shall maintain documentation of all such communications.

15.43(6) When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

15.43(7) When the insurer elects to repair an automobile, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy, within a reasonable period of time.

15.43(8) Storage and towing. The insurer shall provide reasonable notice to an insured prior to termination of payment for automobile storage charges. The insurer shall provide reasonable time for the insured to remove the vehicle from storage prior to the termination of payment. Unless the insurer has provided an insured with the name of a specific towing company prior to the insured's use of another towing company, the insurer shall pay all reasonable towing charges.

15.43(9) Betterment. Betterment deductions are allowable only if the deductions reflect a measurable decrease in market value attributable to the poorer condition of, or prior damage to, the vehicle. Betterment deductions must be measurable, itemized, specified as to dollar amount and documented in the claim file.

191—15.44(507B) Standards for determining replacement cost and actual cost values.

15.44(1) *Replacement cost.* When the policy provides for the adjustment and settlement of first-party losses based on replacement cost, the following shall apply:

a. When a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making such repair or replacement not otherwise excluded by the policy shall be included in the loss. The insured shall not have to pay for betterment or any other cost except for the applicable deductible.

b. When a loss requires replacement of items and the replaced items do not match in quality, color or size, the insurer shall replace as much of the item as is necessary to result in a reasonably uniform appearance within the same line of sight. This subrule applies to interior and exterior losses. Exceptions may be made on a case-by-case basis. The insured shall not bear any cost over the applicable deductible, if any.

15.44(2) *Actual cash value.*

a. When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine the actual cash value. "Actual cash value" means replacement cost of property at time of loss, less depreciation, if any. Alternatively, an insurer may use market value in determining actual cash value. Upon the insured's request, the insurer shall provide a copy of the claim file worksheet(s) detailing any and all deductions for depreciation.

b. In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth above is not required. In such cases, the insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

15.44(3) *Applicability.* This rule does not apply to automobile insurance claims.

191—15.45(507B) Guidelines for use of aftermarket crash parts in motor vehicles.

15.45(1) *Identification.* All aftermarket crash parts supplied for use in this state shall comply with the identification requirements of Iowa Code section 537B.4.

15.45(2) *Like kind and quality.* An insurer shall not require the use of aftermarket crash parts in the repair of an automobile unless the aftermarket crash part is certified by a nationally recognized entity to be at least equal in kind and quality to the original equipment manufacturer part in terms of fit, quality and performance, or that the part complies with federal safety standards.

15.45(3) *Contents of notice.* Any automobile insurance policy delivered in this state that pays benefits based on the cost of aftermarket crash parts or that requires the insured to pay the difference between the cost of original equipment manufacturer parts and the cost of aftermarket crash parts shall include a notice that contains and is limited to the following language:

NOTICE—PAYMENT FOR AFTERMARKET CRASH PARTS

Physical damage coverage under this policy includes payment for aftermarket crash parts. If you repair the vehicle using more expensive original equipment manufacturer (OEM) parts, you may pay the difference. Any warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle.

15.45(4) *Form of notice.* Notice may be provided on a separate form or may be printed prominently on the declaration page of the policy. The notice shall be provided in conjunction with all new policies issued. Notice may be provided at the time of application, but shall in no case be provided later than the time of delivery of the new policy. Insurers may inform applicants that the insurance division requires the notice in this rule.

191—15.46 to **15.50** Reserved.

DIVISION III
DISCLOSURE FOR SMALL FACE AMOUNT LIFE INSURANCE POLICIES

191—15.51(507B) Purpose. The purpose of these rules is to ensure the provision of meaningful information to the purchasers of small face amount life insurance policies. The rules in this division apply to all small face amount policies not exempted under rule 191—15.53(507B) that are issued on or after July 1, 2004.

191—15.52(507B) Definition. *"Small face amount policy"* means a life insurance policy or certificate with an initial face amount of $15,000 or less.

191—15.53(507B) Exemptions. These rules apply to all group and individual life insurance policies and certificates except:

1. Variable life insurance;
2. Individual and group annuity contracts;
3. Credit life insurance;
4. Group or individual policies of life insurance issued to members of an employer group or other permitted group when:

- Every plan of coverage was selected by the employer or other group representative;
- Some portion of the premium is paid by the group or through payroll deduction; and
- Group underwriting or simplified underwriting is used; and

5. Policies and certificates where an illustration has been provided pursuant to the requirements of 191—Chapter 14.

191—15.54(507B) Disclosure requirements.

15.54(1) An insurer issuing a small face amount policy shall provide the disclosure included in Appendix IV if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy, but may be delivered with the policy.

15.54(2) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

a. Provide the disclosure only in those circumstances when the premiums may exceed the face amount; or

b. Provide the disclosure for all demographic and benefit combinations.

15.54(3) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

191—15.55(507B) Insurer duties. The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement.

191—15.56 to **15.60** Reserved.

DIVISION IV
ANNUITY DISCLOSURE REQUIREMENTS

191—15.61(507B) Purpose. The purpose of the rules in Division IV of this chapter is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and to foster consumer education. The rules specify the minimum information that must be disclosed, the method for disclosing it and the use and content of illustrations, if used, in connection with the sale of annuity contracts. The goal of these rules is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

191—15.62(507B) Applicability and scope. These rules apply to all annuities not exempted under this rule for which applications are taken on or after January 1, 2013, except that rule 191—15.66(507B) applies to all annuities not exempted under this rule that are in effect or for which applications are taken on or after January 1, 2013, and except that rule 191—15.67(507B) applies to all annuity contracts not exempted under this rule that are in effect on or after January 1, 2013. These rules apply to all group and individual annuity contracts and certificates except:

15.62(1) Immediate and deferred annuities that contain no nonguaranteed elements;

15.62(2) Annuities used to fund:

a. An employee pension plan that is covered by ERISA;

b. A plan described by Section 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

c. A governmental or church plan defined in Section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

Notwithstanding this subrule, these rules shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subrule, "direct solicitation" shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

15.62(3) Structured settlement annuities;

15.62(4) Charitable gift annuities as defined in Iowa Code chapter 508F;

15.62(5) Nonregistered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.); and

15.62(6) Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, provided that compliance with rule 191—15.64(507B) shall be required after January 1, 2015, unless, or until such time as, the SEC has adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products.

a. Notwithstanding this subrule, the delivery of the Buyer's Guide is required in sales of variable annuities and, when appropriate, in sales of other registered products.

b. Nothing in this subrule shall limit the commissioner's ability to enforce the provisions of these rules or to require additional disclosure.

191—15.63(507B) Definitions. For purposes of these rules:

"Buyer's Guide" means the National Association of Insurance Commissioners' approved Annuity Buyer's Guide.

"Contract owner" means the owner named in the annuity contract or the certificate holder in the case of a group annuity contract.

"Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after the contract is issued. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest-based credits, charges, or elements of formulas used to determine any of these elements. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

"Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

"Generic name" means a short title descriptive of the annuity contract for which application is made or an illustration is prepared, such as "single premium deferred annuity."

"Guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest-based credits, charges, or elements of formulas used to determine any of these elements that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

"Illustration" means a personalized presentation or depiction that is prepared for and provided to an individual consumer and that includes nonguaranteed elements of an annuity contract over a period of years.

"Market value adjustment" or *"MVA"* is a positive or negative adjustment that may be applied to the account value or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based either on the movement of an external index or on the company's current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.

"Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest-based credits, charges or elements of formulas used to determine any of these elements that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

"Structured settlement annuity" means a "qualified funding asset" as defined in Section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

191—15.64(507B) Standards for the disclosure document and Buyer's Guide.

15.64(1) *Delivery methods.* The documents required under this rule may be delivered as follows:

a. When an application for an annuity contract is taken in a face-to-face meeting, the applicant shall be given at or before the time of application both the disclosure document described in rule 191—15.65(507B) and the Buyer's Guide, if any.

b. When an application for an annuity contract is taken by means other than a face-to-face meeting, the applicant shall be sent both the disclosure document and the Buyer's Guide no later than five business days after the completed application is received by the insurer.

c. When an application is received as a result of direct solicitation through the mail:

(1) Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five business days after receipt of the application.

(2) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

d. When an application is received via the Internet:

(1) Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five business days after receipt of the application.

(2) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

15.64(2) *Free Buyer's Guide.* A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Iowa insurance division for a free Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free Buyer's Guide.

15.64(3) *Free-look period.* When the Buyer's Guide and disclosure document are not provided at or before the time of application, a free-look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or rule.

191—15.65(507B) Content of disclosure documents.

15.65(1) At a minimum, the following information shall be included in the disclosure document required to be provided under these rules:

a. The generic name of the contract, the company product name, if different, and form number and the fact that it is an annuity;

b. The insurer's legal name, physical address, website address and telephone number;

c. A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate, including but not limited to:

(1) The guaranteed and nonguaranteed elements of the contract, and their limitations, if any, including for fixed indexed annuities, the elements used to determine the index-based interest, such as the participation rates, caps or spread, and an explanation of how they operate;

(2) An explanation of the initial crediting rate, or for fixed indexed annuities, an explanation of how the index-based interest is determined, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(3) Periodic income options both on a guaranteed and nonguaranteed basis;

(4) Any value reductions caused by withdrawals from or surrender of the contract;

(5) How values in the contract can be accessed;

(6) The death benefit, if available, and how it will be calculated;

(7) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(8) Impact of any rider including, but not limited to, a guaranteed living benefit or a long-term care rider;

d. Specific dollar amount or percentage charges and fees, listed with an explanation of how they apply; and

e. Information about the current guaranteed rate or indexed crediting rate formula, if applicable, for new contracts that contains a clear notice that the rate is subject to change.

15.65(2) Insurers shall define terms used in the disclosure statement in language that facilitates understanding by a typical individual within the segment of the public to which the disclosure statement is directed.

191—15.66(507B) Standards for annuity illustrations.

15.66(1) An insurer or producer may elect to provide a consumer an illustration at any time, provided that the illustration is in compliance with this rule and:

a. Is clearly labeled as an illustration;

b. Includes a statement referring consumers to the disclosure document and Buyer's Guide provided to them at time of purchase for additional information about their annuity; and

c. Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, provided that the insurer maintains a system of control over the use of illustrations.

15.66(2) An illustration furnished an applicant for a group annuity contract or contracts issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

15.66(3) The illustration shall not be provided unless accompanied by the disclosure document referenced in rules 191—15.64(507B) and 191—15.65(507B).

15.66(4) When an illustration is used, the illustration shall not:

a. Describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

b. State or imply that the payment or amount of nonguaranteed elements is guaranteed; or

c. Be incomplete.

15.66(5) Costs and fees of any type shall be individually noted and explained in the illustration.

15.66(6) An illustration shall conform to the following requirements:

a. The illustration shall be labeled with the date on which it was prepared;

b. Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document (e.g., the fourth page of a seven-page disclosure document shall be labeled "page 4 of 7 pages");

c. The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;

d. If the age of the proposed insured is shown as a component of the tabular detail, the age shown shall be issue age plus the numbers of years the contract is assumed to have been in force;

e. The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;

f. Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features and indicating whether or not they are included in the illustration;

g. Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled as guaranteed;

h. Except as provided by paragraph 15.66(6)*"v,"* nonguaranteed elements underlying the nonguaranteed illustrated values shall be no more favorable than current nonguaranteed elements and shall not include any assumed future improvement of such elements. Additionally, nonguaranteed elements used in calculating nonguaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;

i. In determining the nonguaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the most recent 10 calendar years; one to reflect the historical performance of the index for the continuous period of 10 calendar years out of the last 20 calendar years that would result in the least index value growth (the "low scenario"); one to reflect the historical performance of the index for the continuous period of 10 calendar years out of the last 20 calendar years that would result in the most index value growth (the "high scenario"). The following requirements apply:

(1) The most recent 10 calendar years and the last 20 calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;

(2) If any index utilized in determination of an account value has not been in existence for at least 10 calendar years, indexed returns for that index shall not be illustrated. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least 10 calendar years, the allocation to such indexed account shall be assumed to be zero;

(3) If any index utilized in determination of an account value has been in existence for at least 10 calendar years but less than 20 calendar years, the 10-calendar-year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;

(4) The nonguaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the nonguaranteed index-based interest rate shall be no more favorable than the corresponding current elements;

(5) If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:

1. The allocation used in the illustration shall be the same for all three scenarios; and

2. The ten-calendar-year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option;

(6) The geometric mean annual effective rate of the account value growth over the ten-calendar-year period shall be shown for each scenario;

(7) If the most recent ten-calendar-year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of subrule 15.66(8), the most recent ten-calendar-year historical period experience of the index shall be used for each subsequent 10-calendar-year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;

(8) The low and high scenarios:

1. Need not show surrender values (if different than account values);

2. Shall not extend beyond ten calendar years (and therefore are not subject to the requirements of subrule 15.66(8) beyond subparagraph 15.66(8)*"a"*(1)); and

3. May be shown on a separate page. A graphical presentation shall also be included comparing the movement of the account value over the ten-calendar-year period for the low scenario, the high scenario and the most recent ten-calendar-year scenario; and

(9) The low and high scenarios should reflect the irregular nature of the index performance and should trigger every type of adjustment to the index-based interest rate under the contract. The effect of the adjustments should be clear; for example, additional columns showing how the adjustment applied may be included. If an adjustment to the index-based interest rate is not triggered in the illustration (because no historical values of the index in the required illustration range would have triggered it), the illustration shall so state;

j. The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (e.g., "see page 1 for guaranteed elements");

k. The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;

l. The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as applicable;

m. Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;

n. Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

(1) The benefits and values are not guaranteed;

(2) The assumptions on which they are based are subject to change by the insurer; and

(3) Actual results may be higher or lower;

o. Illustrations based on nonguaranteed credited interest and nonguaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and nonguaranteed participation rates, caps or spreads for fixed indexed annuities;

p. The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;

q. Illustrations shall be concise and easy to read;

r. Key terms shall be defined and then used consistently throughout the illustration;

s. Illustrations shall not depict values beyond the maximum annuitization age or date;

t. Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable;

u. Illustrations shall show both annuity income rates per $1,000 and the dollar amounts of the periodic income payable; and

v. For participating immediate and deferred income annuities:

(1) Illustrations shall not assume any future improvement in the applicable dividend scale (or scales, if more than one dividend scale applies, such as for a flexible premium annuity);

(2) Illustrations shall reflect the equitable apportionment of dividends, whether performance meets, exceeds or falls short of expectations;

(3) If the dividend scale is based on a portfolio rate method, the portfolio rate underlying the illustrated dividend scale shall not be assumed to increase;

(4) If the dividend scale is based on an investment cohort method, the illustrated dividend scale shall assume that reinvestment rates grade to long-term interest rates, subject to the following conditions:

1. Any assumptions as to future investment performance in the dividend formula shall be consistent with assumptions that are reflected in the marketplace within the normal range of analyst

forecasts and investor behavior. These assumptions shall not be changed arbitrarily, notwithstanding changes in markets or economic conditions, and shall be consistent with assumptions that the insurer uses with respect to other lines of business.

2. The illustrated dividend scale shall assume that reinvestment rates grade to long-term interest rates, based on the rates of U.S. Treasury bonds (U.S. Treasury rates). For the purposes of this grading, the assumed long-term rates shall not exceed the rates calculated using the formula in numbered paragraph 15.66(6)*"v"*(4)"3" based on the time to maturity or reinvestment (the "tenor") of the investments supporting the cohort of policies.

3. Maximum long-term interest rates shall be calculated for tenors of 3 months or less, 5 years, 10 years, and 20 years or more, using U.S. Treasury rates. For each tenor, the maximum long-term interest rate shall vary over time, based on historical interest rates as they emerge. The formula for the maximum long-term interest rate is the average of the median U.S. Treasury rate during the last 600 months and the average U.S. Treasury rate during the last 120 months, rounded to the nearest quarter of one percent (0.25%).

4. The maximum long-term interest rate for a tenor shall be recalculated once per year, in January, using historical interest rates as of December 31 of the calendar year two years prior to the calendar year of the calculation date. The historical interest rate for each month is the interest rate reported for the last business day of the month.

5. Grading to the maximum long-term interest rates shall take place:

- No less than 20 years from the issue date if U.S. Treasury rates as of the illustration date are below the long-term interest rates; or
- No more than 20 years from the issue date if the U.S. Treasury rates as of the illustration date are above the long-term interest rates.

6. When the ten-year U.S. Treasury rate is less than the ten-year maximum long-term interest rate, an additional illustrated dividend scale shall be presented. This additional illustrated dividend scale shall satisfy the following conditions:

- Assume that reinvestment U.S. Treasury rates do not exceed the initial investment U.S. Treasury rates, and
- Illustrate dividends of no less than half of the dividends illustrated under the current dividend scales.

If the conditions under the two prior bulleted paragraphs are in conflict (i.e., if half of the current dividends are greater than would be permitted by the condition under the first bulleted paragraph above), then the reinvestment U.S. Treasury rates shall equal the initial investment U.S. Treasury rates.

7. The illustration shall include a disclosure that is substantially similar to the following:

> The illustrated current dividend scale is based on interest rates that are assumed to gradually [increase/decrease] from current interest rates to long-term interest rates during a period of [20] years. As required by state regulations, the long-term assumed interest rates cannot and do not exceed the rates listed in column (c) of the table below.
> [Insert table from numbered paragraph 15.66(6)*"v"*(4)"9"]

8. If the illustration contains an additional dividend scale pursuant to numbered paragraph 15.66(6)*"v"*(4)"6," then the illustration also shall include a disclosure that is substantially similar to the following:

> The additional illustrated dividend scale is based on interest rates that are assumed not to increase and that do not exceed the interest rates in column (b) of the table below.
> [Insert table from numbered paragraph 15.66(6)*"v"*(4)"9"]

9. The following table shall be used in the disclosures as indicated in numbered paragraphs 15.66(6)*"v"*(4)"7" and "8":

(a)	(b)	(c)
	U.S. Treasury Rate as of 12/31/2016	**Long-Term U.S. Treasury Rate**
3 Months or Less	0.51%	3.00%
5 Years	1.93%	4.50%
10 Years	2.45%	5.00%
20 Years or More	3.06%	5.50%

15.66(7) An annuity illustration shall include a narrative summary that includes the following unless provided at the same time in a disclosure document:

a. A brief description of any contract features, riders or options, whether guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract.

b. A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract.

c. Identification and a brief definition of column headings and key terms used in the illustration.

d. A statement containing in substance the following:

(1) For other than fixed indexed annuities:

This illustration assumes the annuity's current nonguaranteed elements will not change. It is likely that they **will** change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information.

(2) For fixed indexed annuities:

This illustration assumes the index will repeat historical performance and that the annuity's current nonguaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index **will not** repeat historical performance, the nonguaranteed elements **will** change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information.

e. Additional explanations as follows:

(1) Minimum guarantees shall be clearly explained;

(2) The effect on contract values of contract surrender prior to maturity shall be explained;

(3) Any conditions on the payment of bonuses shall be explained;

(4) For annuities sold as an IRA or as a qualified plan or in another arrangement subject to the required minimum distribution (RMD) requirements of the Internal Revenue Code, the effect of RMDs on the contract values shall be explained;

(5) For annuities with recurring surrender charge schedules, a clear and concise explanation of what circumstances will cause the surrender charge to recur shall be included; and

(6) A brief description of the types of annuity income options available shall be explained, including:

1. The earliest or only maturity date for annuitization (as the term is defined in the contract);

2. For contracts with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age 70 or ten years after issue, but in no case later than the maximum annuitization age or date in the contract;

3. For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and

4. The periodic income amount based on the currently available periodic income rates for the annuity income option in numbered paragraph 15.66(7)*"e"*(6)"2" or "3," if desired.

15.66(8) Following the narrative summary, an illustration shall include a numeric summary that shall include, at minimum, numeric values at the following durations:

a. Either:

(1) The first ten contract years; or

(2) The surrender charge period if longer than ten years, including any renewal surrender charge period;

b. Every tenth contract year up to the later of 30 years or age 70; and

c. Either:

(1) The required annuitization age; or

(2) The required annuitization date.

15.66(9) If the annuity contains a market value adjustment, hereafter MVA, all of the following provisions apply to the illustration (Appendix V provides an illustration of an annuity containing an MVA that addresses paragraphs 15.66(9)*"a"* through *"f"* below):

a. The MVA shall be referred to as such throughout the illustration.

b. The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender.

c. The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit.

d. A statement, containing in substance the following, shall be included:

> When you make a withdrawal, the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive.

e. Illustrations shall describe both the upside and the downside aspects of the contract features relating to the market value adjustment.

f. The illustrative effect of the MVA shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of an MVA.

g. Actual MVA floors and ceilings as listed in the contract shall be illustrated.

h. If the MVA has significant characteristics not addressed by paragraphs 15.66(9)*"a"* through *"f,"* the effect of such characteristics shall be shown in the illustration.

15.66(10) A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time in a disclosure document:

a. An explanation, in simple terms, of the elements used to determine the index-based interest, including, but not limited to, the following elements:

(1) The index(es) that will be used to determine the index-based interest;

(2) The indexing method – such as point-to-point, daily averaging, monthly averaging;

(3) The index term – the period over which indexed-based interest is calculated;

(4) The participation rate, if applicable;

(5) The cap, if applicable; and

(6) The spread, if applicable;

b. The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;

c. The narrative shall include a brief description of the frequency with which the company can reset the elements used to determine the indexed-based credits, including the participation rate, the cap, and the spread, if applicable; and

d. If the product allows the contract holder to make allocations to declared-rate segment, then the narrative shall include a brief description of:

(1) Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and

(2) Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.

15.66(11) A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:

a. The assumed growth rate of the index in accordance with paragraph 15.66(6)*"i"*;

b. The assumed values for the participation rate, cap and spread, if applicable; and

c. The assumed allocation between indexed-based segments and declared-rate segment, if applicable, in accordance with paragraph 15.66(6)*"i."*

15.66(12) If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that nonsubstantive changes including, but not limited to, changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1035 of the Internal Revenue Code, rollovers or transfers, which do not alter the key benefits and features of the annuity as applied for, will not require a revised illustration unless requested by the applicant.

191—15.67(507B) Report to contract owners. For annuities in the payout period that include nonguaranteed elements and for deferred annuities in the accumulation period, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

15.67(1) The beginning and ending date of the current report period;

15.67(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

15.67(3) The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

15.67(4) The amount of outstanding loans, if any, as of the end of the current report period.

191—15.68(507B) Penalties. In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of these rules shall be guilty of a violation of Iowa Code chapter 507B.

191—15.69(507B) Severability. If any provision of these rules or the application of these rules to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the rule and its application to other persons or circumstances shall not be affected.

191—15.70 and **15.71** Reserved.

DIVISION V
SUITABILITY IN ANNUITY TRANSACTIONS

191—15.72(507B) Purpose. The purpose of these rules is to require producers, as defined in rule 191—15.74(507B), to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the times of the transactions are effectively addressed. Nothing herein shall be construed to create or imply a private cause of action for a violation of these rules or to subject a producer to civil liability under the best interest standard of care outlined in rule 191—15.75(507B) or under standards governing the conduct of a fiduciary or a fiduciary relationship.

191—15.73(507B) Applicability and scope.

15.73(1) These rules shall apply to any sale or recommendation of an annuity on or after January 1, 2021.

15.73(2) Unless otherwise specifically included, these rules do not apply to transactions involving:

a. Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to these rules;

b. Contracts used to fund the following:

(1) An employee pension or welfare benefit plan that is covered by ERISA;

(2) A plan described by Section 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC) if established or maintained by an employer;

(3) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the IRC; or

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

c. Settlements or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

d. Formal prepaid funeral contracts.

191—15.74(507B) Definitions. For purposes of this division:

"Annuity" means an annuity that is an insurance product under state law, individually solicited, whether the product is classified as an individual or group annuity.

"Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

"Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs and financial objectives, including, at a minimum, the following:

1. Age;
2. Annual income;
3. Financial situation and needs, including debts and other obligations;
4. Financial experience;
5. Insurance needs;
6. Financial objectives;
7. Intended use of the annuity;
8. Financial time horizon;
9. Existing assets or financial products, including investment, annuity and insurance holdings;
10. Liquidity needs;
11. Liquid net worth;
12. Risk tolerance, including, but not limited to, willingness to accept nonguaranteed elements in the annuity;
13. Financial resources used to fund the annuity; and
14. Tax status.

"Continuing education credit" or *"CE credit"* means one credit as defined in rule 191—11.2(505,522B).

"Continuing education provider" or *"CE provider"* means a CE provider as defined in rule 191—11.2(505,522B).

"FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

"Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

"Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

"Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. "Material conflict of interest" does not include cash compensation or noncash compensation.

"Noncash compensation" means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.

"Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

"Producer" means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of these rules, "producer" includes an insurer where no producer is involved.

"Recommendation" means advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

"Replacement" means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that, by reason of the transaction, an existing annuity or other insurance policy has been or is to be any of the following:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. Reissued with any reduction in cash value; or
5. Used in a financed purchase.

"SEC" means the United States Securities and Exchange Commission.

191—15.75(507B) Duties of insurers and producers.

15.75(1) *Best interest obligations.* A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if the producer has satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:

a. Care obligation.

(1) The producer, in making a recommendation, shall exercise reasonable diligence, care and skill to:

1. Know the consumer's financial situation, insurance needs and financial objectives;
2. Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
3. Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and
4. Communicate the basis or bases of the recommendation.

(2) The requirements under subparagraph 15.75(1)*"a"*(1) include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

(3) The requirements under subparagraph 15.75(1)*"a"*(1) require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.

(4) The requirements under this subrule do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in these rules.

(5) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

(6) The requirements under subparagraph 15.75(1)*"a"*(1) include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.

(7) The requirements under subparagraph 15.75(1)*"a"*(1) apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.

(8) The requirements under subparagraph 15.75(1)*"a"*(1) do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

(9) The requirements under subparagraph 15.75(1)*"a"*(1) do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.

(10) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

1. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

2. The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

3. The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

(11) Nothing in this regulation should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

b. Disclosure obligation.

(1) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix VI:

1. A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

2. An affirmative statement on whether the producer is licensed and authorized to sell the following products:

- Fixed annuities;
- Fixed indexed annuities;
- Variable annuities;
- Life insurance;
- Mutual funds;
- Stocks and bonds; and
- Certificates of deposit;

3. An affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:

- From one insurer;
- From two or more insurers; or

- From two or more insurers although primarily contracted with one insurer.

4. A description of the sources and types of cash compensation and noncash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and

5. A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph 15.75(1)*"b"*(2);

(2) Upon request of the consumer or the consumer's designated representative, the producer shall disclose:

1. A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and

2. Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

(3) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as: the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees; any annual fees; potential charges for and features of riders or other options of the annuity; limitations on interest returns; potential changes in nonguaranteed elements of the annuity; insurance and investment components; and market risk.

c. Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

d. Documentation obligation. A producer shall at the time of recommendation or sale:

(1) Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

(2) Obtain a consumer-signed statement on a form substantially similar to Appendix VII documenting:

1. A customer's refusal to provide the consumer profile information, if any; and

2. A customer's understanding of the ramifications of not providing the customer's consumer profile information or providing insufficient consumer profile information; and

(3) Obtain a consumer-signed statement on a form substantially similar to Appendix VIII acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

e. Application of the best interest obligation. Any requirement applicable to a producer under this subrule shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

15.75(2) *Transactions not based on a recommendation.*

a. Except as provided under paragraph 15.75(2)*"b,"* a producer shall have no obligation to a consumer under paragraph 15.75(1)*"a"* related to any annuity transaction if:

(1) No recommendation is made;

(2) A recommendation was made and was later found to have been prepared based on inaccurate material information provided by the consumer;

(3) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

(4) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

b. An insurer's issuance of an annuity subject to paragraph 15.75(2)*"a"* shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

15.75(3) *Supervision system.*

a. Except as permitted under subrule 15.75(2), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.

b. An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with rules 191—15.72(507B) through 191—15.78(507B) including, but not limited to, the following:

(1) The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of these rules and shall incorporate the requirements of these rules into relevant producer training manuals;

(2) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of rule 191—15.76(507B);

(3) The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its producers;

(4) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(5) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subrules 15.75(1), 15.75(2), 15.75(4) and 15.75(5). These procedures may include, but are not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming the consumer profile information or other required information under this rule after issuance or delivery of the annuity;

(6) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this rule;

(7) The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

(8) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

(9) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

c. Third-party supervisor.

(1) Nothing in this subrule restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this subrule. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to rule 191—15.77(507B) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph 15.75(3)*"c"*(2).

(2) An insurer's supervision system under this subrule shall include supervision of contractual performance under this subrule including, but not limited to, the following:

1. Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

2. Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

d. An insurer is not required to include in its system of supervision:

(1) A producer's recommendations to consumers of products other than the annuities offered by the insurer; or

(2) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

15.75(4) *Prohibited practices.* Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

a. Truthfully responding to an insurer's request for confirmation of the consumer profile information;

b. Filing a complaint; or

c. Cooperating with the investigation of a complaint.

15.75(5) *Safe harbor.*

a. Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under these rules. This subrule applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subrule shall limit the insurance commissioner's ability to investigate and enforce the provisions of these rules.

b. Nothing in paragraph 15.75(5)*"a"* shall limit the insurer's obligation to comply with paragraph 15.75(3)*"a,"* although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

c. For paragraph 15.75(5)*"a"* to apply, an insurer shall:

(1) Monitor the relevant conduct of the financial professional seeking to rely on paragraph 15.75(5)*"a"* or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal securities laws using information collected in the normal course of an insurer's business; and

(2) Provide to the entity responsible for supervising the financial professional seeking to rely on paragraph 15.75(5)*"a,"* such as the financial professional's broker-dealer or investment adviser registered under federal securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

d. For purposes of this subrule, "financial professional" means a producer that is regulated and acting as:

(1) A broker-dealer registered under federal securities laws or a registered representative of a broker-dealer;

(2) An investment adviser registered under federal securities laws or an investment adviser representative associated with the federal registered investment adviser; or

(3) A plan fiduciary under Section 3(21) of ERISA or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

e. For purposes of this subrule, "comparable standards" means:

(1) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;

(2) With respect to investment advisers registered under federal securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, including, but not limited to, the Form ADV and interpretations; and

(3) With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

191—15.76(507B) Producer training.

15.76(1) A producer shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subrule.

15.76(2) Training required.

a. One-time course.

(1) A producer who engages in the sale of annuity products shall complete a one-time, four-credit training course approved by the commissioner and provided by an education provider approved by the commissioner.

(2) Producers may not engage in the sale of annuities until the annuity training course required under this rule has been completed.

b. The minimum length of the training required under this rule shall be sufficient to qualify for at least four CE credits, but may be longer.

c. The training required under this rule shall include information on the following topics:

(1) The types of annuities and various classifications of annuities;

(2) Identification of the parties to an annuity;

(3) How fixed, variable, indexed, and other product-specific annuity contract provisions affect consumers;

(4) The application of income taxation of qualified and nonqualified annuities;

(5) The primary uses of annuities;

(6) Appropriate standard of conduct sales practices; and

(7) Replacement and disclosure requirements.

d. Providers of courses intended to comply with this rule shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

e. A provider of an annuity training course intended to comply with this rule shall register as a CE provider in this state and comply with the rules and guidelines applicable to producer continuing education courses as set forth in 191—Chapter 11.

f. A producer who has completed an annuity training course approved by the commissioner prior to January 1, 2021, shall, before July 1, 2021, complete either:

(1) A new four-credit training course approved by the commissioner after January 1, 2021; or

(2) An additional one-time, one-credit training course approved by the commissioner and provided by the commissioner-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended regulation.

g. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with 191—Chapter 11.

h. Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with 191—Chapter 11.

i. Satisfaction of the training requirements of another state that are substantially similar to the provisions of this subrule shall be deemed to satisfy the training requirements of this subrule in this state.

j. The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subrule shall be deemed to satisfy the training requirements of this subrule in this state.

k. An insurer shall verify that a producer has completed the annuity training course required under this subrule before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subrule by obtaining certificates of completion of the training course or obtaining reports provided by Iowa insurance commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved continuing education providers.

191—15.77(507B) Compliance; mitigation; penalties; enforcement.

15.77(1) An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:

a. An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with these rules by the insurer, an entity contracted to perform the insurer's supervisory duties, or by the producer;

b. A general agency, independent agency or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of the rules of this division; and

c. Appropriate penalties and sanctions.

15.77(2) Any applicable penalty under Iowa Code chapter 507B for a violation of the rules in Division V of this chapter may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

15.77(3) The authority to enforce compliance with these rules is vested exclusively with the commissioner.

191—15.78(507B) Recordkeeping.

15.78(1) Insurers, general agents, independent agencies, and producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer (including summaries of oral disclosures) and other information used in making the recommendations that were the basis for insurance transactions for ten years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.

15.78(2) Records required to be maintained by this rule may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

191—15.79 Reserved.

DIVISION VI
INDEXED PRODUCTS TRAINING REQUIREMENT

191—15.80(507B,522B) Purpose. The purpose of the rules in this division is to require certain specific minimum training for insurance producers who wish to sell indexed annuities or indexed life insurance in Iowa. This additional training is necessary due to the complex nature of these indexed products and to ensure that insurance producers are able to determine whether an indexed product is suitable for a consumer and are able to adequately explain to a consumer how the indexed product works. The ultimate goal of these rules is to ensure that purchasers of indexed products understand basic features of the indexed products. The rules in this division apply to all indexed products sold on or after January 1, 2008.

191—15.81(507B,522B) Definitions. For the purpose of this division:

"CE credit" means one continuing education "credit" as defined in 191—Chapter 11.

"CE provider" means any individual or entity that is approved to offer continuing education courses in Iowa pursuant to 191—Chapter 11.

"Indexed products" means all fixed indexed life insurance and fixed indexed annuity products.

"Insurer" means an insurance company admitted to do business in Iowa that sells indexed products in Iowa.

"Producer" means a person required to obtain an insurance license under Iowa Code chapter 522B.

191—15.82(507B,522B) Special training required. A producer who wishes to sell indexed products in Iowa shall complete at least one four-credit indexed products training course, as described in this division, prior to providing any advice or making any sales presentation concerning an indexed product.

191—15.83(507B,522B) Conduct of training course.

15.83(1) The indexed products training shall include information on all topics listed in the most recent version of the indexed products training outline available at the division's website, iid.iowa.gov.

15.83(2) CE providers of indexed products training shall cover all topics listed in the indexed products training outline and, within the time allotted for the required topics, shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

15.83(3) The minimum length of the indexed products training must be sufficient to qualify for at least four CE credits but may be longer.

15.83(4) To satisfy the requirements of subrules 15.83(1), 15.83(2) and 15.83(3), an indexed products training course shall be filed, approved and conducted according to the rules and guidelines applicable to insurance producer continuing education courses as set forth in 191—Chapter 11.

15.83(5) Indexed products training courses may be conducted and completed by classroom or self-study methods according to the rules in 191—Chapter 11.

15.83(6) CE providers of indexed products training shall comply with the reporting requirements as set forth in 191—Chapter 11.

15.83(7) CE providers of indexed products training shall issue certificates of completion according to the rules in 191—Chapter 11.

15.83(8) A producer may use the CE credits completed under the indexed products training requirement to meet the producer's continuing education requirement under 191—Chapter 11.

191—15.84(507B,522B) Insurer duties.

15.84(1) Each insurer shall establish a system to verify which of its appointed insurance producers have completed one training course on indexed products as required in this division.

15.84(2) An insurer shall verify that a producer has completed the required indexed products training before allowing the producer to sell an indexed product for that insurer.

15.84(3) For insurance producers under contract with or employed by a broker-dealer, general agent or independent agency, an insurer may enter into a contract with the broker-dealer, general agent or independent agency to establish and maintain a system of verification as required by subrule 15.84(1) with respect to those insurance producers. In such circumstances, the insurer shall make reasonable inquiry to ensure that the broker-dealer, general agent or independent agency is performing the functions required under subrules 15.84(1) and 15.84(2).

191—15.85(507B,522B) Verification of training. Insurers, producers and third-party contractors may verify a producer's completion of the indexed products training by accessing the division's website, iid.iowa.gov.

191—15.86(507B,522B) Penalties.

15.86(1) Insurers and third-party contractors that violate the rules of this division are subject to penalty under Iowa Code chapter 507B.

15.86(2) Producers who violate the rules of this division are subject to penalty under Iowa Code chapters 507B and 522B.

15.86(3) Continuing education providers that fail to follow the requirements of the rules of this division and the conduct requirements of 191—Chapter 11 are subject to penalty under 191—Chapter 11 and Iowa Code chapters 507B and 522B.

191—15.87(507B,522B) Compliance date.

15.87(1) A producer who provides advice or makes a sales presentation regarding an indexed product on or after January 1, 2008, shall have completed the indexed products training required by this division.

15.87(2) An Iowa-licensed insurer shall verify that, prior to the sale of any indexed products on or after January 1, 2008, any producer appointed by the insurer has completed the indexed products training required by this division.

APPENDIX I
LIFE INSURANCE COST AND
BENEFIT DISCLOSURE

Definitions.

"Annual premium" for a basic policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium.

"Cash dividend" means dividends that can be applied toward payment of gross premiums that comply with the illustrated scale.

"Equivalent level annual dividend" is calculated by applying the following steps:

1. Accumulate the annual cash dividends at 5 percent interest compounded annually to the end of the tenth and twentieth policy years.

2. Divide each accumulation of paragraph "1" by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in paragraph "1" over the respective periods stipulated in paragraph "1." If the period is 10 years, the factor is 13.207, and if the period is 20 years, the factor is 34.719.

3. Divide the results of paragraph "2" by the number of thousands of the equivalent level death benefit to arrive at the equivalent level annual dividend.

"Equivalent level death benefit" of a policy or term life insurance rider is an amount calculated as follows:

1. Accumulate the guaranteed amount payable upon death, regardless of the cause of death other than suicide, or other specifically enumerated exclusions, at the beginning of each policy year for 10 and 20 years at 5 percent interest compounded annually to the end of the tenth and twentieth policy years, respectively.

2. Divide each accumulation of paragraph "1" by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in paragraph "1" over the respective periods stipulated in paragraph "1." If the period is 10 years, the factor is 13.207, and if the period is 20 years, the factor is 34.719.

"Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

"Life insurance net payment cost index." The life insurance net payment cost index is calculated in the same manner as the comparable life insurance cost index except that the cash surrender value and any terminal dividend are set at zero.

"Life insurance surrender cost index." The life insurance surrender cost index is calculated by applying the following steps:

1. Determine the guaranteed cash surrender value, if any, available at the end of the tenth and twentieth policy years.

2. For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual cash dividends at 5 percent interest compounded annually to the end of the period selected and add this sum to the amount determined in subparagraph "1."

3. Divide the result of subparagraph "2" (subparagraph "1" for guaranteed-cost policies) by an interest factor that converts it into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in subparagraph "2" (subparagraph "1" for guaranteed-cost policies) over the respective periods stipulated in subparagraph "1." If the period is 10 years, the factor is 13.207, and if the period is 20 years, the factor is 34.719.

4. Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider at 5 percent interest compounded annually to the end of the period stipulated in subparagraph "1" and dividing the result by the respective factors stated in subparagraph "3" (this amount is the annual premium payable for a level premium plan).

5. Subtract the result of subparagraph "3" from subparagraph "4."

6. Divide the result of subparagraph "5" by the number of thousands of the equivalent level death benefit to arrive at the life insurance surrender cost index.

"Policy summary," for the purposes of these rules, shall mean a written statement describing the elements of the policy including but not limited to:

1. A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.

2. The name and address of the insurance producer or, if no producer is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.

3. The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

4. The generic name of the basic policy and each rider.

5. The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns including, but not necessarily limited to, the years for which life insurance cost indexes are displayed and at least one age from 60 through 65 or maturity, whichever is earlier:

(a) The annual premium for the basic policy.

(b) The annual premium for each optional rider.

(c) Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide and other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.

(d) Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.

(e) Cash dividends payable at the end of the year with values shown separately for the basic policy and each rider. (Dividends need not be displayed beyond the twentieth policy year.)

(f) Guaranteed endowment amounts payable under the policy that are not included under guaranteed cash surrender values above.

6. The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is variable, the policy summary includes the maximum annual percentage rate.

7. Life insurance cost indexes for 10 and 20 years but in no case beyond the premium paying period. Separate indexes are displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders that are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months and guaranteed insurability benefits nor for basic policies or optional riders covering more than one life.

8. The equivalent level annual dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which life insurance cost indexes are displayed.

9. A policy summary that includes dividends shall also include a statement that dividends are based on the company's illustrated scale and are not guaranteed and a statement in close proximity to the equivalent level annual dividend as follows: An explanation of the intended use of the equivalent level annual dividend is included in the life insurance buyer's guide.

10. A statement in close proximity to the life insurance cost indexes as follows: An explanation of the intended use of these indexes is provided in the life insurance buyer's guide.

11. The date on which the policy summary is prepared.

The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in paragraph "5" of this definition shall be listed in total, not a per-thousand nor a per-unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insured if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.

APPENDIX II
HIV ANTIBODY TEST
INFORMATION FORM FOR INSURANCE APPLICANT

AIDS

Acquired Immunodeficiency Syndrome (AIDS) is a life-threatening disorder of the immune system, caused by a virus, HIV. The virus is transmitted by sexual contact with an infected person, from an infected mother to her newborn infant, or by exposure to infected blood (as in needle sharing during IV drug use). Persons at high risk of contracting AIDS include males who have had sexual contact with another man, intravenous drug users, hemophiliacs, and persons who have had sexual contact with any of these persons. AIDS does not typically develop until a person has been infected with HIV for several years. A person may remain free of symptoms for years after becoming infected. Infected persons have a 25 percent to 50 percent chance of developing AIDS over the next ten years.

The HIV antibody test:

Before consenting to testing, please read the following important information:

1. Purpose. This test is being run to determine whether you may have been infected with HIV. If you are infected, you are probably not insurable. This test is not a test for AIDS; AIDS can only be diagnosed by medical evaluation.

2. Positive test results. If you test positive, you should seek medical follow-up with your personal physician. If your test is positive, you may be infected with HIV.

3. Accuracy. An HIV test will be considered positive only after confirmation by a laboratory procedure that the state health officer has determined to be highly accurate. Nonetheless, the HIV antibody test is not 100 percent accurate. Possible errors include:

a. False positives: This test gives a positive result, even though you are not infected. This happens rarely and is more common in persons who have not engaged in high-risk behavior. Retesting should be done to help confirm the validity of a positive test.

b. False negatives: The test gives a negative result, even though you are infected with HIV. This happens most commonly in recently infected persons; it takes at least 4 to 12 weeks for a positive test result to develop after a person is infected.

4. Side effects. A positive test result may cause you significant anxiety. A positive test may result in uninsurability for life, health, or disability insurance policies for which you may apply in the future. Although prohibited by law, discrimination in housing, employment, or public accommodations may result if your test results become known to others. A negative result may create a false sense of security.

5. Disclosure of results. A positive test result will be reported to you in one of the following ways. You may choose to have information about a positive test result communicated to you through your physician or through the alternative testing site. If you do not designate a physician or an alternative

testing site to receive the information, the information about a positive test result will be reported to the Iowa Department of Health and Human Services, and the Iowa Department of Health and Human Services will contact you.

6. Confidentiality. Like all medical information, HIV test results are confidential. An insurer, insurance agent, or insurance-support organization is required to maintain the confidentiality of HIV test results. However, certain disclosures of your test results may occur, including those authorized by consent forms that you may have signed as part of your overall application. Your test results may be provided to the Medical Information Bureau, a national insurance data bank. Your insurance agent will provide you with additional written information about this subject at your request.

7. Prevention. Persons who have a history of high-risk behavior should change these behaviors to prevent getting or giving AIDS, regardless of whether they are tested. Specific important changes in behavior include safe sex practices (including condom use for sexual contact with someone other than a long-term monogamous partner) and not sharing needles.

8. Information. Further information about HIV testing and AIDS can be obtained by contacting the CDC national health information hotline, 1.800.CDC.INFO (1.800.232.4636); TTY 1.888.232.6348; www.cdc.gov/info.

INFORMED CONSENT

I hereby authorize the company and its designated medical facilities to draw samples of my blood or other bodily fluid for the purpose of laboratory testing to provide applicable medical information concerning my insurability. These tests may include but are not limited to tests for: cholesterol and related blood lipids; diabetes; liver or kidney disorders; infection by the Acquired Immune Deficiency Syndrome (HIV) virus (if permitted by law); immune disorders; or the presence of medications, drugs, nicotine or other metabolites. The tests will be done by a medically accepted procedure that is extremely reliable.

If an HIV Antibody Screen is performed, it will be performed only by a certified laboratory and according to the following medical protocol:

1. An initial ELISA blood or other bodily fluid test will be done.

a. If the initial ELISA blood or other bodily fluid test is positive, it will be repeated.

b. If the initial ELISA blood or other bodily fluid test is negative, a negative finding will be reported to the company.

2. If the initial ELISA blood or other bodily fluid test is positive, it will be repeated.

a. If the second ELISA blood or other bodily fluid test is also positive, a Western Blot blood or other bodily fluid test will be performed to confirm the positive results of the two ELISA blood or other bodily fluid tests.

b. If the second ELISA blood or other bodily fluid test is negative, a third ELISA blood or other bodily fluid test will be performed. If the third ELISA blood or other bodily fluid test is positive, a Western Blot blood or other bodily fluid test will be performed to confirm the previous positive results. If the third blood or other bodily fluid test is negative, a negative result will be reported to the company.

3. Only if at least two ELISA blood or other bodily fluid tests and a Western Blot blood or other bodily fluid test are all positive will the result be reported as a positive. All other results will be reported as negative to the company.

Without a court order or written authorization from me, these results will be made known only to the company and its reinsurers (if involved in the underwriting process). The company will provide results of all tests to a physician of my choice. Positive test results to the HIV Antibody Screen will be disclosed only to my physician or an alternative testing site as I direct below. If I do not designate a physician or alternative testing site to receive the results, the company will provide results of a positive HIV test to the Iowa Department of Health and Human Services. In addition, the company may make a brief report to MIB, Inc., in a manner described in the Pre-notice that I received as a part of the application process. The only information the company will report to MIB, Inc., is that positive results were obtained from a blood or other bodily fluid test. The company will not report what tests were performed or that the positive result was for HIV antibodies.

These organizations will be the only ones maintaining this information in any type of file except as required by law. Positive HIV Antibody Screen results are to be reported to: (elect one) □ the Alternative Testing Site or □ my physician: _____

(name and address of attending physician)

This authorization will be valid for 90 days from the date below.

Dated At: _____Day _____ Month _____, 20 _____

Witness: _____ Proposed Insured: _____

Producer (Signature) (Signature)

This rule is intended to implement Iowa Code section 505.16.

APPENDIX III
COMPLAINT RECORD

Column A	Column B		Column C	Column D	Column E	Column F	Column G	Column H
Company Identification Number	Function Code	Reason Code	Line Type	Company Disposition after Complaint Received	Date Received	Date Closed	Insurance Division Complaint	State of Origin
(Producer's Number)								

Explanation

A. Company Identification Number. As noted, this refers to the identification number of the complaint and shall also include the license number, name, or other means of identifying any licensee of the Insurance Division, such as a producer that may have been involved in the complaint.

B. Function Code. Complaints are to be classified by function(s) of the company involved. Separate classifications are to be maintained for underwriting, marketing and sales, claims, policyholder service and miscellaneous.
Reason Code. Complaints are also to be classified by the nature of the complaint. The following is the classification required for each function specified above.

1) Underwriting
   a) Premium and rating
   b) Refusal to insure
   c) Cancellation/renewal
   d) Delays
   e) Unfair discrimination
   f) Endorsement/rider
   g) Group conversion
   h) Medicare supplement violation
   i) Miscellaneous (not covered by above)
2) Marketing and Sales
   a) General advertising
   b) Misrepresentation
   c) Producer handling
   d) Replacement
   e) Delays
   f) Miscellaneous (not covered by above)
3) Claims
   a) Post claim underwriting
   b) Delays
   c) Unsatisfactory settlement/offer
   d) Coordination of benefits
   e) Cost containment
   f) Denial of claim
   g) Miscellaneous (not covered by above)
4) Policyholder service
   a) Premium notice/billing
   b) Cash value
   c) Delays/no response
   d) Premium refund
   e) Coverage question
   f) Miscellaneous (not covered by above)
5) Miscellaneous

C. Line Type. Complaints are to be classified according to the line of insurance involved as follows:
1) Automobile
2) Fire
3) Homeowners-Farmowners
4) Crop
5) Life and Annuity
6) Accident and Health
7) Miscellaneous (not covered by above)

D. Company Disposition After Receipt. The complaint record shall note the disposition of the complaint.
The following examples illustrate the type of information called for, but are not intended to be required language nor to exhaust the possibilities:
1. Policy issued/restored.
2. Refund.
3. Claim settled.
4. Delay resolved.
5. Question of fact.
6. Contract provision/legal issue.
7. No jurisdiction.

E. Date Received. This refers to the date the complaint was received.

F. Date Closed. This refers to the date on which the complaint was disposed of whether by one action or a series of actions as may be present in connection with some complaints.

G. Insurance Department Complaint. Complaints are to be classified so as to indicate if the complaint was from an insurance department.

H. State of Origin. The complaint record should note the state from which the complaint originated. Ordinarily this will be the state of residence of the complainant.

APPENDIX IV
DISCLOSURE FORM FOR SMALL FACE AMOUNT LIFE INSURANCE POLICIES

Important Information About Your Policy

The premiums you'll pay for your policy may be more than the amount of your coverage (the face amount). You can find both the face amount and the annual premium in your policy. Look for the page labeled [use the label the company uses for that information, such as "Statement of Policy Cost and Benefit Information"].

- Usually, you can figure out how many years it will take until the premiums paid will be greater than the face amount. For an estimate, divide the face amount by the annual premium. Several factors may affect how many years this might take for *your* policy. These include not paying premiums when due, taking out a policy loan, surrendering your policy for cash, policy riders, payment of dividends, if applicable, and changes in the face amount.
- Many factors will affect how much your life insurance costs. Some are your age and health, the face amount of the policy, and the cost of a policy rider. You may be able to pay less for your insurance if you answer health questions. You may also pay less if you pay your premiums less often.
- Ask your insurance agent or your insurance company if you have any questions about your premiums, your coverage, or anything else about your policy.

If You Change Your Mind . . .

- You can get a full refund of premiums you've paid if you return your policy and cancel your coverage. You *must* do this within the number of days stated on your policy's front page. To return the policy for a full refund, send it back to the agent or the company.
- If you stop paying premiums or cancel your policy *after* the time that a full refund is available, you have specific rights. Ask your insurance agent or your insurance company about your rights.

Contact Information

If you have questions about your insurance policy, ask your agent or your company. If your agent isn't available, contact your insurance company at [provide telephone number (including toll-free number if available), address and website (if available)].

APPENDIX V

Annuity Illustration Example

[The following illustration is an example only and does not reflect specific characteristics of any actual product for sale by any company]

ABC Life Insurance Company

Company Product Name

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)

An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy

(Contact us at Policyownerservice@ABCLife.com or 555.555.5555.)

Sex: Male	Initial Premium Payment: $100,000.00
Age at Issue: 54	Planned Annual Premium Payments: None
Annuitant: John Doe	Tax Status: Nonqualified
Oldest Age at Which Annuity Payments Can Begin: 95	Withdrawals: None Illustrated

Initial Interest Guarantee Period	5 Years
Initial Guaranteed Interest Crediting Rates	
First Year (reflects first year only interest bonus credit of 0.75%):	4.15%
Remainder of Initial Interest Guarantee Period:	3.40%
Market Value Adjustment Period:	5 Years
Minimum Guaranteed Interest Rate After Initial Interest Guarantee Period*:	3%

*After the Initial Interest Guarantee Period, a new interest rate will be declared annually. This rate cannot be lower than the Minimum Guaranteed Interest Rate.

Annuity Income Options and Illustrated Monthly Income Values

This annuity is designed to pay an income that is guaranteed to last as long as the Annuitant lives. When annuity income payments are to begin, the income payment amounts will be determined by applying an annuity income rate to the annuity Account Value.

Annuity income options include the following:

- Periodic payments for Annuitant's life
- Periodic payments for Annuitant's life with payments guaranteed for a certain number of years
- Periodic payments for Annuitant's life with payments continuing for the life of a survivor annuitant

Illustrated Annuity Income Option: Monthly payments for Annuitant's life with payments guaranteed for 10-year period.

Assumed Age When Payments Start: 70

	Account Value	Monthly Annuity Income Rate/$1,000 of Account Value*	Monthly Annuity Income
Based on Rates Guaranteed in the Contract	$164,798	$5.00	$823.99
Based on Rates Currently Offered by the Company	$171,976	$6.50	$1,117.84

*If, at the time of annuitization, the annuity income rates currently offered by the company are higher than the annuity income rates guaranteed in the contract, the current rates will apply.

ABC Life Insurance Company

Company Product Name

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)

An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy

(Contact us at Policyownerservice@ABCLife.com or 555.555.5555.)

		Values Based on Guaranteed Rates				Values Based on Assumption That Initial Guaranteed Rates Continue		
Contract Year/Age	Premium Payment	Interest Crediting Rate	Account Value	Cash Surrender Value Before MVA	Minimum Cash Surrender Value After MVA	Interest Crediting Rate	Account Value	Cash Surrender Value Before and After MVA
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1 / 55	$ 100,000	4.15%	$ 104,150	$ 95,818	$ 92,000	4.15%	$ 104,150	$ 95,818
2 / 56	0	3.40%	107,691	100,153	93,000	3.40%	107,691	100,513
3 / 57	0	3.40%	111,353	104,671	95,614	3.40%	111,353	104,671
4 / 58	0	3.40%	115,139	109,382	98,482	3.40%	115,139	109,382
5 / 59	0	3.40%	119,053	114,291	114,291	3.40%	119,053	114,291
6 / 60	0	3.00%	122,625	118,946	118,946	3.40%	123,101	119,408
7 / 61	0	3.00%	126,304	123,778	123,778	3.40%	127,287	124,741
8 / 62	0	3.00%	130,093	130,093	130,093	3.40%	131,614	131,614
9 / 63	0	3.00%	133,996	133,996	133,996	3.40%	136,089	136,089
10 / 64	0	3.00%	138,015	138,015	138,015	3.40%	140,716	140,716
11 / 65	0	3.00%	142,156	142,156	142,156	3.40%	145,501	145,501
16 / 70	0	3.00%	164,798	164,798	164,798	3.40%	171,976	171,976
21 / 75	0	3.00%	191,046	191,046	191,046	3.40%	203,268	203,268
26 / 80	0	3.00%	221,474	221,474	221,474	3.40%	240,255	240,255
31 / 85	0	3.00%	256,749	256,749	256,749	3.40%	283,972	283,972
36 / 90	0	3.00%	297,643	297,643	297,643	3.40%	335,643	335,643
41 / 95	0	3.00%	345,050	345,050	345,050	3.40%	396,717	396,717

For column descriptions, turn to page 3

Column Descriptions

(1) **Ages** shown are measured from the Annuitant's age at issue.

(2) **Premium Payments** are assumed to be made at the beginning of the Contract Year shown.

Values Based on Guaranteed Rates

(3) **Interest Crediting Rates** shown are annual rates; however, interest is credited daily. During the Initial Interest Guarantee Period, values developed from the Initial Premium Payment are illustrated using the Initial Guaranteed Interest Rate(s) declared by the insurance company, which include an additional first year only interest bonus credit of 0.75%. The interest rates will be guaranteed for the Initial Interest Guarantee Period, subject to an MVA. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually, but can never be less than the Minimum Guaranteed Interest Rate shown.

(4) **Account Value** is the amount you have at the end of each year if you leave your money in the contract until you start receiving annuity payments. It is also the amount available upon the Annuitant's death if it occurs before annuity payments begin. The death benefit is not affected by surrender charges or the MVA.

(5) **Cash Surrender Value Before MVA** is the amount available at the end of each year if you surrender the contract (after deduction of any Surrender Charge) but before the application of any MVA. Surrender charges are applied to the Account Value according to the schedule below until the surrender charge period ends, which may be after the Initial Interest Guarantee Period has ended.

Years Measured from Premium Payment:	1	2	3	4	5	6	7	8+
Surrender Charges:	8%	7%	6%	5%	4%	3%	2%	0%

(6) **Minimum Cash Surrender Value After MVA** is the minimum amount available at the end of each year if you surrender your contract before the end of five years, no matter what the MVA is. The minimum is set by law. The amount you receive may be higher or lower than the cash surrender value due to the application of the MVA, but never lower than this minimum. Otherwise the MVA works as follows: If the interest rate available on new contracts offered by the company is LOWER than your Initial Guaranteed Interest Rate, the MVA will INCREASE the amount you receive. If the interest rate available on new contracts offered by the company is HIGHER than your Initial Guaranteed Interest Rate, the MVA will DECREASE the amount you receive. Page 4 of this illustration provides additional information concerning the MVA.

Values Based on Assumption That Initial Guaranteed Rates Continue

(7) **Interest Crediting Rates** are the same as in Column (3) for the Initial Interest Guarantee Period. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually. For the purposes of calculating the values in this column, it is assumed that the Initial Guaranteed Interest Rate (without the bonus) will continue as the new renewal interest rate in all years. The actual renewal interest rates are not subject to an MVA and will very likely NOT be the same as the illustrated renewal interest rates.

(8) **Account Value** is calculated the same way as Column (4).

(9) **Cash Surrender Value Before and After MVA** is the Cash Surrender Value at the end of each year assuming that Initial Guaranteed Interest Rates continue, and that the continuing rates are the rates offered by the company on new contracts. In this case, the MVA would be zero, and Cash Surrender Values before and after the MVA would be the same.

Important Note: This illustration assumes you will take **no** withdrawals from your annuity before you begin to receive periodic income payments. **Withdrawals will reduce both the annuity Account Value and the Cash Surrender Value.** You may make partial withdrawals of up to 10% of your account value each contract year without paying surrender charges. Excess withdrawals (above 10%) and full withdrawals will be subject to surrender charges.

This illustration assumes the annuity's current interest crediting rates will not change. It is likely that they will change and actual values may be higher or lower than those in the illustration.

The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. For more information, read the annuity disclosure and annuity buyer's guide.

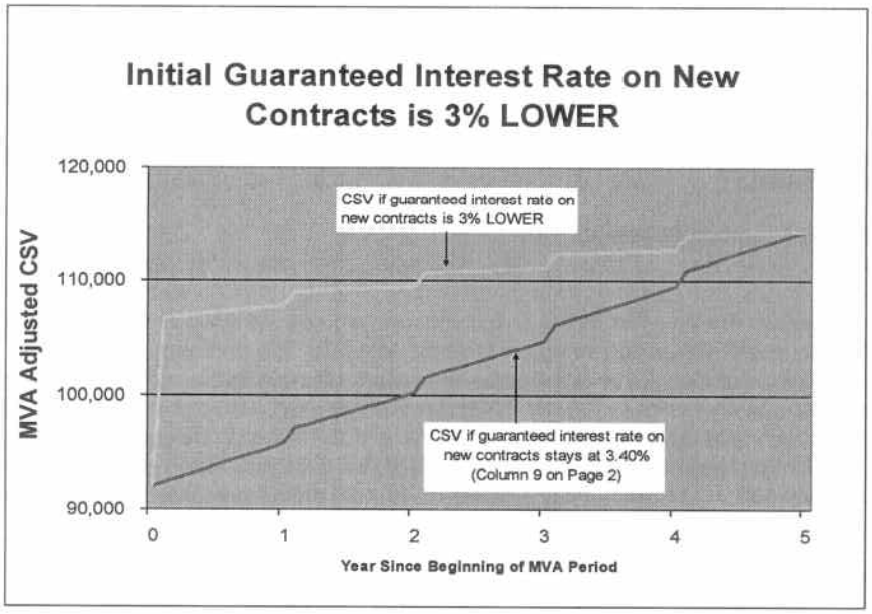
MVA-Adjusted Cash Surrender Values (CSVs) Under Sample Scenarios

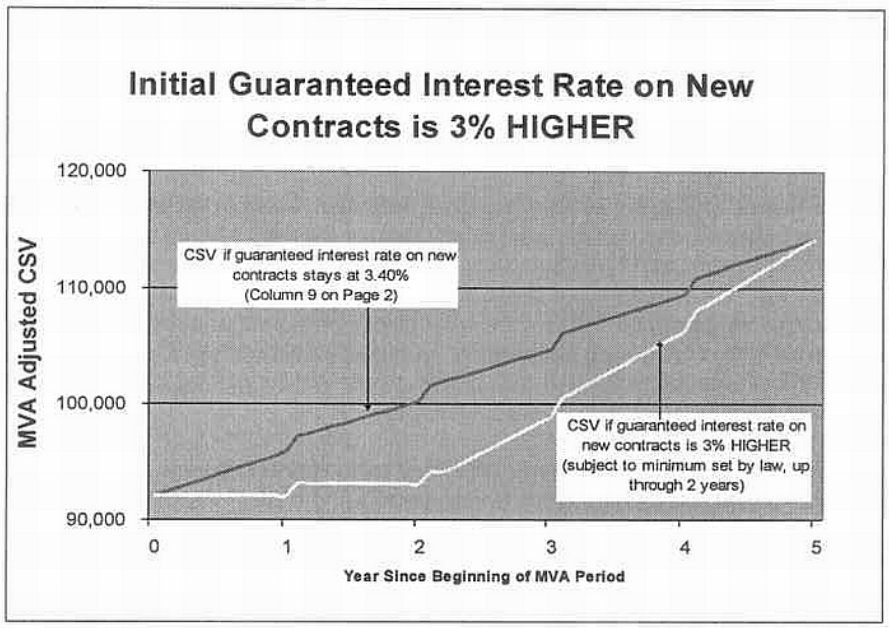
The graphs below* show MVA-adjusted Cash Surrender Values (CSVs) during the first five years of the contract, as illustrated on page 2 ($100,000 single premium, a 5-year MVA Period) under two sample scenarios, as described below.

Graph #1 shows if the interest rate on new contracts is 3% LOWER than your Initial Guaranteed Interest Rate, the MVA will increase the amount you receive (green line). The pink line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on Page 2).

Graph #2 shows if the interest rate on new contracts is 3% HIGHER than your Initial Guaranteed Interest Rate, the MVA will decrease the amount you receive, but not below the minimum set by law (Column (6) on Page 2), which in this scenario limits the decrease for the first 2 years (yellow line). The pink line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on Page 2).

These graphs and the sample guaranteed interest rates on new contracts used are for demonstration purposes only and are not intended to be a projection of how guaranteed interest rates on new contracts are likely to behave.





*Color not reproducible in the Iowa Administrative Code.

APPENDIX VI

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES

Do Not Sign Unless You Have Read and Understand the Information in this Form

Date:_____

INSURANCE AGENT (PRODUCER) INFORMATION ("Me", "I", "My")

First Name: _____ Last Name: _____

Business/Agency Name: _____ Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

National Producer Number in [state]: _____

CUSTOMER INFORMATION ("You", "Your")

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to you in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

☐ Fixed or Fixed Indexed Annuities

☐ Variable Annuities

☐ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

☐ Mutual Funds
☐ Stocks/Bonds
☐ Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

☐ Annuities from Only One (1) Insurer	☐ Annuities from Two or More Insurers
☐ Annuities from Two or More Insurers although I primarily sell annuities from:	

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

☐ Commission, which is usually paid by the insurance company or other sources. If other sources, describe: _____.

☐ Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

☐ Other (Describe): _____.

If you have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "noncash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

Drafting Note: *This disclosure may be adapted to fit the particular business model of the producer. As an example, if the producer only receives commission or only receives a fee from the consumer, the disclosure may be refined to fit that particular situation. This form is intended to provide an example of how to communicate producer compensation, but compliance with the regulation may also be achieved with more precise disclosure, including a written consulting, advising or financial planning agreement.*

Drafting Note: *The acknowledgment and signature should be in immediate proximity to the disclosure language.*

By signing below, you acknowledge that you have read and understand the information provided to you in this document.

_____
Customer Signature

_____
Date

_____
Agent (Producer) Signature

_____
Date

APPENDIX VII

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are you being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company needs information about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets your needs, objectives and situation. You may lose protections under the Insurance Code of [this state] if you sign this form or provide inaccurate information.

Statement of Purchaser:

☐ I **REFUSE** to provide this information at this time.

☐ I have chosen to provide LIMITED information at this time.

_____

Customer Signature

_____

Date

_____

APPENDIX VIII

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.

Why are you being given this form?

You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of [this state].

_____

Customer Signature

_____

Date

_____

_____

Agent/Producer Signature

_____

Date

_____

These rules are intended to implement Iowa Code chapters 507B and 522B.

[Filed 3/1/24, effective 4/24/24]

[Published 3/20/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7735C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to replacement of life insurance and annuities

The Insurance Division hereby rescinds Chapter 16, "Replacement of Life Insurance and Annuities," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 507B.12.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 507B.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 16 and adopt a new Chapter 16 with revisions to remove unnecessarily restrictive terms and provide additional clarity. The chapter regulates the activities of insurance producers and establishes minimum standards of conduct with respect to the replacement of existing life insurance and annuities.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7350C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
REPLACEMENT OF LIFE INSURANCE AND ANNUITIES

DIVISION I

191—16.1 to **16.20** Reserved.

DIVISION II

(Effective July 1, 2000)

191—16.21(507B) Purpose.

16.21(1) The purpose of these rules is:

a. To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.

b. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions by:

(1) Ensuring that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(2) Reducing the opportunity for misrepresentation and incomplete disclosure; and

(3) Establishing penalties for failure to comply with requirements of these rules.

16.21(2) These rules are authorized by Iowa Code section 507B.12 and are intended to implement Iowa Code section 507B.4.

191—16.22(507B) Definitions.

"Commissioner" means the Iowa insurance commissioner.

"Contract" means an individual annuity contract.

"Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

"Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

"Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

"Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from, values of an existing policy to pay all or part of any premium due on a new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender, or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company, within 4 months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to purchase the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in paragraph 16.25(1)*"e."*

"Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years as defined in 191—Chapter 14.

"Policy" means an individual life insurance policy.

"Policy summary," for the purposes of these rules, means:

1. For policies or contracts other than universal life policies, a written statement regarding a policy or contract that shall contain to the extent applicable, but need not be limited to, the following

information: current death benefit, annual contract premium, current cash surrender value, current dividend, application of current dividend, and amount of outstanding loan.

2. For universal life policies, a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

"Producer" means a person licensed under Iowa Code chapter 522B.

"Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

"Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. Reissued with any reduction in cash value; or
5. Used in a financed purchase.

"Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

"Sales material" means a sales illustration and any other written, printed or electronically presented information created, completed or provided by the company or producer that is used in the presentation to the policy or contract owner related to the policy or contract that is purchased.

191—16.23(507B) Exemptions.

16.23(1) Unless otherwise specifically included, these rules shall not apply to transactions involving:

a. Credit life insurance.

b. Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct-response solicitation shall be subject to the provisions of rule 191—16.28(507B).

c. Group life insurance and annuities used to fund formal prepaid funeral contracts.

d. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner.

e. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

f. Except as noted below, policies or contracts used to fund:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Section 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(3) A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the Internal Revenue Code; or

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

These rules shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy.

g. New coverage provided under a life insurance policy or contract where the cost is borne wholly by the insured's employer or by an association of which the insured is a member.

h. Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed.

i. Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this chapter.

j. Structured settlement annuities.

16.23(2) Registered contracts shall be exempt from the requirements of paragraph 16.26(1)*"b"* and subrule 16.27(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

191—16.24(507B) Duties of producers.

16.24(1) A producer who initiates an application for a policy or a contract shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the applicant does not have an existing policy or contract, the producer's duties with respect to replacement are complete.

16.24(2) If the applicant does have an existing policy or contract, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or other substantially similar form approved by the commissioner.

a. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and that a copy of the notice was left with the applicant.

b. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

16.24(3) In connection with a replacement transaction, the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. A copy of any electronically presented sales material shall be provided to the policyholder in printed form no later than at the time of policy or contract delivery.

16.24(4) Except as provided in subrule 16.26(3), in connection with a replacement transaction, the producer shall submit to the insurer to which an application for a policy or contract is presented a copy of each document required by this subrule, a statement identifying any preprinted or electronically presented insurer-approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

191—16.25(507B) Duties of all insurers that use producers on or after January 1, 2001.

16.25(1) Each insurer that uses producers shall maintain a system of supervision and control to ensure compliance with the requirements of these rules that shall include at least the following:

a. Informing its producers of the requirements of these rules and incorporating the requirements of these rules into all relevant producer training manuals prepared by the insurer;

b. Providing to each producer a written statement of the insurer's position with respect to the acceptability of replacements, including providing guidance to its producer as to the appropriateness of these transactions;

c. Reviewing the appropriateness of each replacement transaction that the producer does not indicate is in accord with paragraph 16.25(1)*"b"*;

d. Confirming that the requirements of these rules have been met; and

e. Detecting transactions that are replacements of existing policies or contracts by the existing insurer but that have not been reported as such by the applicant or producer. Compliance with this subrule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters or programs of internal monitoring.

16.25(2) Each insurer that uses producers shall have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer and shall, upon request, make such records available to the insurance division. The capacity to monitor shall include the ability to produce records for each producer's:

a. Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

b. Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

c. Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

d. Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by paragraph 16.25(1)*"e"*; and

e. Replacements, indexed by replacing producer and existing insurer.

16.25(3) Each insurer that uses producers shall require with or as a part of each application for life insurance or for an annuity a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts.

16.25(4) Each insurer that uses producers shall require with each application for life insurance or for an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A.

16.25(5) When the applicant has existing policies or contracts, each replacing insurer that uses producers shall be able to produce completed and signed copies of the notice regarding replacements for at least five years after the termination or expiration of the proposed policy or contract.

16.25(6) In connection with a replacement transaction, each replacing insurer that uses producers shall be able to produce copies of any sales material required by subrule 16.24(4), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract.

16.25(7) Each insurer that uses producers shall ascertain that the sales material and illustrations required by subrule 16.24(4) meet the requirements of these rules and are complete and accurate for the proposed policy or contract.

16.25(8) If an application does not meet the requirements of these rules, each insurer that uses producers shall notify the producer and applicant and fulfill the outstanding requirements.

16.25(9) Records required to be retained by this rule may be maintained by any process that accurately reproduces the actual document.

191—16.26(507B) Duties of replacing insurers that use producers.

16.26(1) Where a replacement is involved in the transaction, the replacing insurer that uses producers shall:

a. Verify that the required forms are received and are in compliance with these rules;

b. Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy

summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;

c. Be able to produce copies of the notification regarding replacement required in subrule 16.24(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of an insurer's state of domicile, whichever is later; and

d. Provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract. The notice may be included in Appendix A or C.

16.26(2) Where a replacement is involved in the transaction and where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract.

16.26(3) Where a replacement is involved in the transaction and where an insurer prohibits the use of sales material other than that approved by the insurer, the insurer may, as an alternative to the requirements of subrule 16.24(4) do all of the following:

a. Require of and obtain from the producer a signed statement with each application that:

(1) Represents that the producer used only insurer-approved sales material; and

(2) Represents that copies of all sales material were left with the applicant in accordance with subrule 16.24(3).

b. Provide the following to the applicant by a letter or by verbal communication, by a person whose duties are separate from the marketing area of the insurer, within ten days of the issuance of the policy or contract:

(1) Information that the producer has represented that copies of all sales material have been left with the applicant in accordance with subrule 16.24(3);

(2) The toll-free number by which the applicant can contact company personnel involved in the compliance function if copies of all sales material were not left with the applicant; and

(3) Information regarding the importance of retaining copies of the sales material for future reference.

c. Be able to produce a copy of the letter or other verification obtained pursuant to this subrule in the policy file for at least five years after the termination or expiration of the policy or contract.

191—16.27(507B) Duties of the existing insurer. Where a replacement is involved in the transaction, the existing insurer shall:

16.27(1) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

16.27(2) Send a letter to the policy or contract owner notifying the owner of the right to receive information regarding the existing policy or contract values including, if available, an in-force illustration or policy summary if an in-force illustration cannot be produced within five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner.

16.27(3) Upon receipt of a request to borrow, surrender or withdraw any policy values, send to the applicant a notice, advising the policyowner that the release of policy values may affect the guaranteed elements, nonguaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policyowner.

191—16.28(507B) Duties of insurers with respect to direct-response solicitations.

16.28(1) In the case of an application that is initiated as a result of a direct-response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

16.28(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

a. Provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar form approved by the commissioner. In these instances, the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if the insurer can demonstrate that the insurer has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed, postage prepaid envelope with instructions for the return of the signed notice referred to in this subrule; and

b. Comply with the requirements of paragraph 16.26(1)*"b,"* if the applicant furnishes the names of the existing insurers, and the requirements of paragraphs 16.26(1)*"c"* and *"d"* and subrule 16.26(2).

191—16.29(507B) Violations and penalties.

16.29(1) Any failure to comply with these rules shall be considered a violation of rules 191—15.7(507B) and 191—15.8(507B). Examples of violations include but are not limited to:

a. Any deceptive or misleading information set forth in sales material;

b. Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

c. The intentional incorrect recording of an answer;

d. Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

e. Advising a policy or contract owner to write directly to the insurer in such a way as to attempt to obscure the identity of the replacing producer or insurer.

16.29(2) Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate these rules.

16.29(3) Where it is determined that the requirements of these rules have not been met, the replacing insurer shall provide to the policy owner an in-force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A or C.

16.29(4) Violations of these rules shall subject the violators to penalties that may include the revocation or suspension of a producer's or insurer's license, monetary fines, the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred, or any other penalties authorized by Iowa Code chapter 507B or 191—Chapter 15.

191—16.30(507B) Severability. If any rule or portion of a rule of this division, or its applicability to any person or circumstances, is held invalid by a court, the remainder of this division, or the applicability of its provisions to other persons, shall not be affected.

These rules are intended to implement Iowa Code chapter 507B.

APPENDIX A

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interest. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in-force illustration, policy summary or available disclosure document must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because_____.

I certify that the responses herein are, to the best of my knowledge, accurate:

Applicant's Signature and Printed Name	Date
Producer's Signature and Printed Name	Date

I do not want this notice read aloud to me. _____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:	Are they affordable? Could they change? You're older—are premiums higher for the proposed new policy? How long will you have to pay premiums on the new policy? On the old policy?
POLICY VALUES:	New policies usually take longer to build cash values and to pay dividends. Acquisition costs for the old policy may have been paid; you will incur costs for the new one. What surrender charges do the policies have? What expense and sales charges will you pay on the new policy? Does the new policy provide more insurance coverage?
INSURABILITY:	If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down. You may need a medical exam for a new policy. [Claims on most new policies for up to the first two years can be denied based on inaccurate statements. Suicide limitations may begin anew on the new coverage.]

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?

How will the premiums on your existing policy be affected?

Will a loan be deducted from death benefits?

What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?

What are the interest rate guarantees for the new contract?

Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?

Is this a tax-free exchange? (See your tax advisor.)

Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?

Will the existing insurer be willing to modify the old policy?

How does the quality and financial stability of the new company compare with your existing company?

APPENDIX B

NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

APPENDIX C

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interest. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in-force illustration, policy summary or available disclosure document must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

Applicant's Signature and Printed Name _____ Date _____

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:	Are they affordable? Could they change? You're older—are premiums higher for the proposed new policy? How long will you have to pay premiums on the new policy? On the old policy?
POLICY VALUES:	New policies usually take longer to build cash values and to pay dividends. Acquisition costs for the old policy may have been paid; you will incur costs for the new one. What surrender charges do the policies have? What expense and sales charges will you pay on the new policy? Does the new policy provide more insurance coverage?
INSURABILITY:	If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down. You may need a medical exam for a new policy. [Claims on most new policies for up to the first two years can be denied based on inaccurate statements. Suicide limitations may begin anew on the new coverage.]

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?

What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?

What are the interest rate guarantees for the new contract?

Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?

Is this a tax-free exchange? (See your tax advisor.)

Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?

Will the existing insurer be willing to modify the old policy?

How does the quality and financial stability of the new company compare with your existing company?

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7736C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to property and casualty insurance

The Insurance Division hereby rescinds Chapter 20, "Property and Casualty Insurance," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 515F.37.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 515, 515A and 515F.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 20 and adopt a new Chapter 20 with revisions to remove unnecessarily restrictive terms and provide additional clarity. The adopted chapter sets forth the form and rate requirements and rules governing the Iowa Fair Access to Insurance Requirements (FAIR) Plan.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7351C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 20 and adopt the following **new** chapter in lieu thereof:

PROPERTY AND CASUALTY INSURANCE

CHAPTER 20
PROPERTY AND CASUALTY INSURANCE

DIVISION I
FORM AND RATE REQUIREMENTS

191—20.1(505,509,514A,515,515A,515F) General requirements for filing rates and forms.

20.1(1) Insurers required to file rates or forms with the division shall submit required rate and form filings and any fees required for the filings electronically using the National Association of Insurance Commissioners' System for Electronic Rate and Form Filing (SERFF). Insurers must comply with the division's requirements for submissions, including both the Iowa general instructions and the specific submission requirements for the type of insurance for which the companies are submitting forms or rates, as set out on the SERFF website at serff.com.

20.1(2) No rate filing shall include any adjustment designed to recover underwriting or operating losses incurred out of state. Upon request by the commissioner, insurers doing business in Iowa shall segregate in their rate filings data from any state identified by the commissioner, and the filings shall include a certification that no portion of any rate increase is designed to recover underwriting or operating losses incurred in another state.

191—20.2(505) Objection to form filing.

20.2(1) Any insured or established organization with one or more insureds among its members that has an objection to a form filing may submit to the insurance commissioner a written request for a hearing on the filing. A request for a hearing must be filed within 20 days after the filing has been received by the commissioner.

20.2(2) Within 20 days after receipt of the request for a hearing, the commissioner will hold a hearing to consider the objection to the filing. The commissioner will provide not less than ten days' written notice of the time and place of the hearing to the person or association filing the request, to the filing insurer or organization, and to any other person requesting notice. The commissioner may suspend or postpone the effective date of the filing pending the hearing. Upon consideration of the information received at the hearing, the commissioner may determine whether or not to approve the filing.

191—20.3 Reserved.

191—20.4(505,509,514A,515,515A,515F) Policy form filing.

20.4(1) Each policy form, endorsement, application and agreement modifying the provisions of policies must bear an identification form number. This form number must be in the lower left-hand corner unless uniform or authentic forms are used.

20.4(2) Reserved.

20.4(3) A form filing that has not been previously approved, disapproved or questioned shall be deemed approved on or after 30 days from the date that all necessary requirements are submitted to SERFF.

191—20.5(515A) Rate or manual rule filing.

20.5(1) Every insurer shall determine and file its final rates with the commissioner pursuant to provisions of Iowa Code chapter 515F, except for insurers of workers' compensation that are specifically excluded by Iowa Code section 515F.3(2) and residual market mechanisms.

a. Advisory organizations, defined in Iowa Code section 515F.2 and licensed pursuant to Iowa Code section 515F.8, may file on behalf of their member and subscriber companies prospective loss costs, supplementary rating information and supporting information as defined in Iowa Code section 515F.2. Advisory organization filings shall be filed and made effective in accordance with the provisions of Iowa Code sections 515F.4 through 515F.6 or 515F.23 through 515F.25 that apply to the filing and approval of rates and supplementary rating information.

b. An insurer may satisfy its obligation to make rate filings and supplementary rating information by becoming a participating insurer of a licensed advisory organization that makes reference filings of advisory prospective loss costs and by authorizing the commissioner to accept such filings on its behalf, subject to any modifications filed by the insurer. The insurer's rates shall be the prospective loss costs filed by the advisory organization that have been put into effect in accordance with paragraph 20.5(1)*"a,"* combined with the loss cost adjustments that are filed in accordance with paragraph 20.5(1)*"a."*

c. If an insurer has previously filed forms modifying coverage provided by the applicable advisory organization forms, such fact should be noted in the rate filing.

20.5(2) Rate filings shall reflect that due consideration has been given to the factors enumerated in Iowa Code section 515F.4(1), and shall be accompanied by supporting statistical exhibits. In addition, each filing shall note the date of the last revision of rates affecting this coverage and briefly describe the nature of that revision. Such filings shall identify each page filed by placing their own name thereon.

20.5(3) If a company filing rates used the manuals of an advisory organization in its filings, any portion of the manuals of the advisory organization that will not be followed by the filing must be clearly shown as deleted or amended by use of an appropriately numbered exception page.

20.5(4) For residual market mechanisms, insurers making filings on their own behalf shall identify the submission as an independent filing or a deviation from the previously filed form, rate, or rule. A deviation filing is a submission that represents modification of a form or rate or rule previously filed by an authorized rating organization or advisory organization on behalf of its member and subscriber companies. An insurer shall note in its filing if it has previously filed forms modifying coverage provided by the applicable standard forms.

191—20.6(515A) Exemption from rate filing requirement.

20.6(1) An insurer requesting, pursuant to Iowa Code section 515F.5(4), suspension or modification of the requirement of filing of a rate shall provide the commissioner with a full explanation for the proposed exemption from the filing requirement together with any actuarial data available and shall furnish the commissioner with any additional material the commissioner may desire.

20.6(2) If the commissioner finds that a proposed rate represents a classification for which credible and homogeneous statistical experience does not exist and cannot be analyzed using standard actuarial techniques to produce a statistically significant average rate for the individual risks within the

classification, the commissioner may exempt the insurer from the filing requirement for that proposed rate.

20.6(3) An insurer shall maintain statistical records of the experience and expenses attendant upon the risks covered by any rate exempted by the commissioner from the filing requirement. The insurer may supplement statistical information filed with the commissioner with information by an advisory organization licensed pursuant to Iowa Code section 515F.8.

This rule is intended to implement Iowa Code section 515A.4(6).

191—20.7 Reserved.

191—20.8(515F) Rate filings for crop-hail insurance. Rate filings for crop-hail insurance shall be submitted on or before January 31 of each calendar year. Each company may file one set of rates per policy plan per calendar year that shall remain in effect throughout the current crop year. In the absence of a new filing, rates on file from the previous year will remain in effect. Each filing shall be accompanied by a cover letter, synopsis sheet and supporting data that justify the filed rate.

191—20.9 and **20.10** Reserved.

191—20.11(515) Exemption from form and rate filing requirements.

20.11(1) The following lines of insurance shall be exempt from the form filing requirements of Iowa Code section 515.102:

a. Aircraft hull and aviation liability.
b. Difference-in-conditions.
c. Kidnap-ransom.
d. Manuscript policies and endorsements issued to not more than two insureds in Iowa.
e. Political risk.
f. Reinsurance.
g. Terrorism.
h. War risk.
i. Weather insurance.

20.11(2) An insurer shall, within 30 days of the commissioner's request, provide the commissioner with any of the information that is exempted from form and rate filing requirements.

These rules are intended to implement Iowa Code chapter 515F and section 515.109.

191—20.12 to **20.40** Reserved.

DIVISION II
IOWA FAIR PLAN ACT

191—20.41(515,515F) Purpose. This division is intended to implement and interpret Iowa Code sections 515F.30 through 515F.38 for the purpose of establishing procedures and requirements for a mandatory risk-sharing facility for basic property insurance coverage. This division is also intended to encourage improvement of and reasonable loss prevention measures for properties located in Iowa and to further orderly community development.

191—20.42(515,515F) Scope. This division shall apply to all insurers licensed to write property insurance in Iowa.

191—20.43(515,515F) Definitions. In addition to the definitions in Iowa Code sections 514F.2 and 515F.32 and rule 191—20.1(505,509,514A,515,515A,515F), the following definitions apply:

"Location" means a single building and its contents, or contiguous buildings and their contents, under one ownership.

"Manufacturing risks" means those risks eligible to be written under the customary manufacturing business interruption policy forms approved by the commissioner. The following are not considered manufacturing risks:

1. Dry cleaning and laundering—Carpet, rug, furniture, or upholstery cleaning; diaper service or infants' apparel laundries; dry cleaning; laundries; linen supply.

2. Installation, servicing and repair—Electrical equipment; electronic equipment; glazing; household furnishings and appliances; office machines; plumbing, heating and air conditioning; protective systems for premises, vaults and safes.

3. Laboratories—Blood banks; dental laboratories; medical or X-ray laboratories.

4. Duplicating or similar services—Blueprinting and photocopying services; bookbinding; electrotyping; engraving; letter service (mailing or addressing companies); linotype or hand composition; lithographing; photo engraving; photo finishing; photographers (commercial).

5. Warehousing—Cold storage (locker establishments); cold storage warehouse; furniture or general merchandise warehouse.

6. Miscellaneous—Barber shops; beauty parlors; cemeteries; dog kennels; electroplating; equipment rental (not contractors' equipment); film and tape rental; funeral directors; galvanizing, tinning, and detinning; radio broadcasting, commercial wireless and television broadcasting; taxidermists; telephone or telegraph companies; textiles (bleaching, dyeing, mercerizing or finishing of property of others); veterinarians and veterinary hospitals.

"Motor vehicles" means vehicles that are self-propelled.

"Weighted premiums written" means:

1. Gross direct premiums less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits, with respect to property in this state excluding premiums on risks insured under the Iowa FAIR Plan association, for basic property insurance, for homeowners multiple peril policies, for farm dwelling policies and for the basic property insurance premium components of all other multiple peril policies.

2. In addition, 100 percent of the premiums obtained for homeowners multiple peril policies shall be added to 100 percent of the premiums obtained for basic property insurance and the basic property insurance premium components of all other multiple peril policies. The basic year for the computation shall be the first preceding calendar year.

191—20.44(515,515F) Eligible risks. All risks at a fixed location shall be eligible for inspection and considered for insurance under the Plan except motor vehicles, inland marine risks, and manufacturing risks as defined above.

191—20.45(515,515F) Membership. Every insurer licensed to write one or more components of basic property insurance shall be considered a member of the Plan. Any other insurer may, upon application to and approval by the governing committee, become a member.

191—20.46(515,515F) Administration.

20.46(1) The Plan shall be administered by the governing committee, subject to supervision of the commissioner, and operated by a manager appointed by the governing committee.

20.46(2) The governing committee shall consist of seven members, each of whom shall serve for a period of one year or until a successor is elected or designated. Each member shall have one vote.

191—20.47(515,515F) Duties of the governing committee.

20.47(1) The governing committee shall meet as often as may be required to perform the general duties of the administration of the Plan, or at the call of the commissioner. Four members of the committee present or by proxy shall constitute a quorum. Members of the committee who choose to appoint a proxy shall give a written proxy to the person elected to act as proxy. The written proxy shall then be filed with the governing committee, thus ensuring the validity of the proxy's actions as the governing committee performs its duties.

20.47(2) The governing committee shall be empowered to appoint a manager, who shall serve at the pleasure of the committee, to budget expenses, levy assessments, disburse funds, and perform all other duties of the Plan. The adoption of or substantive changes in pension plans or employee benefit programs for the manager and staff shall be subject to approval of the governing committee.

20.47(3) The governing committee may designate an independent inspection firm to make inspections as required under the Plan and to perform such other duties as may be authorized by the governing committee.

20.47(4) The governing committee shall submit to the commissioner periodic reports setting forth information as the commissioner may request. On or before April 1 of each year, the governing committee shall submit a report summarizing any new programs or reforms in operation undertaken during the preceding calendar year in order to comply with any new legislation, regulations or directives affecting the Plan. This report shall contain a statistical tabulation on business written in accordance with the Plan.

20.47(5) The governing committee shall separately code all policies written by the Plan so that appropriate records may be compiled for purposes of performing loss prevention and other studies of the operation of the Plan.

20.47(6) The governing committee shall authorize the manager to file rates, surcharge schedules and forms for prior approval by the commissioner.

20.47(7) The governing committee shall prepare such agreements and contracts as may be necessary for the execution of this division consistent with its provisions.

191—20.48(515,515F) Annual and special meetings.

20.48(1) There shall be an annual meeting of the insurers on a date fixed by the governing committee at which time members may be chosen.

20.48(2) A special meeting shall be called by the governing committee within 40 days after receipt of written request from any ten insurers, not more than one of which may be in a group under the same management or ownership.

20.48(3) The time and place of all meetings shall be reasonable. Twenty days' notice of an annual or special meeting shall be given in writing by the governing committee to all insurers defined above. Four members present in person or by proxy shall constitute a quorum. Voting by proxy shall be permitted.

20.48(4) Any matter not inconsistent with the law or this division may be proposed and voted upon at any special meeting of the committee. Notice of any such proposal shall be mailed to each insurer not less than 20 days prior to the final date fixed by the committee for voting thereon.

191—20.49(515,515F) Application for insurance.

20.49(1) Any person who has an insurable interest in an eligible risk in property permitted to be written in the Plan and who has received within the last six months a notice of rejection, nonrenewal or cancellation from an insurer may apply for insurance by the Plan.

20.49(2) An inspection need not be made if the governing committee determines that insurance can be provided for specified classes of risks on the basis of representations of the applicant or insurance producer.

20.49(3) The Plan may bind coverage. The Plan may wait until receipt of the inspection report or receipt of additional underwriting information before determining whether to bind coverage. Coverage will be bound by the Plan by acknowledgement to the producer.

191—20.50(515,515F) Inspection procedure.

20.50(1) The inspection by the Plan shall be without cost to the applicant.

20.50(2) The manner and scope of the inspection shall be prescribed by the Plan with the approval of the commissioner.

20.50(3) An inspection report shall be made for each property inspected covering pertinent structural and occupancy features as well as the general condition of the building and surrounding structures.

Representative photographs may be taken during the inspection to indicate the pertinent features of building, construction, maintenance, occupancy, and surrounding property.

20.50(4) After the inspection, a copy of the completed inspection report and any relevant photographs shall be kept on file by the Plan. The report shall include a description of any deficient physical condition changes proposed by the inspector. A copy of the inspection report shall be made available to the applicant or producer upon request.

191—20.51(515,515F) Procedure after inspection and receipt of application.

20.51(1) After receipt of the application, the inspection report, and any additional underwriting information requested from the applicant, the Plan shall within five business days complete and send to the applicant an action report advising the applicant of one of the following:

a. That the risk is acceptable. If the inspection reveals substandard conditions, appropriate charges may be imposed, but the report shall specify the improvements necessary for removal of each such charge.

b. That the risk is declined unless reasonable improvements noted in the action report are made by the applicant and confirmed by reinspection.

c. That the risk is declined because the risk fails to meet reasonable underwriting standards as set forth in rule 191—20.52(515,515F). Reasonable underwriting standards as set forth in rule 191—20.52(515,515F) shall not include neighborhood or area location or any environment hazard beyond the control of the property owner.

20.51(2) If the risk is accepted, the action report shall advise the applicant of:

a. The amount of coverage the Plan agrees to write.

b. The amount of coverage the Plan agrees to write if specified improvements are made.

c. The amount of coverage the Plan agrees to write only if a large or special deductible is agreed to by the applicant.

20.51(3) If the risk is accepted, the Plan, upon receipt of the premium, shall deliver the policy to the applicant or to the licensed producer designated by the applicant for delivery to the applicant. The Plan shall remit the commissions to the licensed producer designated by the applicant.

191—20.52(515,515F) Reasonable underwriting standards for property coverage.

20.52(1) The following characteristics may be used in determining whether a risk is acceptable for property coverage. Where there is more than one cause for declination, all causes shall be listed and complied with before the property may be accepted for insurance purposes.

a. Physical condition of property; however, the mere fact that a property does not satisfy all current building code specifications will not, of itself, suffice as a reason for declination.

b. The property's present use as extended vacancy or extended unoccupancy of the property for 60 consecutive days. Properties that are vacant or unoccupied for more than 60 days may be insured while rehabilitation or reconstruction work is actively in process, meaning that the insured or owner should make monthly progress in order to complete the rehabilitation or reconstruction within a one-year time frame.

c. Other specific characteristics of ownership, condition, occupancy or maintenance that violate the law and that result in substantial increased exposure to loss. Any circumstance considered under this paragraph must relate to the peril insured against.

d. Physical condition of buildings that results in an outstanding order to vacate, in an outstanding demolition order or in being declared unsafe in accordance with the applicable law.

e. One or more of the conditions for nonrenewal as listed in rule 191—20.54(515,515F) currently exist. The Plan shall upon notice that conditions at the buildings have changed consider a new application for coverage.

f. Previous loss history or matters of public record concerning the applicant or any person defined as an insured under the policy.

g. Any other guidelines that have been approved by the commissioner.

20.52(2) Reserved.

191—20.53(515,515F) Reasonable underwriting standards for liability coverage.

20.53(1) The following characteristics may be used in determining whether a risk is acceptable for liability insurance on homeowner policies:

a. Broken, cracked, uneven or otherwise faulty steps, porches, decks, sidewalks, patios and similar areas.

b. Downspouts or drains that discharge onto sidewalks or driveways.

c. Unsafe conditions including inadequate lighting of stairways.

d. Animals known to be vicious or animals that have caused a liability claim.

e. Swimming pools or private ponds not fenced in accordance with local regulations.

f. Unsafe, or the absence of, handrails.

g. Junk cars, empty refrigerators, trampolines or other potentially dangerous objects in the yard that are an attraction to children.

h. Previous loss history or matters of public record concerning the applicant or any person defined as an insured under the policy.

i. Any other guidelines that have been approved by the commissioner.

20.53(2) Liability insurance shall only be provided as contained in the Iowa FAIR Plan homeowners policy.

20.53(3) Liability insurance shall not be provided for risks with any of the deficiencies set forth in paragraphs 20.53(1)*"a"* through *"g,"* as disclosed by the application or inspection, until the deficiencies have been corrected.

191—20.54(515,515F) Cancellation; nonrenewal and limitations; review of eligibility.

20.54(1) The Plan shall not cancel or refuse to renew a policy issued by the Plan except for the following reasons:

a. Facts as confirmed by inspection or investigation that would have been grounds for nonacceptance of the risk by the Plan had they been known to the Plan at the time of acceptance.

b. Changes in the physical condition of the property or other changed conditions as confirmed by inspection or investigation that make the risk uninsurable pursuant to paragraph 20.54(1)*"i."*

c. Nonpayment of premiums.

d. At least 65 percent of the rental units in the building are unoccupied, and the insured has not received prior approval from the Plan of a rehabilitation program that necessitates a high degree of unoccupancy.

e. Unrepaired damage exists and the insured has stated that repairs will not be made, or such time has elapsed as clearly indicates that the damage will not be repaired.

f. After a loss, permanent repairs have not been commenced within 60 days following payment of the claim, unless there are known to be extenuating circumstances. The 60-day period starts upon acceptance of payment of the claim.

g. There is good cause to believe, based on reliable information, that the building will be burned for the purpose of collecting the insurance on the property. The removal of damaged salvageable items, such as normally permanent fixtures, from the building shall be considered under this paragraph when the insured can provide no reasonable explanation for such removal.

h. A named insured or loss payee or other person having a financial interest in the property being convicted of the crime of arson or a crime involving a purpose to defraud an insurance company. The fact that an appeal has been entered shall not negate the use of this paragraph.

i. The property has been subject to more than two losses, each loss amounting to at least $500 or 1 percent of the insurance in force, whichever is greater, in the immediately preceding 12-month period, or more than three such losses in the immediately preceding 24-month period, provided that the cause of such losses is due to the conditions that are the responsibility of the owner named insured or due to the actions of any person defined as an insured under the policy.

j. Material misrepresentation in any statement to the Plan.

k. On homeowners policies, excessive theft or liability losses.

20.54(2) The Plan shall terminate all insurance contracts in accordance with Iowa Code sections 515.125, 515.127, and 515.128.

20.54(3) At the completion of 36 months of coverage and prior to the completion of 48 months, each risk shall be reviewed for its eligibility for coverage in the voluntary market. The risk shall be submitted by the Plan to the producer of record, if any, for a search of the voluntary market. If the producer resubmits the risk to the Plan, the risk must be resubmitted with a new application and a written statement from the producer that a search of the voluntary market was performed.

191—20.55(515,515F) Assessments.

20.55(1) Participation and assessments by and upon each insurer in the Plan for losses and expenses in connection with Plan business shall be levied and assessed by the governing committee of the Plan on the basis of participation factors determined annually, giving effect to the proportion that such insurer's weighted premiums written bears to the aggregate weighted premiums written by all insurers in the Plan.

20.55(2) De minimis assessments. Any assessment of less than $100 shall not be billed to an insurer.

20.55(3) Late payment fee. Assessments shall be due and payable when billed. If any member fails to pay an assessment within 60 days after it is due, the insurer shall pay interest from the billing date at the rate of 1.5 percent per month. In the event that an insurer fails to pay any applicable late payment fee with an assessment, the amount of such unpaid late payment fee will be included in the amount of the insurer's next assessment.

20.55(4) Credits for voluntary writings. The Plan may develop a voluntary writing credit policy, subject to approval by the commissioner. Credits may be used as offsets to member company assessments made by the Plan.

191—20.56(515,515F) Commission.

20.56(1) Commission to the licensed producer designated by the applicant shall be 10 percent of all policy premiums. The Plan shall not license or appoint producers.

20.56(2) In the event of cancellation of a policy, or if an endorsement is issued that requires the premium to be returned to the insured, the producer shall refund proportionally to the Plan commissions on the return premium at the same rate at which such commissions were originally paid.

191—20.57(515,515F) Public education. In cooperation with the insurance commissioner, the Plan shall undertake a continuing education program with insurers, producers and consumers about the Plan's insurance program and its availability. All insurers and producers shall cooperate fully in the continuing education program. Such continuing education program will include the publication and distribution of literature:

1. Describing the Plan and its general operation;
2. Explaining the possible cost savings of obtaining insurance in the voluntary market; and
3. Advising of the availability of rate comparison charts.

191—20.58(515,515F) Cooperation and authority of producers.

20.58(1) Each insurer shall require its licensed producers to cooperate fully in the accomplishment of the intents and purposes of the Plan.

20.58(2) Licensed insurance producers shall not act as agents for the Plan.

20.58(3) Licensed insurance producers shall not do any of the following:

a. Bind coverage for the Plan.

b. Alter or change policies issued by the Plan.

c. Settle losses of the Plan.

d. Act on behalf of the Plan or commit the Plan to any course of action.

20.58(4) Licensed insurance producers shall assist applicants who need to apply for coverage under the Plan, and shall submit applications that meet the requirements under rule 191—20.49(515,515F). Producers shall follow the rules and procedures of the Plan.

191—20.59(515,515F) Review by commissioner. The governing committee shall report to the commissioner the name of any insurer or producer that fails to comply with the provisions of the Plan or with any rules prescribed thereunder by the governing committee or to pay within 30 days any assessment levied.

191—20.60(515,515F) Indemnification. Each person serving on the governing committee or any of its subcommittees, each member of the Plan, and the manager and each officer and employee of the Plan shall be indemnified by the Plan against all cost, settlement, judgment, and expense actually and necessarily incurred by that person in connection with the defense of any action, suit, or proceeding in which that person is made a party by reason of that person's being or having been a member of the governing committee or a member or manager or officer or employee of the Plan, except in relation to matters as to which that person has been judged in an action, suit, or proceeding to be liable by reason of willful misconduct in the performance of that person's duties as a member of the governing committee or as a member, manager, officer or employee of the Plan. This indemnification shall not apply to any loss, cost or expense on insurance policy claims under the Plan. Indemnification under this rule shall not be exclusive of other rights to which the member, manager, officer, or employee may be entitled as a matter of law.

These rules are intended to implement 2003 Iowa Acts, chapter 119.

191—20.61 to **20.69** Reserved.

DIVISION III
CERTIFICATES OF INSURANCE FOR COMMERCIAL LENDING TRANSACTIONS

191—20.70(515) Purpose. The purpose of division III is to clarify what information an insurance company regulated by the division may provide its customer in connection with a commercial real estate transaction between the customer and a lender.

191—20.71(515) Definitions. For purposes of division III, the following definitions shall apply:

"ACORD" means the Association for Cooperative Operations Research and Development.

"Commercial real estate transaction" means a non-recourse commercial lending transaction in which the underlying property serves as the primary collateral securing the borrower's repayment of the loan and neither the borrower nor any of its members, partners, or shareholders, nor any related person to any of the aforementioned persons, bears the economic risk of loss in the event of a payment default under the terms of the lending transaction.

"Division" means the insurance division.

"ISO" means the Insurance Services Office, Inc.

191—20.72(515) Evidence of insurance.

20.72(1) Prior to the issuance of an insurance policy by an insurer, an insured who has entered into a commercial real estate transaction may request that the relevant insurer or a producer acting on behalf of the insurer provide the following items as evidence of insurance:

a. An ACORD Form 75, a successor ACORD form, an ISO binder form, or a substantially similar binder form approved by the division; and

b. An ACORD Form 28, a successor ACORD form, an ISO certificate form, or a substantially similar certificate of insurance form approved by the division.

The insurer or the producer acting on behalf of an insurer has the sole discretion to determine which division-approved binder form or certificate of insurance form the insurer or producer uses to comply with this rule.

20.72(2) An insurer or a producer acting on behalf of an insurer shall comply with a request made pursuant to this rule within 20 business days of the receipt of the request. The requirements of this rule shall not apply to an insurance producer who:

a. Is unauthorized to provide the documents described in this rule; and

b. Informs the insured of this fact within 20 business days of the receipt of the request.

20.72(3) Delivery of a binder along with a certificate of insurance requested pursuant to this rule may be accomplished by regular mail, overnight delivery, facsimile, physical delivery, electronic means, or other appropriate means.

20.72(4) Notwithstanding any language on a form provided pursuant to subrule 20.72(1) which language states that the form is for "information only," a binder together with a certificate of insurance delivered pursuant to this rule shall be valid and may be relied upon by the borrower or by the borrower's lender as evidence of insurance, including in any private civil action or administrative proceeding, until the delivery of the insurance policy to the borrower or the cancellation of the binder pursuant to Iowa Code sections 515.125 through 515.127.

20.72(5) An insurer or producer acting on behalf of an insurer that produces or delivers a binder and certificate of insurance to its customer pursuant to this rule may charge a reasonable fee for the production and delivery of the documents.

20.72(6) All insurers and all producers subject to this rule shall comply with the terms hereof within 90 days from May 9, 2012.

These rules are intended to implement Iowa Code chapter 515.

191—20.73 to **20.79** Reserved.

DIVISION IV
CANCELLATIONS, NONRENEWALS AND TERMINATIONS

191—20.80(505B,515,515D,518,518A,519) Notice of cancellation, nonrenewal or termination of property and casualty insurance.

20.80(1) *Purpose and definitions.*

a. Purpose. The purpose of this rule is to implement the policyholder protections of Iowa Code sections 515.125, 515.126, 515.127, 515.128, 515.129, 515.129A, 515.129B, 515.129C, 515D.5, 515D.7, 518.23, 518A.29 and 519.8 and chapter 505B by clarifying the authorized methods of delivery for notices of cancellation, nonrenewal or termination by an insurer.

b. Definitions. As used in Iowa Code section 505B.1 and this rule:

"Commissioner" means the Iowa insurance commissioner or insurance division.

"Notice of cancellation, nonrenewal or termination" means:

1. Notice of an insurance company's termination of an insurance policy at the end of a term or before the termination date;

2. Notice of an insurance company's decision or intention not to renew a policy; and

3. For purposes of notices required by Iowa Code sections 515.125, 515.126, 515.127, 515.128, 515.129, 515.129A, 515.129B, 515.129C, 515D.5, 515D.7, 518.23, 518A.29 and 519.8, "notice of cancellation, nonrenewal or termination" includes but is not limited to an insurance company's notice of cancellation, forfeiture, suspension, exclusion, nonrenewal, intention not to renew, or failure to renew.

20.80(2) *Scope.* This rule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapters 508, 515, 518, and 518A.

20.80(3) *Delivery.* For any notice of cancellation, nonrenewal or termination by an insurer under Iowa Code sections 515.125, 515.126, 515.127, 515.128, 515.129, 515.129A, 515.129B, 515.129C, 515D.5, 515D.7, 518.23, 518A.29 and 519.8 to be effective, an insurer must, within the time frame established by law, deliver the notice to the person to whom notice is required to be provided either in person or by mail through the U.S. Postal Service to the last-known address of the person to whom notice is required to be provided. The use of U.S. Postal Service Intelligent Mail® fulfills any requirement in the Iowa Code sections cited in this subrule for certified mail or certificate of mailing as proof of mailing.

20.80(4) *Electronic transmissions.* Notwithstanding the requirements of subrule 20.80(3), if an insurer receives approval from the commissioner of a manner of electronic delivery of a notice of cancellation, nonrenewal or termination of a policy, the approved manner shall satisfy the notice

requirements of Iowa Code sections 515.125, 515.126, 515.127, 515.128, 515.129, 515.129A, 515.129B, 515.129C, 515D.5, 515D.7, 518.23, 518A.29 and 519.8 and chapter 505B.

This rule is intended to implement Iowa Code chapter 505B.

[Filed 3/1/24, effective 4/24/24]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7737C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to surplus lines, risk retention groups, and purchasing groups

The Insurance Division hereby rescinds Chapter 21, "Requirements for Surplus Lines, Risk Retention Groups and Purchasing Groups," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 515I.15.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 515 and 515I.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 21 and adopt a new Chapter 21 with revisions to remove unnecessarily restrictive terms and provide additional clarity. The chapter provides duties and procedures for insurance producers and nonadmitted insurers in order to provide excess and surplus lines insurance in Iowa.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7352C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings.

The National Risk Retention Association (NRRA) objected to the application of filing and renewal fees to foreign risk retention groups doing business in the state of Iowa. The references to filing and renewal fees in rule 191—21.6(515E) have been removed.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa. The filing and renewal fees generated by registered risk retention groups is de minimis and does not significantly impact the duties, functions or revenues of the Division.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21
REQUIREMENTS FOR SURPLUS LINES,
RISK RETENTION GROUPS AND PURCHASING GROUPS

191—21.1(515E,515I) Definitions. In addition to the definitions provided in Iowa Code chapters 515E and 515I, the following definitions apply to this chapter, unless the context clearly requires otherwise:

"Division" means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division's performance of the duties of the commissioner under Iowa Code chapters 515E and 515I.

"Division's website" means the website of the Iowa insurance division, iid.iowa.gov.

"Place" means obtaining insurance for an insured with a specific insurer.

191—21.2(515I) Eligible surplus lines insurer's duties.

21.2(1) *Premium tax payment.* Where, pursuant to Iowa Code chapter 515I, coverage is placed with an eligible surplus lines insurer, but the surplus lines insurance producer fails to pay to the division the premium tax required by Iowa Code section 515I.3(2) and rule 191—21.3(515I), the eligible surplus lines insurer must pay the premium tax required by Iowa Code chapter 515I and this chapter.

21.2(2) *How premium tax quoted.* An eligible surplus lines insurer or a surplus lines producer for an eligible surplus lines insurer is authorized to quote a premium that includes tax as is required by Iowa Code chapter 515I, and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums that included a premium tax component. Any fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

191—21.3(515I) Surplus lines insurance producer's duties.

21.3(1) *Surplus lines insurance producer's collection of tax.* A surplus lines insurance producer who places insurance with an eligible surplus lines insurer must collect premium tax from the eligible surplus lines insurer by withholding the applicable percentage of premiums pursuant to Iowa Code section 432.1(3) and 432.1(4).

21.3(2) *Electronic reporting of premium tax.* A surplus lines insurance producer who places insurance with an eligible surplus lines insurer must file electronically the premium tax information with the division, as instructed on the division's website, on or before March 1 for policies issued during the preceding calendar year.

21.3(3) *Annual report.* On or before March 1 of each year, every surplus lines insurance producer who has placed insurance with an eligible surplus lines insurer when the policies have been issued during

the preceding calendar year must file electronically with the division, or as otherwise directed by the division, a sworn report and supporting documentation, as instructed on the division's website, which may include evidence of a diligent search required pursuant to Iowa Code section 515I.3, of all such business written during the preceding calendar year, and must submit the amount to cover the taxes due on all such business. The manner of filing electronically and the content of the report and required supporting documentation are listed on the division's website. If no business was issued during the preceding calendar year, no report is required. Failure to file an annual report or pay the taxes imposed by Iowa Code chapter 515I will be deemed grounds for the revocation of a surplus lines insurance producer's license by the division, and failure to file an annual report or pay taxes within the time requirements of this rule will subject the surplus lines insurance producer to the penalties of Iowa Code section 515I.12.

191—21.4(515I) Surplus lines insurance producer's duty to insured. A surplus lines insurance producer who places coverage with an eligible surplus lines insurer must deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following: "This policy is issued, pursuant to Iowa Code chapter 515I, by an eligible surplus lines insurer in Iowa and as such is not covered by the Iowa Insurance Guaranty Association." A surplus lines insurance producer may comply with this rule by verifying disclosure of this language in a clear and conspicuous position on the policy or by electronic delivery authorized by Iowa Code chapter 505B, if the method of delivery of the notice allows the division, the surplus lines insurance producer and the intended recipient to verify receipt of the specific notice.

191—21.5(515I) Procedures for qualification and renewal as an eligible surplus lines insurer.

21.5(1) *Application and procedures for initial qualification as an eligible surplus lines insurer.*

a. Any nonadmitted insurer or domestic surplus lines insurer that wishes to qualify under Iowa Code chapter 515I as an eligible surplus lines insurer must make an application with the division in a format prescribed by the division, as instructed on the division's website.

b. The application must include:

(1) The name of an Iowa resident surplus lines insurance producer whom the insurer is designating as the person to accept inquiries and notices on behalf of the insurer.

(2) Payment of the greater of a $100 filing fee or a retaliatory fee, and an examination fee for all new applicants.

(3) Demonstrated maintenance of the capital and surplus required pursuant to Iowa Code chapter 515I.

21.5(2) *Procedures for renewal of an insurer as an eligible surplus lines insurer.* An eligible surplus lines insurer that was approved by the division as an eligible surplus lines insurer, except for an alien insurer under Iowa Code section 515I.2(8)*"b,"* must by March 1 of each year following the year of approval:

a. Be in compliance with subparagraph 21.5(1)*"b"*(3);

b. Pay the greater of a $100 renewal fee or a retaliatory fee; and

c. Submit to the division the documents and materials listed on the division's website.

21.5(3) *Periodic reporting.* An eligible surplus lines insurer, except for an alien insurer under Iowa Code section 515I.2(8)*"b,"* must submit annual and quarterly financial statements to the division as instructed on the division's website.

21.5(4) *Failure to comply with renewal procedures.* An eligible surplus lines insurer that fails to timely file an application for renewal as an eligible surplus lines insurer or fails to provide requested information shall pay a late fee of $500.

21.5(5) *Failure to timely file financial statements.* An eligible surplus lines insurer that fails to file a financial statement, as instructed on the division's website, shall pay a late fee of $500. The commissioner may give notice to an insurer that fails to timely file that the insurer is in violation of this subrule. If the insurer fails to file the required financial statements within ten days of the date of the notice, the insurer shall pay an additional late fee of $100 for each day the failure continues.

21.5(6) *Failure to comply with this rule.* An eligible surplus lines insurer's authority to transact new business in this state shall immediately cease until the insurer has fully complied with this rule, including paying all applicable late fees.

21.5(7) *Suspension.* The commissioner may order the suspension of an eligible surplus lines insurer's authority to transact the business of insurance within the state, after notice and hearing pursuant to Iowa Code chapter 17A, if the eligible surplus lines insurer fails to fully comply with this rule within 90 days, including paying all applicable late fees.

191—21.6(515E) Procedures for qualification as a risk retention group.

21.6(1) Any insurer that wishes to register under Iowa Code chapter 515E as a risk retention group must file with the division an application that contains information required by Iowa Code section 515E.4, which also is listed on the division's website.

21.6(2) The risk retention group must annually provide information requested by the division for determination of continued registration.

191—21.7(515E) Risk retention groups. A risk retention group may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, the producers must file the premium tax information electronically with the division through the division's website on or before March 1 for policies issued during the preceding calendar year.

191—21.8(515E) Procedures for registration as a purchasing group.

21.8(1) Prior to doing business in this state, a purchasing group must furnish to the division notice that includes:

a. The information set forth in Iowa Code section 515E.8, which also is listed on the division's website;

b. Designation of the commissioner for service of process, as set forth in Iowa Code section 515E.8(3); and

c. Remittance of a $100 filing fee.

21.8(2) A registered purchasing group must pay a $100 renewal fee by March 1 of each year following the year of registration. The purchasing group must provide information requested by the division for determination of continued registration.

191—21.9(515E,515I) Failure to comply; penalties. Failure of a producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to comply with this chapter or with Iowa Code chapters 515E and 515I may subject the producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to penalties set forth in Iowa Code chapters 507B, 515E and 515I.

These rules are intended to implement Iowa Code chapters 515I and 515E.

[Filed 3/1/24, effective 4/24/24]
[Published 3/20/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7738C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to military sales practices

The Insurance Division hereby rescinds Chapter 25, "Military Sales Practices," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 505.27A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 505.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 25 and adopt a new Chapter 25 with revisions to remove unnecessarily restrictive terms and provide additional clarity. The chapter shields members of the United States Armed Forces from abusive and misleading sales practices and protects them from certain life insurance products that are improperly marketed as investment products pursuant to the Military Personnel Financial Services Protection Act.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7353C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
MILITARY SALES PRACTICES

191—25.1(505) Purpose and authority.

25.1(1) The purpose of this chapter is to set forth standards to protect active duty service members of the United States armed forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

25.1(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this chapter.

25.1(3) This chapter is issued under the authority of Iowa Code section 505.27A.

25.1(4) This chapter shall apply to acts or practices committed on or after January 1, 2008.

191—25.2(505) Scope. This chapter shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to a service member of the United States armed forces.

191—25.3(505) Exemptions.

25.3(1) This chapter shall not apply to solicitations or sales involving:

a. Credit insurance;

b. Group life insurance or group annuities where in-person, face-to-face solicitation of individuals by an insurance producer does not occur or where the contract or certificate does not include a side fund;

c. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner, or when a term conversion privilege is exercised among corporate affiliates;

d. Contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. §1965 et seq.;

e. Life insurance contracts offered through or by a nonprofit military association, qualifying under Section 501(c)(23) of the Internal Revenue Code (IRC), and that are not underwritten by an insurer; or

f. Contracts used to fund:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Section 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, if established or maintained by an employer;

(3) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC; or

(4) Settlements of or assumptions of liabilities associated with personal injury litigation or of any dispute or claim resolution process.

25.3(2) Nothing in this rule shall be construed to abrogate the ability of nonprofit or other organizations to educate members of the United States armed forces in accordance with Department of Defense DoD Instruction 1344.07, Personal Commercial Solicitation on DoD Installations, or successor directive.

25.3(3) For purposes of this chapter, general advertisements, direct mail and Internet marketing shall not constitute solicitation. Telephone marketing shall not constitute solicitation, provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the telephone communication. However, nothing in this rule shall be construed to exempt an insurer or insurance producer from the requirements of this chapter in any in-person, face-to-face meeting established as a result of the solicitation exemptions identified in this rule.

191—25.4(505) Definitions. For purposes of this chapter, the following definitions shall apply.

"Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component (national guard and reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who

are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

"Department of Defense personnel" or *"DoD personnel"* means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

"Door to door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

"General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

"Insurance producer" means the same as defined in Iowa Code section 522B.1.

"Insurer" means the same as defined in Iowa Code section 522B.1.

"Known" or *"knowingly"* means, depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

1. Is a service member; or
2. Is a service member with a pay grade of E-4 or below.

"Life insurance" means insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and, unless otherwise specifically excluded, includes individually issued annuities.

"Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

"MyPay" is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

"Service member" means any active duty officer (commissioned and warrant) or enlisted member of the United States armed forces.

"Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism that accumulates premium or deposits with interest or by other means. The term does not include:

1. Accumulated value or cash value or secondary guarantees provided by a universal life policy;
2. Cash values provided by a whole life policy that are subject to standard nonforfeiture law for life insurance; or
3. A premium deposit fund that:

- Contains only premiums paid in advance that accumulate at interest;
- Imposes no penalty for withdrawal;
- Does not permit funding beyond future required premiums;
- Is not marketed or intended as an investment; and
- Does not carry a commission, either paid or calculated.

"Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

"United States armed forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

191—25.5(505) Practices declared false, misleading, deceptive or unfair on a military installation.

25.5(1) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

a. Knowingly soliciting the purchase of any life insurance product door to door or without first establishing a specific appointment for each meeting with the prospective purchaser.

b. Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary.

c. Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

d. Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.

e. Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

f. Posting unauthorized bulletins, notices or advertisements.

g. Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit DD Form 2885.

h. Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States armed forces without first obtaining for the insurer's files a completed copy of any required form that confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the United States armed forces.

25.5(2) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

a. Using DoD personnel, directly or indirectly, as representatives or agents in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

b. Using an insurance producer to participate in any United States armed forces-sponsored education or orientation program.

191—25.6(505) Practices declared false, misleading, deceptive or unfair regardless of location.

25.6(1) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

a. Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States armed forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's MyPay account or other similar Internet or electronic medium for such purposes. This subrule does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

b. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this rule, a formal banking relationship is established when the depository institution:

(1) Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. §4301 et seq., and the regulations promulgated thereunder; and

(2) Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

c. Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "savings" or "checking" and where the service member has no formal banking relationship as defined in paragraph 25.6(1)*"b."*

d. Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

e. Using DoD personnel, directly or indirectly, as representatives or agents in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel.

f. Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.

g. Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for the service member's attendance at any event where an application for life insurance is solicited.

h. Advising a service member with a pay grade of E-4 or below to change the service member's income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

25.6(2) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

a. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. government, the United States armed forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

Nothing in this subrule shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

b. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third-party organization that promotes the welfare of or assists a member of the United States armed forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. government or the United States armed forces.

25.6(3) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

a. Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

b. Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product costs nothing or is free.

25.6(4) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

a. Making any representation regarding the availability, suitability, amount or cost of or exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI that is false, misleading or deceptive.

b. Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers that is false, misleading or deceptive.

c. Suggesting, recommending or encouraging a service member to cancel or terminate the service member's SGLI policy, or issuing a life insurance policy that replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States armed forces.

25.6(5) The following acts or practices by an insurer or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

a. Deploying, using or contracting for any lead-generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

b. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

c. Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

d. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the Military Personnel Financial Services Protection Act, Pub. L. No. 109-290, p.16.

e. Excluding individually issued annuities, when an in-person, face-to-face sale is conducted with an individual known to be a service member, failing at the time the application is taken to provide the applicant:

(1) An explanation of any free-look period with instructions on how to cancel if a policy is issued; and

(2) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance and the death benefit applied for and its expected first-year cost. A basic illustration that meets the requirements of 191—Chapter 15 and Iowa Code chapter 507B shall be deemed sufficient to meet this requirement for a written disclosure.

25.6(6) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

a. Excluding individually issued annuities, recommending the purchase of any life insurance product that includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

b. Offering for sale or selling a life insurance product that includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(1) "Insurable needs" means the risks associated with premature death, taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and survivors or dependents.

(2) "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE health care benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

c. Excluding individually issued annuities, offering for sale or selling any life insurance contract that includes a side fund:

(1) Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(2) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at the insured's age 100, the policy's maturity date or the policy's final expiration date; and

(3) That by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premium due.

d. Excluding individually issued annuities, offering for sale or selling any life insurance contract that after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

e. Selling to an individual known to be a service member any life insurance product that excludes coverage if the insured's death is related to war, declared or undeclared, or to any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded.

191—25.7(505) Reporting requirements. No insurer may participate in any military sales unless that insurer has implemented a system to report to the Iowa insurance commissioner in a manner prescribed by the commissioner any military sales disciplinary actions about which the insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the action, and unless the insurer also has reported such action to the commissioner. Failure to comply with this rule shall be a violation of this chapter and shall subject the insurer to penalties set forth in rule 191—25.8(505).

191—25.8(505) Violation and penalties.

25.8(1) Any insurance producer or insurer found after hearing to have violated a provision of this chapter shall be deemed to have committed an unfair trade practice under Iowa Code chapter 507B and shall be subject to the penalties set forth in Iowa Code chapters 505 and 507B.

25.8(2) Any insurance producer or insurer found after hearing to have violated a provision of this chapter will be reported by the commissioner pursuant to, and may be subject to, the penalties set forth in Section 10(d) of the Military Personnel Financial Services Protection Act, Pub. L. No. 109-290 (2006).

191—25.9(505) Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules that can be given effect without the invalid provisions or application. To this end, all provisions of these rules are declared to be severable.

These rules are intended to implement Iowa Code section 505.27A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7740C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to workers' compensation insurance rate filing procedures

The Insurance Division hereby rescinds Chapter 60, "Workers' Compensation Insurance Rate Filing Procedures," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 515A.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 515A.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 60 and adopt a new Chapter 60 with revisions that remove unnecessarily restrictive terms and provide additional clarity. The adopted chapter clarifies

and guides insurers regarding the deviations in workers' compensation filings as permitted under Iowa Code section 515A.7.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7355C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 60 and adopt the following **new** chapter in lieu thereof:

CHAPTER 60
WORKERS' COMPENSATION INSURANCE RATE FILING PROCEDURES

191—60.1(515A) Purpose.

60.1(1) The purpose of this chapter is to set forth filing procedures and parameters for rates as required by Iowa Code chapter 515A.

60.1(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this chapter.

191—60.2(515A) Definitions, scope, authority.

60.2(1) The definitions in Iowa Code section 515A.2 are incorporated into this chapter by this reference. In addition, the following definitions shall apply:

"Division" means the Iowa insurance division.

"SERFF" means the National Association of Insurance Commissioners' System for Electronic Rate and Form Filing.

60.2(2) This chapter shall apply only to workers' compensation liability insurance.

60.2(3) This chapter is issued under the authority of Iowa Code section 505.8 and chapter 515A.

191—60.3(515A) General filing requirements.

60.3(1) Insurers required to file rates with the division shall submit required rate filings and any fees required for the filings electronically using SERFF. Insurers must comply with the division's requirements, including both the Iowa general instructions and the specific submission requirements for the type of insurance for which the companies are submitting forms or rates, as set out on the SERFF website at serff.com.

60.3(2) No rate filing shall include any adjustment designed to recover underwriting or operating losses incurred out of state. Upon request by the division, insurers doing business in Iowa shall segregate in their rate filings data from any state identified by the division, and the filings shall include a certification that no portion of any rate increase is designed to recover underwriting or operating losses incurred in another state.

191—60.4(515A) Rate or manual rule filing.

60.4(1) Every insurer, either on its own or via a licensed rating organization, shall file with the division, pursuant to provisions of Iowa Code chapter 515A, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing that it proposes to use.

Every insurer shall adhere to the filings made on its behalf by a rating organization except that any such insurer may file a deviation from the class rates, schedules, rating plans, or rules, or a combination thereof, at any time during the year and, once approved, the deviation need only be refiled to propose changes to any filing.

60.4(2) An insurer may file for approval by the division a uniform percentage rate deviation to be applied to the class rates of the rating organization's filing.

a. A rate deviation from the approved class rates of a rating organization shall not exceed 15 percent nor shall it cause the rate charged a policyholder to exceed the approved assigned risk rates but must state whether or not the proposed deviation is to be applied to minimum premiums.

b. In the event that an insurer has an existing approved filing for which the deviation results in rates above those approved for the assigned risk, the insurer must use the same deviation as approved for the assigned risk effective the same date as the approval of the assigned risk rates. A filing must be made confirming use of the new deviation on that date.

60.4(3) Schedule rating may be used by any company, regardless of whether that company has an approved deviation. The maximum modification allowed for schedule rating is 15 percent for individual policies.

191—60.5(515A) Violation and penalties. Any insurer found after hearing to have violated a provision of this chapter shall be deemed to have committed an unfair trade practice under Iowa Code chapter 507B and shall be subject to the penalties set forth in Iowa Code chapter 507B.

191—60.6(515A) Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules that can be given effect without the invalid provisions or application. To this end, all provisions of these rules are declared to be severable.

191—60.7(515A) Effective date. These rules are effective as of April 24, 2024, and apply to acts or practices committed on or after January 1, 2009.

These rules are intended to implement Iowa Code section 515A.7.

[Filed 3/1/24, effective 4/24/24]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.

ARC 7741C

INSURANCE DIVISION[191]

Adopted and Filed

Rulemaking related to financial and health information regulation

The Insurance Division hereby rescinds Chapter 90, "Financial and Health Information Regulation," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 505.8.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 505 and 12 CFR Part 1016, Regulation P (Privacy of Consumer Financial Information).

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 90 and adopt a new Chapter 90 with revisions to remove unnecessarily restrictive terms and provide additional clarity. The adopted chapter provides for sample privacy notices to be consistent with the privacy model notice form issued by federal regulatory agencies for use by financial institutions as a safe harbor of compliance with the privacy notification requirements of the federal Gramm-Leach-Bliley Act (GLBA).

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7356C**. Public hearings were held on February 15, 2024, at 10 a.m. and 3 p.m. at 1963 Bell Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by Douglas Ommen, Iowa Insurance Commissioner, on February 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 191—Chapter 90 and adopt the following **new** chapter in lieu thereof:

CHAPTER 90
FINANCIAL AND HEALTH INFORMATION REGULATION

191—90.1(505) Purpose and scope.

90.1(1) This chapter governs the treatment of nonpublic personal financial information and nonpublic personal health information about individuals by all licensees of the insurance division.

90.1(2) This chapter also applies to nonpublic personal financial information and nonpublic personal health information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This chapter does not apply to information about individuals or companies that obtain products or services for business, commercial or agricultural purposes.

90.1(3) A licensee domiciled in this state that is in compliance with this chapter shall be deemed to be in compliance with Title V of P.L. 106-102 in a state that has not enacted laws or regulations that meet the requirements of Title V.

191—90.2(505) Definitions. For the purpose of these rules, the following definitions shall apply:

"Affiliate" means any company that controls, is controlled by or is under common control with another company.

"Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

"Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying article assigned to the individual, irrespective of the source of the underlying information.

"Commissioner" means the insurance commissioner.

"Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

"Consumer" means an individual, or that individual's legal representative, who seeks to obtain, obtains or has obtained from a licensee an insurance product or service that is to be used primarily for personal, family or household purposes and about whom the licensee has nonpublic personal information. "Consumer" includes any of the following:

1. An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.
2. An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.
3. An individual is a licensee's consumer if:

- The individual is a beneficiary of a life insurance policy underwritten by the licensee;
- The individual is a claimant under an insurance policy issued by the licensee;

- The individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or
- The individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and
- The licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under rules 191—90.12(505), 191—90.13(505) and 191—90.14(505) of this chapter.

An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

An individual is not the consumer of the licensee provided that the licensee provides the initial, annual and revised notices required under rules 191—90.3(505), 191—90.4(505), and 191—90.7(505) to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant, or further, provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under rules 191—90.12(505), 191—90.13(505), and 191—90.14(505) and solely due to any of the following:

a. The consumer is a participant in or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary,

b. The consumer is covered under a group or blanket insurance policy or group annuity contract issued by the licensee, or

c. The consumer is a beneficiary in a workers' compensation plan.

However, an individual described in *"a"* through *"c"* is a consumer of a licensee if the licensee does not meet all the above conditions. In no event shall an individual solely by virtue of the status described in *"a"* through *"c"* above be deemed a customer for purposes of this chapter.

An individual is not a licensee's consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee or because the individual has designated the licensee as trustee for a trust.

"Consumer reporting agency" means "consumer reporting agency" as defined in Section 603(f) of the federal Fair Credit Reporting Act.

"Control" means any of the following:

1. Ownership, control or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
2. Control in any manner over the election of a majority of the directors, trustees or general partners or individuals exercising similar functions of the company; or
3. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

"Customer" means a consumer who has a customer relationship with a licensee.

"Customer information" means nonpublic personal information about a customer, whether the information is in paper, electronic or other form, that is maintained by or on behalf of the licensee.

"Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

"Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides to the consumer one or more insurance products or services that are to be used primarily for personal, family or household purposes.

A consumer has a continuing relationship with a licensee if the consumer is a current policyholder of an insurance product issued by or through the licensee or if the consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

A consumer does not have a continuing relationship with a licensee under the following examples:

1. The consumer applies for insurance but does not purchase the insurance;
2. The licensee sells the consumer airline travel insurance in an isolated transaction;
3. The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

4. The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

5. The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

6. The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

7. The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

8. For the purposes of these rules, the individual's last-known address according to the licensee's record is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

"Designed to call attention" means a licensee designs its notice to call attention to the nature and significance of the information in a notice if the licensee does the following:

1. Uses a plain-language heading to call attention to the notice;
2. Uses a typeface and type size that are easy to read;
3. Provides wide margins and ample line spacing;
4. Uses boldface or italics for key words; and
5. Uses a form that combines the licensee's notice with other information and uses distinctive type size, style, and graphic devices, such as shading or sidebars.

"Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to the financial activities described in Section 4(k) of the Bank Holding Company Act of 1956. "Financial institution" does not include the following:

1. Any person or entity with respect to any financial activity that is subject to the jurisdiction of the commodity futures trading commissioner under the Commodity Exchange Act.
2. The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971.
3. Institutions chartered by Congress specifically to engage in securitizations, secondary market sales including sales of servicing rights, or similar transactions related to a transaction of a consumer as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

"Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956. Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

"Health care" means preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that relates to the physical, mental or behavioral condition of an individual or affects the structure or function of the human body or any part of the human body including the banking of blood, sperm, organs or any other tissues. "Health care" also means prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

"Health care provider" means a physician or health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

"Health information" means any information or data except age, gender or nonmedical identifying information, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to the following:

1. The past, present or future physical, mental or behavioral health or condition of an individual;
2. The provision of health care to an individual; or
3. Payment for the provision of health care to an individual.

"Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of Iowa. "Insurance service" includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

"Licensee" means all licensed carriers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of the state or by the department of health and human services. "Licensee" shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker but only in regard to the excess lines placements pursuant to state rules.

"Nonaffiliated third party" means any person except a licensee's affiliate or a person employed jointly by a licensee and any company that is not a licensee's affiliate. "Nonaffiliated third party" includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) of the federal Bank Holding Company Act or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act.

"Nonpublic personal health information" means health information that identifies an individual who is the subject of the information or with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

"Nonpublic personal information" or *"nonpublic personal financial information"* means personally identifiable financial information and any list, description or other groupings of consumers and publicly available information pertaining to them that is derived using any personally identifiable financial information that is not publicly available.

"Nonpublic personal financial information" does not include health information, publicly available information, except as included on a list as described above or any list or description pertaining to consumers that is derived without using any personally identifiable financial information that is not publicly available.

"Opt out" means a direction by the consumer that the licensee not disclose nonpublic personal financial information about the consumer to a nonaffiliated third party other than as permitted by rules 191—90.12(505), 191—90.13(505), and 191—90.14(505).

"Personally identifiable financial information" means any information a consumer provides to a licensee to obtain an insurance product or service from the licensee, information about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer, or information the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

Examples of "personally identifiable financial information" include:

1. Information a consumer provides to a licensee on an application to obtain an insurance product or service;
2. Account balance information and payment history;
3. The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;
4. Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;
5. Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;
6. Any information the licensee collects through an Internet cookie (an information-collecting device from a web server); and
7. Information from a consumer report.

"Personally identifiable financial information" does not include health information, a list of names and addresses of customers of an entity that is not a financial institution and information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, and addresses.

"Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records; widely distributed media sources; or disclosures to the general public that are required to be made by federal, state or local law.

A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine that the information is the type that is available to the general public and whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

Examples of "publicly available information" include:

1. Publicly available information in government records, which includes information in government real estate records and security interest filings.
2. Publicly available information from widely distributed media, which includes information from a telephone book, a television or radio program, a newspaper or a website that is available to the general public on an unrestricted basis. A website is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.
3. A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

"Reasonably understandable" means the licensee's notice is reasonably understandable if it:

1. Uses clear, concise sentences, paragraphs, and sections;
2. Uses short explanatory sentences or bullet lists whenever possible;
3. Uses definite, concrete, plain language and active voice whenever possible;
4. Avoids multiple negatives;
5. Avoids legal or highly technical business terminology whenever possible; and
6. Avoids explanations that are imprecise and readily subject to different interpretations.

"Service provider" means a person who maintains, processes or otherwise is permitted access to customer information through the person's provision of services directly to the licensee.

DIVISION I
RULES FOR FINANCIAL INFORMATION

191—90.3(505) Initial privacy notice to consumers required.

90.3(1) A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to the following persons and at the following times:

a. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subrule 90.3(5); and

b. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by rules 191—90.13(505) and 191—90.14(505).

90.3(2) A licensee is not required to provide an initial notice to a consumer under subrule 90.3(1) if:

a. The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party other than as authorized by rules 191—90.13(505) and 191—90.14(505) and the licensee does not have a customer relationship with the consumer; or

b. A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions; or

c. The licensee has a customer relationship with the consumer and the consumer consents to the licensee's searching for insurance coverage to replace existing coverage or the licensee is selling the agency expiration lists or the agency contract is canceled and the licensee is required to move the existing coverage to a new carrier.

90.3(3) A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship. A licensee establishes a customer relationship when the consumer does either of the following:

a. Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer or, in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

b. Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

90.3(4) When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subrule 90.3(1) as follows:

a. The licensee provides a revised policy notice under rule 191—90.7(505) that covers the customer's new insurance product or service; or

b. If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under subrule 90.3(1).

90.3(5) A licensee may provide the initial notice required by paragraph 90.3(1)*"a"* within a reasonable time after the licensee establishes a customer relationship if:

a. Establishing the customer relationship is not at the customer's election; or

b. Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

Examples of notice within a reasonable time are as follows:

- The establishment of the customer relationship is not at the customer's election. Establishing the customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.
- There is substantial delay in the customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.
- Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a website.

90.3(6) When a licensee is required by this rule to deliver an initial privacy notice, the licensee shall deliver it according to rule 191—90.8(505). If the licensee uses a short-form initial notice for noncustomers according to subrule 90.5(6), the licensee may deliver its privacy notice according to subrule 90.5(6).

191—90.4(505) Annual privacy notice to customers required.

90.4(1) A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. "Annually" means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the 12-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

A licensee provides a notice annually if it defines the 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

90.4(2) A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

a. A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

b. A licensee no longer has a continuing relationship with an individual if the individual's policy lapsed, expired or is otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual notices, material required by law or regulation, or promotional materials.

c. For purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last-known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

d. A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

90.4(3) When a licensee is required by this rule to deliver an annual privacy notice, the licensee shall deliver it according to rule 191—90.8(505).

90.4(4) A licensee is not required to provide an annual privacy notice if both of the following are true: the licensee has not changed the privacy policies and practices that the licensee disclosed to the consumer in the privacy notice that the licensee most recently delivered to the consumer in accordance with rule 191—90.3(505) or this rule; and the licensee does not disclose any nonpublic personal information about the consumer to any nonaffiliated third party except as authorized by rules 191—90.12(505), 191—90.13(505) and 191—90.14(505). If a licensee at any time fails to comply with the criteria of this subrule, the licensee shall immediately provide to the consumer the annual privacy notice required under this chapter.

191—90.5(505) Information to be included in privacy notices.

90.5(1) The initial annual and revised privacy notices that a licensee provides under rules 191—90.3(505), 191—90.4(505) and 191—90.7(505) shall include each of the following items of information in addition to any other information the licensee wants to provide and that apply to the licensee and to the consumers to whom the licensee sends its privacy notice:

a. The categories of nonpublic personal financial information that the licensee collects;

b. The categories of nonpublic personal financial information that the licensee discloses;

c. The categories of affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information, other than those parties to which the licensee discloses information under rules 191—90.13(505) and 191—90.14(505);

d. The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to which the licensee discloses information under rules 191—90.13(505) and 191—90.14(505);

e. A separate description of the categories of information the licensee discloses and the categories of third parties with which the licensee has contracted if a licensee discloses nonpublic personal financial information to a nonaffiliated third party under rule 191—90.12(505) and no other exception in rules 191—90.13(505) and 191—90.14(505) applies to that disclosure;

f. An explanation of the consumer's right under subrule 90.9(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

g. Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act;

h. The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information; and

i. Any disclosure that the licensee makes under subrule 90.5(2).

90.5(2) If a licensee discloses nonpublic personal financial information as authorized under rules 191—90.13(505) and 191—90.14(505), the licensee is not required to list those exceptions in the initial or annual privacy notices required by rules 191—90.3(505) and 191—90.4(505). When describing the categories of parties to which disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable and permitted by law.

90.5(3) Examples of nonpublic personal financial information are as follows:

a. Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(1) Information from the consumer;

(2) Information about the consumer's transactions with the licensee or its affiliates;

(3) Information about the consumer's transactions with nonaffiliated third parties; and

(4) Information from a consumer reporting agency.

b. Categories of nonpublic personal financial information a licensee discloses. A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in paragraph 90.5(3)*"a,"* as applicable, and provides examples to illustrate the types of information in each category. These might include the following:

(1) Information from the consumer, including application information, such as assets and income and identifying information such as name, address and social security number;

(2) Transaction information, such as information about balances, payment history and parties to the transaction; and

(3) Information from consumer reports, such as a consumer's creditworthiness and credit history.

A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

c. Categories of affiliates and nonaffiliated third parties to which the licensee discloses. A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which the affiliate and nonaffiliated third parties engage.

(1) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term "financial products or services" if it includes appropriate examples of significant lines of business, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(2) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

90.5(4) If a licensee discloses nonpublic personal financial information under the exception in rule 191—90.12(505) to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of paragraph 90.5(1)*"e"* if it does the following:

a. Lists the categories of nonpublic personal financial information it discloses using the same categories and examples the licensee used to meet the requirements of paragraph 90.5(1)*"b"* as applicable; and

b. States whether the third party is a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution or a financial institution with which the licensee has a joint marketing agreement.

90.5(5) If a licensee does not disclose and does not wish to reserve the right to disclose nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under rules 191—90.13(505) and 191—90.14(505), the licensee may simply state that fact, in addition to the information it shall provide under paragraphs 90.5(1)*"a," "h,"* and *"i"* and subrule 90.5(2).

90.5(6) A licensee shall describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

a. Describes in general terms who is authorized to have access to the information; and

b. States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

90.5(7) A licensee may satisfy the initial notice requirements in paragraph 90.3(1)*"b"* and subrule 90.6(4) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt-out notice as required in rule 191—90.6(505).

a. The short-form initial notice shall be clear and conspicuous, state that the licensee's privacy notice is available upon request and explain a reasonable means by which the consumer may obtain that notice.

b. The licensee shall deliver its short-form initial notice according to rule 191—90.8(505). The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to rule 191—90.8(505).

c. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee provides a toll-free telephone number that the consumer may call to request the notice or, for a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

90.5(8) The licensee's notice may include categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future but does not currently disclose and categories of affiliates or nonaffiliated third parties to which the licensee reserves the right in the future to disclose, but to which the licensee does not currently disclose, nonpublic personal financial information. Sample clauses are found in Appendix A.

191—90.6(505) Form of opt-out notice to consumers and opt-out methods.

90.6(1) A licensee required to provide an opt-out notice under subrule 90.9(1) shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that rule. The notice shall state the following:

a. The licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

b. The consumer has the right to opt out of that disclosure; and

c. A reasonable means by which the consumer may exercise the opt-out right.

90.6(2) Examples of the opt-out notice include the following:

a. Adequate opt-out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee does the following:

(1) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in paragraphs 90.5(1)*"b"* and *"c,"* and states that the consumer can opt out of the disclosure of that information; and

(2) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt-out direction applies.

b. Reasonable opt out. A licensee provides a reasonable means to exercise an opt-out right if it provides the following:

(1) Designates check-off boxes in a prominent position on the relevant forms with the opt-out notice;

(2) Includes a reply form together with the opt-out notice;

(3) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's website, if the consumer agrees to the electronic delivery of information; or

(4) Provides a toll-free telephone number that consumers may call to opt out.

c. Unreasonable opt out. A licensee does not provide a reasonable means of opting out in the following circumstances:

(1) The only means of opting out is for the consumer to write the consumer's own letter to exercise that opt-out right; or

(2) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

d. Specific opt out. A licensee may require each consumer to opt out through a specific means as long as that means is reasonable for that consumer.

90.6(3) A licensee may provide the opt-out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with rule 191—90.3(505).

90.6(4) If a licensee provides the opt-out notice later than required for the initial notice in accordance with rule 191—90.3(505), the licensee shall also include in writing or, if the consumer agrees, electronically a copy of the initial notice with the opt-out notice.

90.6(5) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt-out notice. The licensee's opt-out notice shall explain how the licensee will treat an opt-out direction by a joint consumer.

a. Any of the joint consumers may exercise the right to opt out. The licensee may do either of the following:

(1) Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

(2) Permit each joint consumer to opt out separately.

b. The licensee shall permit one of the joint consumers to opt out on behalf of all the joint consumers if a licensee permits each joint consumer to opt out separately.

c. A licensee may not require all joint consumers to opt out before it implements any opt-out direction.

d. Examples of opt-out notice requirements for joint consumers. If John and Mary are both names of policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt-out notice which of the following opt-out policies the licensee will follow:

(1) Send a single opt-out notice to John's address, but the licensee shall accept an opt-out direction from either John or Mary.

(2) Treat an opt-out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt-out direction.

(3) Permit John and Mary to make different opt-out directions. If the licensee does so, it shall provide for the following:

1. Permit John and Mary to opt out for each other;

2. Permit both of them to notify the licensee in a single response such as on a form or through a telephone call if both opt out; and

3. Allow the licensee to disclose nonpublic personal financial information about one of them such as Mary but not about John if John opts out and Mary does not and not about John and Mary jointly.

90.6(6) A licensee shall comply with a consumer's opt-out direction as soon as reasonably practicable after the licensee receives it.

90.6(7) A consumer may exercise the right to opt out at any time.

90.6(8) A consumer's direction to opt out under this rule is effective until the consumer revokes it in writing or electronically, if the consumer agrees to revoke electronically.

90.6(9) When a customer relationship terminates, the customer's opt-out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt-out direction that applied to the former relationship does not apply to the new relationship.

90.6(10) When a licensee is required to deliver an opt-out notice by this rule, the licensee shall deliver it according to rule 191—90.8(505).

191—90.7(505) Revised privacy notices.

90.7(1) Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under rule 191—90.3(505) unless the following occur:

a. The licensee has provided to the consumer a clear and conspicuous revised privacy notice that accurately describes its policies and practices;

b. The licensee has provided to the consumer a new opt-out notice;

c. The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

d. The consumer does not opt out.

Except as permitted by rules 191—90.12(505), 191—90.13(505), and 191—90.14(505), a licensee shall provide a revised notice before the licensee does any of the following:

- Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;
- Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or
- Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt-out right regarding that disclosure.

90.7(2) A revised privacy notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

90.7(3) When a licensee is required to deliver a revised privacy notice by this rule, the licensee shall deliver it according to rule 191—90.8(505).

191—90.8(505) Delivery of notice.

90.8(1) A licensee shall provide any notices that these rules require so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

a. Examples of reasonable expectation of actual notice by a licensee are as follows:

(1) Hand delivery of a printed copy of the notice to the consumer;

(2) Mailing a printed copy of the notice to the last-known address of the consumer separately or in a policy, billing or other written communication;

(3) For a consumer who conducts transactions electronically, posting the notice on the website and requiring the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(4) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posting the notice and requiring the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

b. Examples of unreasonable expectation of actual notice by a licensee are as follows:

(1) Only posting a sign in its office or generally publishing advertisements of its privacy policies and practices; or

(2) Sending the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

90.8(2) A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if one of the following occurs:

a. The customer uses the licensee's website to access insurance products and services electronically and agrees to receive notices at the website and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the website; or

b. The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

90.8(3) A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

90.8(4) For customers only, a licensee shall provide the initial notice required by paragraph 90.3(1)*"a,"* the annual notice required by subrule 90.4(1) and the revised notice required by rule 191—90.7(505) so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

A licensee provides a privacy notice to the customer so that the customer can retain the notice or obtain the notice later if the licensee does any of the following:

a. Hand delivers a printed copy of the notice to the customer;

b. Mails a printed copy of the notice to the last-known address of the customer; or

c. Makes its current privacy notice available on a website or a link to another website for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the website.

90.8(5) A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee may also provide a notice on behalf of another financial institution.

90.8(6) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of subrules 90.3(1), 90.4(1) and 90.7(1), respectively, by providing one notice to those consumers jointly.

191—90.9(505) Limits on disclosure of nonpublic personal financial information to nonaffiliated third parties.

90.9(1) A licensee may not directly or through any affiliate disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party except as otherwise authorized in these rules unless the following occur:

a. The licensee has provided to the consumer an initial notice as required under rule 191—90.3(505);

b. The licensee has provided to the consumer an opt-out notice as required in rule 191—90.6(505);

c. The licensee has given the consumer a reasonable opportunity to opt out of the disclosure before the licensee discloses the information to the nonaffiliated third party; and

d. The consumer does not opt out.

90.9(2) A licensee provides a consumer with a reasonable opportunity to opt out under the following methods:

a. The licensee mails the notices required in subrule 90.9(1) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

b. A customer opens an online account with a licensee and agrees to receive the notices required in subrule 90.9(1) electronically, and the licensee allows the customer to opt out by any reasonable means

within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

c. For an isolated transaction such as providing the customer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notice required in subrule 90.9(1) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

90.9(3) A licensee shall comply with this rule regardless of whether the licensee and the consumer have established a customer relationship.

90.9(4) Unless a licensee complies with this rule, the licensee may not directly or through any affiliate disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

90.9(5) A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

191—90.10(505) Limits on redisclosure and reuse of nonpublic personal financial information.

90.10(1) In the event a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception to rules 191—90.13(505) and 191—90.14(505), the licensee's disclosure and use of that information is limited as follows:

a. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

b. The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

c. The licensee may disclose and use the information pursuant to an exception in rule 191—90.13(505) or 191—90.14(505) in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

90.10(2) In the event a licensee received nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in rules 191—90.13(505) and 191—90.14(505), the licensee may disclose the information only as follows:

a. To the affiliates of the financial institution from which the licensee received the information;

b. To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

c. To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

In the event a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in rule 191—90.13(505) or 191—90.14(505), the licensee may use that list for its own purposes and the licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party.

The licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list as limited by the opt-out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in rule 191—90.13(505) or 191—90.14(505), such as to the licensee's attorneys or accountants.

90.10(3) In the event a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in rules 191—90.13(505) and 191—90.14(505), the third party may disclose and use that information only as follows:

a. The third party may disclose the information to the licensee's affiliates;

b. The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

c. The third party may disclose and use the information pursuant to an exception in rules 191—90.13(505) and 191—90.14(505) in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

90.10(4) In the event a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in rules 191—90.13(505) and 191—90.14(505), the third party may disclose the information only to the following:

a. The licensee's affiliates;

b. The third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

c. Any other person, if the disclosure would be lawful if the licensee made it directly to that person.

191—90.11(505) Limits on sharing account number information for marketing purposes.

90.11(1) A licensee shall not directly or through an affiliate disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct-mail marketing or marketing through electronic mail to the consumer.

90.11(2) The above subrule does not apply if a licensee discloses a policy number or similar form of access number or access code to any of the following:

a. A licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

b. A licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

c. A participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

A policy number or similar form of access number or access code does not include a number or code in encrypted form as long as the licensee does not provide the recipient with a means to decode the number or code.

For purposes of this subrule, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

191—90.12(505) Exception to opt-out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing.

90.12(1) The opt-out requirements in rules 191—90.6(505) and 191—90.9(505) do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions for the licensee on the licensee's behalf, if the licensee does the following:

a. Provides the initial notice in accordance with rule 191—90.3(505); and

b. Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in rules 191—90.13(505) and 191—90.14(505) in the ordinary course of business to carry out those purposes.

For example, if a licensee discloses nonpublic personal financial information under this rule to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of paragraph *"b"* of this subrule if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary

to carry out the joint marketing or under an exception in rules 191—90.13(505) and 191—90.14(505) in the ordinary course of business to carry out that joint marketing.

90.12(2) The services a nonaffiliated third party performs for a licensee under subrule 90.12(1) may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

90.12(3) For purposes of this rule, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

191—90.13(505) Exceptions to notice and opt-out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions.

90.13(1) The requirements for initial notice in paragraph 90.3(1)*"b,"* for the opt out in rules 191—90.6(505) and 191—90.9(505), and for service providers and joint marketing in rule 191—90.12(505) do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with the following:

a. Servicing or processing an insurance product or service that a consumer requests or authorizes;

b. Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private-label credit card program or other extension of credit on behalf of such entity;

c. A proposed or actual securitization, secondary market sale including sales of servicing rights, or similar transaction related to a transaction of the consumer; or

d. Reinsurance or stop loss or excess loss insurance.

90.13(2) For purposes of this rule, "necessary to effect, administer or enforce a transaction" means that the disclosure is as follows:

a. Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

b. Required, or is a usual, appropriate or acceptable method, for the following transactions:

(1) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(2) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(3) To provide a confirmation, statement or other record of the transaction or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

(4) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(5) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits including utilization review activities, participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(6) To disclose in connection with the following:

1. The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

2. The transfer of receivables, accounts or interests therein; or

3. The audit of debit, credit or other payment information.

191—90.14(505) Other exceptions to notice and opt-out requirements for disclosure of nonpublic personal financial information.

90.14(1) The requirements for initial notice to consumers in paragraph 90.3(1)*"b,"* for the opt out in rules 191—90.6(505) and 191—90.9(505), and for service providers and joint marketing in rule 191—90.12(505) do not apply when a licensee discloses nonpublic personal financial information as follows:

a. With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

b. To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product, or transaction;

c. To protect against or prevent actual or potential fraud or unauthorized transactions;

d. For required institutional risk control or for resolving consumer disputes or inquiries;

e. To persons holding a legal or beneficial interest relating to the consumer;

f. To persons acting in a fiduciary or representative capacity on behalf of the consumer;

g. To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

h. To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978, to law enforcement agencies including the Federal Reserve Board; Office of the Comptroller of the Currency; Federal Deposit Insurance Corporation; Office of Thrift Supervision; National Credit Union Administration; the Securities and Exchange Commission; the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II, and 12 U.S.C. Chapter 21, a state insurance authority, and the Federal Trade Commission, self-regulatory organizations or for an investigation on a matter related to public safety;

i. To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act;

j. From a consumer report reported by a consumer reporting agency;

k. In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business unit;

l. To comply with federal, state, or local laws, rules and other applicable legal requirements;

m. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

n. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law;

o. For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

90.14(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal financial information as permitted under subrule 90.6(7).

191—90.15(505) Notice through a website. If a licensee provides a notice on a website, the licensee shall comply with the above requirements if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the website such as text, graphics, hyperlinks or sound do not distract attention from the notice. In addition, the licensee shall either place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted, or place a link on a screen that consumers frequently access that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

191—90.16(505) Licensee exception to notice requirement.

90.16(1) A licensee is not subject to the notice and opt-out requirements for nonpublic personal financial information if:

a. The licensee is an employee, agent or other representative of another licensee; and

b. The other licensee otherwise complies with, and provides the notices required by, the provisions of the rules and the licensee does not disclose any nonpublic personal financial information to any person other than the other licensee or its affiliates in a manner permitted by these rules.

90.16(2) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and opt-out requirements for nonpublic personal financial information in these rules provided the following:

a. The broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose including joint servicing or marketing under rule 191—90.12(505) except as permitted by rule 191—90.13(505) or 191—90.14(505); and

b. The broker or insurer delivers to the consumer at the time a customer relationship is established a notice on which the following is printed in 16-point type:

PRIVACY NOTICE

NEITHER THE U.S. BROKER THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

DIVISION II
RULES FOR HEALTH INFORMATION

191—90.17(505) Disclosure of nonpublic personal health information.

90.17(1) A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

90.17(2) Nothing in this rule shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee or the licensee's insurance affiliate for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; rate-making and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers' compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

191—90.18(505) Authorizations.

90.18(1) A valid authorization to disclose nonpublic personal health information pursuant to the health information rules as required under subrule 90.17(1) shall be in written or electronic form and shall contain all of the following:

a. The identity of the consumer or customer who is the subject of the nonpublic personal health information;

b. A general description of the types of nonpublic personal health information to be disclosed;

c. General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;

d. The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

e. Notice of the length of time for which the authorization is valid, the fact that the consumer or customer may revoke the authorization at any time, and the procedure for making a revocation.

90.18(2) An authorization for the purposes of these health information rules shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than 24 months.

90.18(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to these health information rules at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

90.18(4) A licensee shall retain the authorization or a copy in the record of the individual who is the subject of nonpublic personal health information.

191—90.19(505) Delivery of authorization request. A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to rule 191—90.8(505), provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to subrule 90.17(1).

191—90.20(505) Relationship to federal rules. Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services, if a licensee complies with all requirements of the federal rules except for their effective date provision, the licensee shall not be subject to the provisions of these health information rules.

191—90.21(505) Relationship to state laws. Nothing in these health information rules shall preempt or supersede existing state law related to medical records, health or insurance information privacy.

191—90.22(505) Protection of Fair Credit Reporting Act. Nothing in these rules shall be construed to modify, limit or supersede the operations of the federal Fair Credit Reporting Act, and no inference shall be drawn on the basis of the provisions of these rules regarding whether information is transaction or experience information under Section 603 of that Act.

191—90.23(505) Nondiscrimination. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of the consumer's or customer's nonpublic personal financial information pursuant to the provisions of this chapter.

191—90.24(505) Severability. If any rule or portion of a rule of this chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the rules or the applicability of the provision to other persons or circumstances shall not be affected.

191—90.25(505) Penalties. An insurer or producer or licensee that violates a requirement of these rules shall be found to have committed a violation of Iowa Code section 507B.4 in addition to any other penalties provided by the laws of this state.

191—90.26(505) Effective dates.

90.26(1) These rules became effective November 13, 2000. However, in order to provide sufficient time for licensees to establish policies and systems to comply with the requirements of these rules, the commissioner extends the time for compliance until July 1, 2001.

90.26(2) A licensee shall provide by July 1, 2001, an initial notice as required by rule 191—90.3(505) to consumers who are the licensee's customers on July 1, 2001. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has

established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

90.26(3) Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of paragraph 90.12(1)*"a,"* even if the contract does not include a requirement that the third party maintain confidentiality of nonpublic personal financial information, provided that the licensee entered into the agreement on or before July 1, 2001.

90.26(4) The rules regarding health information are effective January 2, 2002, and no administrative action against noncompliance shall be taken until January 2, 2002.

191—90.27 to **90.36** Reserved.

DIVISION III
SAFEGUARDING CUSTOMER INFORMATION

191—90.37(505) Information security program.

90.37(1) Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of the licensee's activities.

90.37(2) A licensee's information security program shall be designed to:

a. Ensure the security and confidentiality of customer information;

b. Protect against any anticipated threats or hazards to the security or integrity of the information; and

c. Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

191—90.38(505) Examples of methods of development and implementation. The actions and procedures that follow are examples of methods a licensee may use to implement the requirements of rule 191—90.37(505) to assess, manage and control risks of disclosure:

1. Identify reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems.
2. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information.
3. Assess the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.
4. Design an information security program to control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the licensee's activities.
5. Train staff, as appropriate, to implement the licensee's information security program.
6. Regularly test or otherwise regularly monitor the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.
7. Exercise appropriate due diligence in selecting service providers.
8. Require service providers to implement appropriate measures designed to meet the objectives of rule 191—90.37(505) and, when indicated by the licensee's risk assessment, take appropriate steps to confirm that service providers have satisfied these obligations.
9. Monitor, evaluate and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

191—90.39(505) Penalties. An insurer, producer or licensee that violates a requirement of these rules shall be subject to the penalties imposed under Iowa Code chapter 507B in addition to any other penalties provided by the laws of this state.

191—90.40(505) Effective date. Each licensee shall establish and implement an information security program, including appropriate policies and systems, by June 30, 2003.

These rules are intended to implement Iowa Code section 505.8(6) and P.L. 106-102.

APPENDIX A
SAMPLE CLAUSES

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1 Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirements of paragraph 90.5(1)*"a"* to describe the categories of nonpublic personal financial information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

A-2 Categories of information that a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirements of paragraph 90.5(1)*"b"* to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in rules 191—90.14(505), 191—90.15(505), and 191—90.16(505).

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as (provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries");
- Information about your transactions with us, our affiliates or others, such as (provide illustrative examples, such as "your policy coverage, premiums, and payment history"); and
- Information we receive from a consumer reporting agency, such as (provide illustrative examples, such as "your creditworthiness and credit history").

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect as described (describe location in the notice, such as "above" or "below").

A-3 Categories of information that a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of paragraphs 90.5(1)*"b,"* *"c,"* and *"d"* to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in rules 191—90.13(505) and 191—90.14(505).

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4 Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of paragraph 90.5(1)*"c"* to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by exceptions to rules 191—90.12(505), 191—90.13(505), and 191—90.14(505), as well as when permitted by the exceptions in rules 191—90.13(505) and 191—90.14(505).

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as (provide illustrative examples, such as "life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents");
- Nonfinancial companies, such as (provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"); and
- Others, such as (provide illustrative examples, such as "nonprofit organizations").

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5 Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of paragraph 90.5(1)*"e"* related to the exception for service providers and joint marketers in rule 191—90.12(505). If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as (provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries");
- Information about your transactions with us, our affiliates or others, such as (provide illustrative examples, such as "your policy coverage, premium, and pay history"); and
- Information we receive from a consumer reporting agency, such as (provide illustrative examples, such as "your creditworthiness and credit history").

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described (describe location in the notice, such as "above" or "below"), to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6 Explanation of opt-out right (institutions that disclose outside of the exception)

A licensee may use this clause, as applicable, to meet the requirement of paragraph 90.5(1)*"f"* to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in rules 191—90.12(505), 191—90.13(505), and 191—90.14(505).

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third

parties, you may (describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)").

A-7 Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of paragraph 90.5(1)*"h"* to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to (provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"). We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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ARC 7720C

MEDICINE BOARD[653]

Adopted and Filed

Rulemaking related to standards of practice for physicians who perform or induce abortions

The Board of Medicine hereby amends Chapter 13, "Standards of Practice and Principles of Medical Ethics," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in 2023 Iowa Acts, House File 732.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 732.

Purpose and Summary

This rule is directed by 2023 Iowa Acts, House File 732, to outline the standards of practice for physicians who perform or induce abortions, including the detection of a fetal heartbeat, exceptions, and discipline.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7170C**.

A public hearing was held on January 4, 2024, at 10 a.m. at 6200 Park Avenue, Des Moines, Iowa. There were approximately 50 individuals in attendance at this hearing, and 10 individuals made an oral public comment. The Board additionally received 52 written public comments. Of the total 62 written and oral comments, 43 were generally opposed to 2023 Iowa Acts, House File 732; 18 provided technical feedback on the rules themselves; and 1 was supportive of the draft rules.

Public comments fell into the following categories:

The Board's authority. Many commenters suggested that the Board either refuse to adopt a rule or adopt a rule that overrode the language of Iowa Code chapter 146E. The Board has no authority to do either.

Definitions. Many commenters requested that the Board amend the proposed rule to define particular terms. Several of these comments contended that the rule should use language that parallels that used by physicians in their practice. Many of these terms, however, are defined by statute; the Board has no

authority to vary those definitions. Further, the Board declines to introduce uncertainty into either the law or the practice of medicine by using terms that may be under- or over-inclusive compared to the terms used in the statute.

In particular, the Board declines to adopt definitions of "fetal heartbeat," "unborn child," or "woman" that might vary from the statutory meaning. The statute furnishes the definitions for "fetal heartbeat" and "unborn child." "Woman," in the context of regulating abortion, has been understood since at least 1858 to encompass both adults and minors. As a matter of law, therefore, defining these terms in rule is unnecessary at best and, as described above, has the potential to mislead physicians into performing prohibited abortions. However, to clarify the scope of the rule and of Iowa Code chapter 146E for physicians, the Board hereby adopts a definition of "woman" with the intent to remind physicians of the meaning under the law and a definition of "unborn child" with the intent to remind physicians that the statutory definition includes both embryos and fetuses. The Board's intent is to codify, rather than change, the definitions given and the meanings understood in Iowa Code chapter 146E.

The Board declined to expand the definitions related to rape and incest. Proposals related to the definition of incest generally contended that other persons in a woman's household might be responsible for a pregnancy and that the definition should be expanded to include those persons. The Board disagrees; the common understanding of the term requires that the perpetrator be related to the victim, not merely a member of the same household. Proposals related to the definition of rape generally contended that sex with a person who exercises influence over a woman should be included within the definition. The Board disagrees; as the elements of the crime of sexual assault confirm, the common understanding of the term does not include such relationships in many instances. The Board expresses no opinion on whether the conduct commenters seek to include in these definitions would, in a particular case, constitute rape under the definition as adopted.

The Board did, however, revise the definition of "the pregnancy is the result of a rape" to remove geographic restrictions on the covered conduct. This is because the Iowa Code's prohibition on sexual assault applies only to conduct that occurred in Iowa. As proposed, therefore, the rape exception would apply only if the rape were perpetrated in Iowa. Iowa Code chapter 146E establishes an exception if a "pregnancy is the result of a rape," not "pregnancy is the result of a rape perpetrated in Iowa." To be consistent with this lack of a geographic restriction, the Board has adopted language specifying that as long as the conduct would constitute a violation of the listed statutes, it does not matter where the conduct occurred.

Method. Iowa Code chapter 146E requires that the physician conduct an "abdominal ultrasound, necessary to detect a fetal heartbeat[.]" The general understanding of "abdominal ultrasound" is an ultrasound of a person's abdomen. This differs from what a physician or technician would understand if an "abdominal ultrasound" were ordered for a patient—an ultrasound of a particular area of the abdomen, through which it would not be possible to detect a fetal heartbeat. The Board therefore specifies that the physician must conduct a transabdominal pelvic ultrasound—the particular type of ultrasound that would typically be used to detect a fetal heartbeat.

Commenters noted that the standard medical practice to attempt to detect a fetal heartbeat early in a pregnancy would be a transvaginal ultrasound. However, the Board has no authority to change the requirement in Iowa Code chapter 146E that the physician conduct an "abdominal ultrasound."

Sources of information. The Board revised the proposed rule to clarify that the physician must obtain the information required to determine whether an exception exists but need not do so with particular questions or from a particular source. As in the proposed rule, the physician must determine in good faith that the information is true, and as in the proposed rule, the physician may—but need not—require the source of the information to certify that the information is true. The rule retains the requirement that the physician document the information and its source in the woman's medical records despite comments that doing so would not be standard practice. There are other instances when the law requires information or documentation to be kept in a patient's medical record, and the Board's ability to assess whether a physician made a good-faith effort to determine that an exception exists depends on its access to the information that the physician reviewed at the time. In addition, the rule continues to permit physicians

to require information sources to attest to the information's truth to reduce the chances that a charge against a physician becomes a contest of memories and credibility.

Fetal abnormality. Several commenters suggested that the Board specify types of conditions or diagnoses that would qualify for this exception. Others suggested that the Board outline requirements for such a finding. Because the determination of whether this exception applies must necessarily be made on a case-by-case basis, the Board declined to make a change based on these suggestions. The Board similarly disagrees that the statutory language regarding this exception is ambiguous or unclear and therefore adopted no definitions regarding the exception.

Discipline. The Board disagrees with comments on the language regarding physician discipline and has adopted that language as proposed. No other rule adopted by the Board specifies the range of penalties the Board may impose for a particular violation. No other rule allows a physician to assert good faith as a defense to a violation. And no other rule singles out a particular type of violation for special notice or publicity. The Board has declined to create exceptions here.

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 15, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on April 24, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** rule 653—13.17(135L,146A,146E,147,148,272C):

653—13.17(135L,146A,146E,147,148,272C) Standards of practice for physicians who perform or induce abortions—definitions—detection of fetal heartbeat—fetal heartbeat exceptions—discipline.

13.17(1) *Standards of practice.* This rule sets forth the standards of practice for physicians who perform or induce abortions. More information is contained in Iowa Code section 146E.2(5).

13.17(2) *Definitions.* As used in this rule or in Iowa Code chapter 146E:

"Private health agency" means any establishment, facility, organization, or other entity that is not owned by a federal, state, or local government that either is a health care provider or employs or provides the services of a health care provider. Establishments, facilities, organizations, or other entities that are health care providers include the following:

1. A hospital as defined in Iowa Code section 135B.1;
2. A health care facility as defined in Iowa Code section 135C.1;
3. A health facility as defined in Iowa Code section 135P.1; or
4. A similar entity that either is a health care provider or employs or provides the services of a health care provider.

"Public health agency" means any establishment; facility; organization; administrative division; or entity that is owned by a federal, state, or local government that either is a health care provider or employs or provides the services of a health care provider. Establishments, facilities, organizations, administrative divisions, or other entities that are health care providers include the following:

1. A hospital as defined in Iowa Code section 135B.1;
2. A health care facility as defined in Iowa Code section 135C.1;
3. A health facility as defined in Iowa Code section 135P.1; or
4. A similar entity that either is a health care provider or employs or provides the services of a health care provider.

"Standard medical practice" means the degree of skill, care, and diligence that a physician of the same medical specialty would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of Iowa Code chapter 146E and this rule, "standard medical practice" includes employing the appropriate means of detection depending on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

"The pregnancy is the result of a rape" means a circumstance in which the pregnancy is the result of conduct that would constitute an offense under Iowa Code section 709.2, 709.3, 709.4, or 709.4A when perpetrated against a female, regardless of where the conduct occurred.

"The pregnancy is the result of incest" means a circumstance in which a sex act occurs between closely related persons that involves a vaginal penetration that causes a pregnancy. The closely related persons must be related, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew. For purposes of this rule, a closely related person includes a stepparent, stepchild, or stepsibling, including siblings through adoption.

"Unborn child" means an individual organism of the species *Homo sapiens* from fertilization to live birth—that is, at all stages of development, including embryo and fetus.

"Woman" means a female individual regardless of her age.

13.17(3) *Detection of fetal heartbeat.* A physician who intends to perform or induce an abortion must determine via ultrasound whether the woman is carrying an unborn child with a detectable fetal heartbeat.

a. Obligation. The obligation under this rule requires a bona fide effort to detect a fetal heartbeat in the unborn child. This effort must be made in good faith and according to standard medical practice and reasonable medical judgment.

b. Method. The physician shall perform a transabdominal pelvic ultrasound on the woman to determine whether the unborn child has a detectable fetal heartbeat. This shall be performed in a manner consistent with standard medical practice, with real-time ultrasound equipment with a transducer of appropriate frequency. The equipment must be properly maintained and in proper functioning order.

13.17(4) *Fetal heartbeat exceptions.* The following applies to a physician who intends to perform or induce an abortion under a fetal heartbeat exception as defined in Iowa Code chapter 146E and this rule:

a. Incest or rape. For purposes of this rule, a pregnancy resulting from incest or rape may be reported within the appropriate time frame to a licensed physician whose services are retained for an abortion procedure.

(1) To determine whether the pregnancy is the result of incest, a physician who intends to perform or induce an abortion must use the following information:

1. Whether the sex act occurred between the woman and a closely related person, meaning, either legitimately or illegitimately, an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew, including a stepparent, stepchild, or stepsibling to include an adopted sibling.
2. The date the act occurred.

3. If initial reporting was to someone other than the physician who intends to perform or induce an abortion, the date the act was reported to a law enforcement agency, public health agency, private health agency, or family physician.

The physician who intends to perform or induce an abortion shall use this information to determine whether the fetal heartbeat exception for incest applies. This information does not prescribe the manner in which the physician is to obtain this information. This information and its source shall be documented in the woman's medical records.

The physician who intends to perform or induce an abortion may rely on the information received upon a good-faith assessment that the information is true. The physician who intends to perform or induce an abortion may require the person providing the information to sign a certification form attesting that the information is true.

(2) To determine whether the pregnancy is the result of a rape, a physician who intends to perform or induce an abortion must use the following information:

1. The date the sex act that caused the pregnancy occurred.
2. The age of the woman seeking an abortion at the time of that sex act.
3. Whether the sex act constituted a rape.
4. Whether the rape was perpetrated against the woman seeking an abortion.
5. If initial reporting was to someone other than the physician who intends to perform or induce an abortion, the date the rape was reported to a law enforcement agency, public health agency, private health agency, or family physician.

The physician who intends to perform or induce an abortion shall use this information to determine whether the fetal heartbeat exception for rape applies. This rule does not prescribe the manner in which the physician is to obtain this information. This information and its source shall be documented in the woman's medical records.

The physician who intends to perform or induce an abortion may rely on the information received upon a good-faith assessment that the information is true. The physician who intends to perform or induce an abortion may require the person providing the information to sign a certification form attesting that the information is true.

b. Fetal abnormality. A certification from an attending physician that a fetus has a fetal abnormality that in the attending physician's reasonable medical judgment is incompatible with life must contain the following information:

(1) The diagnosis of the abnormality;

(2) The basis for the diagnosis, including the tests and procedures performed, the results of those tests and procedures, and why those results support the diagnosis; and

(3) A description of why the abnormality is incompatible with life.

The diagnosis and the attending physician's conclusion must be reached in good faith following a bona fide effort, consistent with standard medical practice and reasonable medical judgment, to determine the health of the fetus. The certification must be signed by the attending physician. A physician who intends to perform or induce an abortion may rely in good faith on a certification from an attending physician if the physician who intends to perform or induce an abortion has a copy of the certification. The certification must be included in the woman's medical records by the physician who intends to perform or induce an abortion.

13.17(5) *Discipline.* Failure to comply with this rule or the requirements of Iowa Code chapter 146E may constitute grounds for discipline.

This rule is intended to implement Iowa Code chapter 146E.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/20/24.