



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; 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, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
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The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

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

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

Schedule for Rule Making 2019

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
25	Wednesday, May 15, 2019	June 5, 2019
26	Friday, May 31, 2019	June 19, 2019
1	Friday, June 14, 2019	July 3, 2019

PLEASE NOTE:

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

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

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

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

EDUCATION DEPARTMENT[281]

General accreditation standards, 12.5, 12.8 IAB 4/24/19 ARC 4402C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	May 14, 2019 11 a.m. to 12 noon
Medium of instruction for students of limited English proficiency, 60.3(4) IAB 4/24/19 ARC 4403C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	May 14, 2019 10 to 11 a.m.
Operational function sharing eligibility—master social workers, independent social workers, removal of supplemental weighting limit, 98.15 IAB 4/24/19 ARC 4404C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	May 14, 2019 9 to 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

NPDES General Permit No. 6 for discharge of wastewater associated with well construction activities, 64.15(6) IAB 5/8/19 ARC 4421C	Conference Room 4 East and West Wallace State Office Bldg. Des Moines, Iowa	May 28, 2019 2 to 4 p.m.
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NATURAL RESOURCE COMMISSION[571]

Antlerless deer hunting—January licenses, county license quotas, 106.6 IAB 5/8/19 ARC 4422C	Conference Room 4 East Wallace State Office Bldg. Des Moines, Iowa	May 28, 2019 12 noon to 1 p.m.
Increased bag limits for bobcats, 108.7(3) IAB 5/8/19 ARC 4423C	Conference Room 4 East Wallace State Office Bldg. Des Moines, Iowa	May 28, 2019 12 noon to 1 p.m.

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Electric vehicle charging service, 20.20 IAB 5/8/19 ARC 4417C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	June 12, 2019 9 to 11 a.m.
Regulation of telecommunications service, ch 22 IAB 5/8/19 ARC 4419C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	June 13, 2019 1 to 3 p.m.
Annual reports, 23.1 to 23.3 IAB 5/8/19 ARC 4420C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	June 12, 2019 1 to 3 p.m.
Electric interconnection of distributed generation facilities, 45.1, 45.5(10), 45.6(2) IAB 4/24/19 ARC 4407C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	May 21, 2019 11 a.m.

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

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

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ARC 4424C**DENTAL BOARD[650]****Notice of Intended Action****Proposing rule making related to expanded functions for dental assistants and dental hygienists and providing an opportunity for public comment**

The Dental Board hereby proposes to amend Chapter 10, "General Requirements," Chapter 15, "Fees," and Chapter 20, "Dental Assistants," to adopt a new Chapter 23, "Expanded Functions," and to amend Chapter 25, "Continuing Education," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.76, 153.33 and 272C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 153.15, 153.38 and 153.39.

Purpose and Summary

The primary purpose of these proposed amendments is to update the requirements for expanded functions. The proposed amendments move some procedures into the standard scope of practice for dental assistants and dental hygienists, and also allow additional procedures to be performed by dental assistants and dental hygienists as new expanded functions. The amendments also include updated terminology to make the rules clearer.

These proposed amendments create a new Chapter 23 for all expanded function requirements. The proposed amendments remove the expanded function requirements currently established in Chapters 10 and 20 and relocate the content into proposed Chapter 23. The intent is to make it easier for dental hygienists and dental assistants to locate the requirements for expanded functions by placing all of the requirements in a single chapter.

These proposed amendments establish clearer requirements for training in expanded functions to ensure that a minimum standard of competency is met at the completion of all expanded function training courses. A review of expanded function training courses to date has shown that there is not a clear minimum training standard. These amendments would resolve this concern.

These proposed amendments also create a process whereby expanded function dental assistants and dental hygienists may obtain a certification from the Dental Board recognizing the ability of those dental assistants or dental hygienists to perform Level 1 and Level 2 expanded functions. A certification process has been requested by dentists who have delegated these services and by dental hygienists and dental assistants who have performed expanded function procedures. Certification as an expanded function dental assistant or dental hygienist would be required only for those who wish to complete training in Level 2 expanded functions. The certification would be optional for those who complete training in all Level 1 expanded functions and who opt not to train in Level 2 expanded functions.

These proposed amendments also establish fees related to the certification of expanded function licensees and registrants, for a hard copy of a duplicate certificate or proof of renewal, and for educational services provided by the Board.

Fiscal Impact

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

Jobs Impact

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

DENTAL BOARD[650](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 650—Chapter 7.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on July 1, 2019. Comments should be directed to:

Steve Garrison
Iowa Dental Board
400 S.W. Eighth Street, Suite D
Des Moines, Iowa 50309
Phone: 515.281.3248
Fax: 515.281.7969
Email: Steven.Garrison@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 10.3(1) as follows:

10.3(1) “Practice of dental hygiene” as defined in Iowa Code section 153.15 ~~as amended by 2017 Iowa Acts, Senate File 479~~, means the performance of the following educational, therapeutic, preventive and diagnostic dental hygiene services. Such services, except educational services, shall be delegated by and performed under the supervision of a dentist licensed pursuant to Iowa Code chapter 153.

a. Educational. Assessing the need for, planning, implementing, and evaluating oral health education programs for individual patients and community groups; conducting workshops and in-service training sessions on dental health for nurses, school personnel, institutional staff, community groups and other agencies providing consultation and technical assistance for promotional, preventive and educational services.

b. Therapeutic. Identifying and evaluating factors which indicate the need for and performing (1) oral prophylaxis, which includes supragingival and subgingival debridement of plaque, and detection and removal of calculus with instruments or any other devices; (2) periodontal scaling and root planing; (3) removing and polishing hardened excess restorative material; (4) administering local anesthesia with the proper permit; (5) administering nitrous oxide inhalation analgesia in accordance with 650—subrules 29.6(4) and 29.6(5); (6) applying or administering medicaments prescribed by a dentist, including chemotherapeutic agents and medicaments or therapies for the treatment of periodontal disease and caries; (7) removal of adhesives.

DENTAL BOARD[650](cont'd)

c. Preventive. Applying pit and fissure sealants and other medications or methods for caries and periodontal disease control; organizing and administering fluoride rinse or sealant programs.

d. Diagnostic. Reviewing medical and dental health histories; performing oral inspection; indexing dental and periodontal disease; preliminary charting of existing dental restorations and teeth; making occlusal registrations for mounting study casts; testing pulp vitality; testing glucose levels; analyzing dietary surveys.

e. The following services may only be delegated by a dentist to a dental hygienist: administration of local anesthesia, placement of sealants, and the removal of any plaque, stain, calculus, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish.

f. Expanded function procedures in accordance with 650—Chapter 23.

g. Phlebotomy.

ITEM 2. Rescind subrules **10.3(8)** and **10.3(9)**.

ITEM 3. Amend rule 650—15.4(153) as follows:

650—15.4(153) Application fees. All fees are nonrefundable. In addition to the fees specified in this rule, an applicant will pay a service charge for filing online.

15.4(1) to **15.4(15)** No change.

15.4(16) Level 1 expanded function certification. The fee for application to be certified as a Level 1 expanded function dental hygienist or dental assistant is \$100.

15.4(17) Level 2 expanded function certification. The fee for application to be certified as a Level 2 expanded function dental hygienist or dental assistant is \$150.

~~**15.4(16)**~~ **15.4(18) Temporary permit—urgent need or educational services.** The fee for an application for a temporary permit to serve an urgent need or provide educational services is \$100 if an application is submitted online or \$150 if submitted via paper application.

~~**15.4(17) Temporary permit—volunteer services.** Rescinded ARC 0984C, IAB 9/4/13, effective 10/9/13.~~

ITEM 4. Amend subrule 15.8(1) as follows:

15.8(1) Duplicates. The fee for issuance of a hard copy duplicate license, permit or registration certificate or current renewal is \$25.

ITEM 5. Amend rule 650—20.4(153) as follows:

650—20.4(153) Scope of practice.

20.4(1) In all instances, a dentist assumes responsibility for determining, on the basis of diagnosis, the specific treatment patients will receive and which aspects of treatment may be delegated to qualified personnel as authorized in these rules.

20.4(2) A licensed dentist may delegate to a dental assistant those procedures for which the dental assistant has received training. This delegation shall be based on the best interests of the patient. Such services shall be delegated by and performed under the supervision of a licensed dentist and may include:

a. Placement and removal of dry socket medication;

b. Placement of periodontal dressings;

c. Testing pulp vitality;

d. Preliminary charting of existing dental restorations and teeth;

e. Phlebotomy;

f. Glucose testing; and

g. Expanded functions in accordance with 650—Chapter 23.

~~**20.4(2)**~~ **20.4(3)** The dentist shall exercise supervision and shall be fully responsible for all acts performed by a dental assistant. A dentist may not delegate to a dental assistant any of the following, unless allowed pursuant to 650—Chapter 23:

a. Diagnosis, examination, treatment planning, or prescription, including prescription for drugs and medicaments or authorization for restorative, prosthodontic or orthodontic appliances.

DENTAL BOARD[650](cont'd)

- b. Surgical procedures on hard and soft tissues within the oral cavity and any other intraoral procedure that contributes to or results in an irreversible alteration to the oral anatomy.
- c. Administration of local anesthesia.
- d. Placement of sealants.
- e. Removal of any plaque, stain, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish, or removal of any calculus.
- f. Dental radiography, unless the assistant is qualified pursuant to 650—Chapter 22.
- g. Those procedures that require the professional judgment and skill of a dentist.

20.4(3) 20.4(4) A dental assistant may perform duties consistent with these rules under the supervision of a licensed dentist. The specific duties dental assistants may perform are based upon:

- a. The education of the dental assistant.
- b. The experience of the dental assistant.

ITEM 6. Rescind rule **650—20.5(153)**.

ITEM 7. Renumber rules **650—20.6(153)** and **650—20.7(153)** as **650—20.5(153)** and **650—20.6(153)**.

ITEM 8. Amend renumbered rules 650—20.5(153) and 650—20.6(153) as follows:

650—20.5(153) Categories of dental assistants: dental assistant trainee, registered dental assistant. There are two categories of dental assistants. Both the supervising dentist and the registered dental assistant or dental assistant trainee are responsible for maintaining documentation of training. Such documentation must be maintained in the office of practice and shall be provided to the board upon request.

20.5(1) Registered dental assistant. Registered dental assistants are individuals who have met the requirements for registration and have been issued a certificate of registration. A registered dental assistant may, under general supervision, perform dental radiography, intraoral suctioning, use of a curing light and intraoral camera, and all extraoral duties that are assigned by the dentist and are consistent with these rules. During intraoral procedures, the registered dental assistant may, under direct supervision, assist the dentist in performing duties assigned by the dentist that are consistent with these rules. The registered dental assistant may take radiographs if qualified pursuant to 650—Chapter 22.

20.5(2) Dental assistant trainee. Dental assistant trainees are all individuals who are engaging in on-the-job training to meet the requirements for registration and who are learning the necessary skills under the personal supervision of a licensed dentist. Trainees may also engage in on-the-job training in dental radiography pursuant to 650—22.3(136C,153).

- a. No change.
- b. *Trainee restart.*

(1) Reapplying for trainee status. A trainee may “start over” as a dental assistant trainee provided the trainee submits an application in compliance with subrule ~~20.7(1)~~ 20.6(1).

- (2) to (4) No change.
- c. No change.

650—20.6(153) Registration requirements after July 1, 2001. Effective July 2, 2001, dental assistants must meet the following requirements for registration:

20.6(1) Dental assistant trainee.

- a. to c. No change.

d. Prior to the trainee status expiration date, the dental assistant trainee’s supervising dentist must ensure that the trainee has received a certificate of registration or has been issued start-over trainee status in accordance with rule ~~650—20.6(153)~~ 650—20.5(153) before performing any further dental assisting duties.

20.6(2) Registered dental assistant.

- a. No change.

DENTAL BOARD[650](cont'd)

b. Applications for registration as a registered dental assistant must be filed on official board forms and include the following:

- (1) No change.
- (2) Evidence of meeting the requirements specified in ~~20.7(2)“a.”~~ 20.6(2)“a.”
- (3) to (9) No change.

~~20.6(3) Rescinded IAB 9/17/03, effective 10/22/03.~~

~~20.6(4)~~ 20.6(3) All applications must be signed and verified by the applicant as to the truth of the documents and statements contained therein.

~~20.6(5) Review of applications.—The board shall follow the procedures specified in 650—11.8(147,153) in reviewing applications for registration and qualification.~~

ITEM 9. Adopt the following new rule 650—20.7(153):

~~650—20.7(153)~~ **Review of applications.** The board shall follow the procedures specified in rule 650—11.8(147,153) in reviewing applications for registration and qualification.

ITEM 10. Adopt the following new 650—Chapter 23:

CHAPTER 23
EXPANDED FUNCTIONS

~~650—23.1(153)~~ **Definitions.** As used in this chapter:

“*Accredited school*” means a dental, dental hygiene, or dental assisting education program accredited by the Commission on Dental Accreditation (CODA).

“*Clinical training*” means training which includes patient experiences.

“*Didactic training*” means educational instruction.

“*Direct supervision*” means that the dentist is present in the treatment facility, but it is not required that the dentist be physically present in the treatment room.

“*Fabrication*” means the construction or creation of an impression, occlusal registration or provisional restoration, as defined in this chapter.

“*General supervision of a dental assistant*” means that a dentist has examined the patient and has delegated the services to be provided by a registered dental assistant, which are limited to all extraoral duties, dental radiography, intraoral suctioning, use of a curing light, intraoral camera, and recementation of a provisional restoration. The dentist need not be present in the facility while these services are being provided.

“*General supervision of a dental hygienist*” means that a dentist has examined the patient and has prescribed authorized services to be provided by a dental hygienist. The dentist need not be present in the facility while these services are being provided. If a dentist will not be present, the following requirements shall be met:

1. Patients or their legal guardians must be informed prior to the appointment that no dentist will be present and therefore no examination will be conducted at that appointment.
2. The hygienist must consent to the arrangement.
3. Basic emergency procedures must be established and in place, and the hygienist must be capable of implementing these procedures.
4. The treatment to be provided must be prior prescribed by a licensed dentist and must be entered in writing in the patient record.

“*Intermediate restorative material*” means any restorative material intended to remain in place for up to one year.

“*Laboratory training*” means training that is hands-on, that may include simulation, and that prepares a dental hygienist or dental assistant for patient experiences. Laboratory training can be done as part of an approved course, or obtained through a supervising dentist.

“*Observational supervision,*” for expanded functions, means the dentist is physically present in the treatment room to oversee and direct all services being provided as part of clinical training.

DENTAL BOARD[650](cont'd)

“*Patient experiences*” are procedures that are performed on a patient, during the course of clinical training, under the observational supervision of a dentist.

“*Prosthetic*” means any provisional or permanent restoration intended to replace a tooth or teeth.

“*Provisional restoration*” means a crown or bridge placed with the intention that the crown or bridge will be replaced with a permanent crown or bridge at a later date.

650—23.2(153) Expanded function requirements and eligibility.

23.2(1) A dental hygienist or dental assistant may only perform expanded function procedures upon successful completion of a board-approved course of training and certification by the board. All expanded functions must be delegated by and performed under the direct supervision of a dentist licensed pursuant to Iowa Code chapter 153, with two exceptions: the taking of occlusal registrations by a dental hygienist for purposes other than mounting study casts (Level 1) and the recementation of provisional restorations (Level 1). These exceptions may be performed under general supervision. Dental assistant trainees are not eligible to perform or receive training in expanded function procedures.

23.2(2) A dental hygienist or dental assistant shall not perform any expanded function procedures listed in this chapter unless the education and training requirements have been met and certification has been issued to the dental hygienist or dental assistant. This shall not preclude a dental hygienist or dental assistant from practicing expanded functions for training purposes while enrolled in a board-approved course of training.

23.2(3) To be eligible to train in Level 1 expanded functions, a dental hygienist or dental assistant must comply with one of the following:

- a. Hold an active dental hygiene license in Iowa; or
- b. Hold an active dental assistant registration, and comply with at least one of the following:
 - (1) Be a graduate of an accredited school; or
 - (2) Be currently certified by the Dental Assisting National Board (DANB); or
 - (3) Have at least one year of clinical practice as a registered dental assistant; or
 - (4) Have at least one year of clinical practice as a dental assistant in a state that does not require registration.

23.2(4) A dentist who delegates Level 1 or Level 2 expanded functions to a dental hygienist or dental assistant under direct supervision must examine the patient to review the quality of work prior to the conclusion of the dental appointment. The following expanded functions are exempt from this requirement and may be performed under general supervision:

- a. Recementation of a provisional crown by Level 1 dental hygienists and dental assistants.
- b. Recementation of a bridge restoration by Level 1 dental hygienists and dental assistants.
- c. Taking occlusal registrations for purposes other than mounting study casts by Level 1 dental hygienists only.

650—23.3(153) Expanded function categories.

23.3(1) *Basic Level 1.* Dental hygienists or dental assistants who train in some, but not all, Level 1 expanded functions are deemed to be basic expanded function dental hygienists or dental assistants. A dentist may delegate to a dental hygienist or dental assistant only those Level 1 expanded function procedures for which training has been successfully completed.

23.3(2) *Certified Level 1.* Expanded function dental hygienists or dental assistants who have successfully completed training for all Level 1 expanded function procedures are deemed to be certified Level 1 dental hygienists or dental assistants.

23.3(3) *Certified Level 2.* Before beginning training to become certified in Level 2, expanded function dental hygienists or dental assistants must have a minimum of one year of clinical practice as a certified Level 1 dental hygienist or dental assistant following issuance of Level 1 certification by the board and must successfully pass a board-approved entrance examination with a score of at least 75 percent.

a. A dental hygienist or dental assistant must successfully complete training for all Level 2 expanded function procedures before becoming certified in Level 2.

DENTAL BOARD[650](cont'd)

b. A dentist may delegate any Level 1 or Level 2 expanded function procedures to a dental hygienist or dental assistant who is certified in Level 2.

650—23.4(153) Level 1 expanded function procedures for dental assistants. Level 1 expanded function procedures for dental assistants include:

23.4(1) Taking occlusal registrations for the fabrication of dental appliances except for complete denture fabrication;

23.4(2) Placement and removal of gingival retraction cord;

23.4(3) Fabrication, temporary cementation, temporary recementation, and removal of provisional crowns or bridges placed with the intention that they will be replaced with a permanent crown or bridge at a later date;

23.4(4) Applying cavity liners and bases; desensitizing agents; and bonding systems, to include the placement of orthodontic brackets, following the determination of location by the supervising dentist;

23.4(5) Monitoring of patients receiving nitrous oxide inhalation analgesia, which may include increasing oxygen levels as needed, pursuant to the following:

a. A licensed dentist shall induce a patient and establish the maintenance level;

b. A dental assistant may make adjustments that decrease the nitrous oxide concentration during the administration of nitrous oxide;

c. A dental assistant may turn off the oxygen delivery at the completion of the dental procedure;

23.4(6) Taking final impressions, except for complete upper and lower dentures;

23.4(7) Removal of any adhesives (nonmotorized hand instrumentation only);

23.4(8) Placement of Class 1 intermediate restorative material, including lingual endodontic access, following preparation of a tooth by a dentist; and

23.4(9) Recementation of provisional restorations. The recementation of a provisional crown or bridge restoration is the only Level 1 function that shall be allowed under general supervision.

650—23.5(153) Level 1 expanded function procedures for dental hygienists. Level 1 expanded function procedures for dental hygienists include:

23.5(1) Taking occlusal registrations for the fabrication of dental appliances, except for complete denture fabrication, and for purposes other than mounting study casts;

23.5(2) Placement and removal of gingival retraction cord;

23.5(3) Fabrication, temporary cementation, temporary recementation, and removal of provisional crowns or bridges placed with the intention that they will be replaced with a permanent crown or bridge at a later date;

23.5(4) Applying cavity liners and bases; and bonding systems for restorative purposes, including the placement of orthodontic brackets, following the determination of location by the supervising dentist;

23.5(5) Taking final impressions, except for complete upper and lower dentures;

23.5(6) Placement of Class 1 intermediate restorative material, including lingual endodontic access, following preparation of a tooth by a dentist; and

23.5(7) Recementation of provisional restorations. The recementation of a provisional crown or bridge restoration is the only Level 1 expanded function that shall be allowed under general supervision.

650—23.6(153) Level 2 expanded function procedures for dental hygienists and dental assistants.

23.6(1) Level 2 expanded function procedures for dental hygienists and dental assistants include:

a. Placement and shaping of amalgam following preparation of a tooth by a dentist;

b. Placement and shaping of adhesive restorative materials following preparation of a tooth by a dentist;

c. Polishing of adhesive restorative material using a slow-speed handpiece;

d. Fitting of stainless steel crowns on primary posterior teeth, and cementation after fit verification by the dentist;

e. Making final impressions and occlusal registrations for the fabrication of dentures and partial dentures;

DENTAL BOARD[650](cont'd)

- f. Tissue conditioning (soft relines only);
 - g. Extraoral adjustment to acrylic dentures without making any adjustments to the prosthetic teeth;
- and

h. Placement of intracoronal temporary fillings following preparation of a tooth by a dentist.

23.6(2) These Level 2 expanded function procedures refer to both primary and permanent teeth except as otherwise noted.

650—23.7(153) Expanded function training.

23.7(1) *Level 1 expanded function training.* Expanded function training for Level 1 procedures must be board-approved. Clinical training in expanded functions must be completed under observational supervision. Level 1 expanded function training must consist of the following:

- a. An initial assessment to determine the base entry level of all participants in the program;
- b. Completion of a training program that meets the following minimum standards for each function:

(1) Taking occlusal registrations for the fabrication of dental appliances, except for removable prosthetics:

Goal: To reproduce the patient's jaw relationship accurately.

Standard: Demonstrate an accurate occlusal registration confirmed by a supervising dentist.

Minimum training requirement: One hour of didactic training, and clinical training that includes a minimum of five patient experiences under observational supervision.

(2) Placement and removal of gingival retraction cord:

Goal: To expose the margins of a crown by displacing tissue from the tooth.

Standard: Perform the procedural steps to place and remove retraction material and recognize oral conditions and techniques that may compromise tissue displacement or patient health.

Minimum training requirement: Two hours of didactic training, the equivalent of one hour of laboratory training that includes a minimum of three experiences, and clinical training that includes a minimum of five patient experiences under observational supervision.

(3) Fabrication, temporary cementation and removal of provisional crown and bridge restorations:

Goal: To replicate the anatomy and function of the natural tooth, prior to the final restoration.

Standard: Use various methods to fabricate and temporarily cement single-unit and multiunit provisional restorations.

Minimum training requirement: Four hours of didactic training, the equivalent of four hours of laboratory training that includes a minimum of five experiences, and clinical training that includes a minimum of ten patient experiences under observational supervision.

(4) Applying cavity liners and bases; desensitizing agents; and bonding systems, including the placement of orthodontic brackets following the determination of location by the supervising dentist:

Goal: To apply appropriate material that protects existing tooth structure and adheres existing tooth structure to restorative materials.

Standard: Manipulate and apply appropriate material to meet clinical competency.

Minimum training requirement: Two hours of didactic training, the equivalent of one hour of laboratory training that includes a minimum of two experiences, and clinical training that includes a minimum of five patient experiences in each one of these areas (for a total of 15 patient experiences under observational supervision).

(5) Monitoring of nitrous oxide inhalation analgesia:

Goal: Understand the equipment, recognize the signs of patient distress or adverse reaction, and know when to call for help.

Standard: Exercise the ability to maintain patient safety while nitrous oxide is used.

Minimum training requirement: Two hours of didactic training, one hour of laboratory training in the office where the dental hygienist or dental assistant is employed, and five patient experiences under observational supervision.

(6) Taking final impressions for the fabrication of fixed crown and bridge restorations:

Goal: Reproduce soft and hard oral tissues, digitally or with impression materials.

DENTAL BOARD[650](cont'd)

Standard: Complete the procedural steps to obtain a clinically acceptable final impression.

Minimum training requirement: Three hours of didactic training, and the equivalent of clinical training that includes a minimum of six patient experiences under observational supervision.

(7) Removal of adhesives and restorative materials (nonmotorized hand instrumentation only):

Goal: Remove excess adhesives and bonding materials to eliminate soft tissue irritation.

Standard: Identify how, when and where to remove excessive bonding or adhesive material.

Minimum training requirement: One hour of didactic training, and clinical training that includes a minimum of five patient experiences under observational supervision.

(8) Placement of Class 1 intermediate restorative material:

Goal: Place Class 1 intermediate restorative material following preparation of a tooth by a dentist.

Standard: Identify how, when and where to place Class 1 intermediate restorative material.

Minimum training requirement: One hour of didactic training, and clinical training that includes a minimum of five patient experiences under observational supervision.

(9) Recementation of provisional restorations:

Goal: Secure the provisional restoration to a previously prepared tooth after the provisional restoration has become loose or dislodged.

Standard: Use various methods to fabricate and temporarily cement single-unit and multiunit provisional restorations.

Minimum training requirement: If this training is completed in conjunction with training in fabrication, temporary cementation and removal of provisional crown and bridge restorations, the training requirements may be combined since the procedures are related. If this training is being completed separately, the same training requirements for fabrication, temporary cementation and removal of provisional restorations applies.

c. A postcourse written examination at the conclusion of the training program, with a minimum of ten questions per function, must be administered. Participants must obtain a score of 75 percent or higher on each examination administered.

23.7(2) Level 2 expanded function training. Expanded function training for Level 2 procedures shall be eligible for board approval if the training is offered through the University of Iowa College of Dentistry or another program accredited by the Commission on Dental Accreditation of the American Dental Association.

650—23.8(153) Expanded function certification—Level 1.

23.8(1) Dental hygienists and dental assistants who successfully complete board-approved training in all Level 1 expanded functions may apply for certification with the board. Dental hygienists and dental assistants who intend to train in Level 2 expanded functions must become certified in Level 1 expanded functions.

23.8(2) Applications for Level 1 expanded function certification must be filed on official board forms and include the following:

a. The fee as specified in 650—Chapter 15;

b. Evidence of successful completion of all Level 1 expanded function training through a board-approved course of training; and

c. Evidence of successful completion of a postcourse written examination for all Level 1 expanded functions.

23.8(3) Expanded function certification, when issued by the board, must be prominently displayed with the registration or license in each dental facility where expanded function services are provided.

650—23.9(153) Expanded function certification—Level 2.

23.9(1) Dental hygienists and dental assistants who successfully complete a board-approved Level 2 expanded function course of training must be certified by the board prior to performing those functions.

23.9(2) Applications for Level 2 expanded function certification must be filed on official board forms and include the following:

a. The fee as specified in 650—Chapter 15;

DENTAL BOARD[650](cont'd)

- b. Evidence of Level 1 expanded function certification;
- c. Evidence of successful completion of Level 2 expanded function training through a board-approved course of training; and
- d. Evidence of successful completion of a postcourse written examination.

23.9(3) Level 2 expanded function certification must be prominently displayed with the registration or license in each dental facility where expanded function services are provided.

These rules are intended to implement Iowa Code chapter 153.

ITEM 11. Amend paragraph **25.10(2)“f”** as follows:

- f. For dental assistants registered pursuant to rule ~~650—20.7(153)~~ 650—20.6(153), the current biennium renewal period, or portion thereof, following original issuance of the registration.

ARC 4421C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to NPDES general permit no. 6 and providing an opportunity for public comment

The Environmental Protection Commission hereby proposes to amend Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455B.198.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.173(11), 455B.186 and 455B.198.

Purpose and Summary

The purpose of this proposed rule making is to renew National Pollutant Discharge Elimination System (NPDES) General Permit No. 6 (GP6), which authorizes the discharge of wastewater associated with well construction activities. The permit requires the implementation of best management practices and requires visual monitoring of the wastewater effluent to determine compliance with the state’s water quality standards.

The rule making includes changes to GP6 in order to increase clarity and to comply with existing state rules. The renewed permit will include an authorization to discharge treated wastewater from drilling fluid and drilling mud if the discharge complies with Iowa’s narrative water quality criteria in subrule 61.3(2). Well drillers have recently improved their capability to treat the liquid portion of drilling fluid and drilling mud to the point that it will meet narrative water quality criteria. The renewed permit will also include a new limitation on coverage for discharges to outstanding Iowa waters (OIWs) so that GP6 complies with Iowa’s antidegradation rules in subparagraph 64.7(2)“f”(5). The antidegradation rules require individual NPDES permits for discharges to OIWs.

A copy of the proposed permit is available online at www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-General-Permits/GP6-Water-Wells.

Fiscal Impact

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Jobs Impact

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

Waivers

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

Public Comment

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

Wendy Hieb
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Fax: 515.725.8202
Email: wendy.hieb@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk and then be directed to the appropriate hearing location.

May 28, 2019
2 to 4 p.m.

Conference Room 4 East and West
Wallace State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrule 64.15(6) as follows:

64.15(6) “Discharge Associated with Well Construction Activities,” NPDES General Permit No. 6, effective March 1, ~~2015~~ 2020, to February 28, ~~2020~~ 2025.

ARC 4422C**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action****Proposing rule making related to antlerless-deer-only hunting licenses
and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6)"a," 481A.39 and 481A.48(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 481A.39 and 481A.48(1).

Purpose and Summary

Chapter 106, which governs deer hunting by residents in the state of Iowa, sets regulations for deer hunting and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements.

This rule making proposes two amendments to Chapter 106. First, the rule making adds Winneshiek County to the list of counties where a January antlerless-deer-only season is allowed. The addition of Winneshiek brings the total number of authorized January antlerless-deer-only season counties to five (Allamakee, Appanoose, Clayton, Wayne, and Winneshiek). This change, when coupled with increased antlerless-deer-only license quotas in those counties as discussed more below, will slow the spread of chronic wasting disease in this area of the state.

Second, the proposed rule making modifies the antlerless-deer-only license quotas in a total of 24 counties. Quotas are being increased in Adair, Allamakee, Appanoose, Clarke, Clayton, Davis, Delaware, Dubuque, Fayette, Howard, Jackson, Jones, Lucas, Madison, Marion, Monroe, Van Buren, Warren, Wayne, and Winneshiek Counties to reduce deer densities for disease control or to alleviate negative human-deer interactions. Quotas are being decreased in Bremer, Fremont, Mills, and Woodbury Counties to stabilize a healthy local population. Statewide, the overall proposed quota change is an increase of 3,525 licenses.

Fiscal Impact

This proposed rule making has no negative fiscal impact to the State of Iowa. Deer hunting has been relatively constant in Iowa for many years, and none of the proposed changes will substantially alter hunters' ability to purchase tags and pursue deer. Importantly, no license fee changes are proposed in this rule making. The Commission does anticipate a possibly minor increase in license sales from this proposed rule making due to the availability of 3,525 additional tags statewide. However, many of these tags will be free or low-cost (\$10) tags. Any revenue resulting from this proposed rule making shall be deposited into the State Fish and Game Protection Fund. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

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

NATURAL RESOURCE COMMISSION[571](cont'd)

Waivers

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

Public Comment

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 28, 2019. Comments should be directed to:

Tyler Harms, Wildlife Biometrician
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: tyler.harms@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk and be directed to the appropriate hearing location.

May 28, 2019
12 noon to 1 p.m.

Conference Room 4E
Wallace State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 106.6(4) as follows:

106.6(4) *January antlerless-deer-only licenses.* Licenses for the January antlerless-deer-only season shall be available in the following counties: Allamakee, Appanoose, Clayton, ~~and~~ Wayne, and Winneshiek. Prior to December 15, a hunter may purchase up to three January antlerless-deer-only licenses. Beginning December 15, an unlimited number of paid antlerless-deer-only licenses may be purchased for the January antlerless-deer-only season until the antlerless-deer-only quota as described in 106.6(6) is met in the aforementioned counties. These licenses may be obtained regardless of any other paid any-sex or paid antlerless-deer-only licenses that may have been obtained.

ITEM 2. Amend subrule 106.6(6) as follows:

106.6(6) *Antlerless-deer-only licenses.* Paid antlerless-deer-only licenses will be available by county as follows:

NATURAL RESOURCE COMMISSION[571](cont'd)

County	Quota	County	Quota	County	Quota
Adair	1025 <u>1200</u>	Floyd	0	Monona	850
Adams	1450	Franklin	0	Monroe	1950 <u>2250</u>
Allamakee	3700 <u>3800</u>	Fremont	400 <u>300</u>	Montgomery	750
Appanoose	2400 <u>2700</u>	Greene	0	Muscatine	775
Audubon	0	Grundy	0	O'Brien	0
Benton	325	Guthrie	1950	Osceola	0
Black Hawk	0	Hamilton	0	Page	750
Boone	300	Hancock	0	Palo Alto	0
Bremer	500 <u>400</u>	Hardin	0	Plymouth	0
Buchanan	300	Harrison	850	Pocahontas	0
Buena Vista	0	Henry	925	Polk	1350
Butler	150	Howard	350 <u>450</u>	Pottawattamie	850
Calhoun	0	Humboldt	0	Poweshiek	300
Carroll	0	Ida	0	Ringgold	1600
Cass	400	Iowa	450	Sac	0
Cedar	775	Jackson	825 <u>975</u>	Scott	200
Cerro Gordo	0	Jasper	775	Shelby	0
Cherokee	0	Jefferson	1650	Sioux	0
Chickasaw	375	Johnson	850	Story	150
Clarke	2100 <u>2400</u>	Jones	800 <u>950</u>	Tama	200
Clay	0	Keokuk	450	Taylor	1600
Clayton	3600 <u>3800</u>	Kossuth	0	Union	1500
Clinton	400	Lee	1275	Van Buren	2000 <u>2100</u>
Crawford	0	Linn	850	Wapello	1825
Dallas	1875	Louisa	675	Warren	2200 <u>2700</u>
Davis	1600 <u>1700</u>	Lucas	2200 <u>2500</u>	Washington	750
Decatur	2200	Lyon	0	Wayne	2400 <u>2700</u>
Delaware	800 <u>950</u>	Madison	2600 <u>3000</u>	Webster	0
Des Moines	800	Mahaska	475	Winnebago	0
Dickinson	0	Marion	1650 <u>1850</u>	Winneshiek	2375 <u>2500</u>
Dubuque	825 <u>975</u>	Marshall	150	Woodbury	625 <u>400</u>
Emmet	0	Mills	750 <u>500</u>	Worth	0
Fayette	1900 <u>2000</u>	Mitchell	0	Wright	0

ARC 4423C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rule making related to bag limits for bobcats
and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons," Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455A.5(6)“a,” 481A.38, 481A.39 and 481A.87.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 481A.87.

Purpose and Summary

Chapter 108 sets the season dates, bag limits, possession limits and areas open to hunting or trapping fur-bearing animals, including bobcats. This rule making is specific to bobcats and proposes to increase the bag limit for bobcats from one per fur harvester to three per fur harvester in the southern three tiers of counties (Adair, Adams, Appanoose, Cass, Clarke, Davis, Decatur, Des Moines, Fremont, Henry, Jefferson, Keokuk, Lee, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monroe, Montgomery, Page, Pottawattamie, Ringgold, Taylor, Union, Van Buren, Wapello, Warren, Washington, and Wayne). Population data from the past 12 years reveal that Iowa’s bobcat population continues to grow and expand its distribution into more counties with suitable habitat. These data are compiled from a variety of sources, such as hunter surveys, harvest information, field reports, and sightings. This proposed amendment is biologically responsible, as required by law, and will increase recreational opportunities for Iowa fur harvesters while helping minimize social issues associated with high bobcat densities.

Fiscal Impact

The proposed amendment may have a minor positive fiscal impact to the State Fish and Game Protection Fund. The proposed amendment will enable trappers and hunters to harvest additional bobcats in the affected counties, thereby potentially increasing fur harvester license sales. License revenues are deposited into the State Fish and Game Protection Fund, which is a constitutionally protected funding source for fish and wildlife activities in the state. A copy of the fiscal impact statement is available from the Department of Natural Resources (Department) upon request.

Jobs Impact

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

Waivers

This rule is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions.

Public Comment

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 28, 2019. Comments should be directed to:

Vince Evelsizer, Wildlife Biologist
Department of Natural Resources
1203 North Shore Drive
Clear Lake, Iowa 50428
Email: vince.evelsizer@dnr.iowa.gov

NATURAL RESOURCE COMMISSION[571](cont'd)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department's reception desk and be directed to the appropriate hearing location.

May 28, 2019
12 noon to 1 p.m.

Conference Room 4E
Wallace State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend subrule 108.7(3) as follows:

108.7(3) Seasonal bag limit. The seasonal bag limit for river otters is 2 river otters ~~and 1 bobcat~~ per person. The seasonal bag limit for bobcats is 1 bobcat per person in the following counties: Audubon, Cedar, Cherokee, Clinton, Crawford, Dallas, Guthrie, Harrison, Iowa, Jackson, Jasper, Johnson, Lyon, Monona, Muscatine, Plymouth, Polk, Poweshiek, Scott, Shelby, Sioux, and Woodbury. The seasonal bag limit for bobcats is 3 bobcats per person in the following counties: Adair, Adams, Appanoose, Cass, Clarke, Davis, Decatur, Des Moines, Fremont, Henry, Jefferson, Keokuk, Lee, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monroe, Montgomery, Page, Pottawattamie, Ringgold, Taylor, Union, Van Buren, Wapello, Warren, Washington, and Wayne. River otters or bobcats trapped in excess of the seasonal bag limit or in a closed area must be turned over to the department; the trapper shall not be penalized.

ARC 4418C

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

**Proposing rule making related to ignition interlock devices
and providing an opportunity for public comment**

The Department of Public Safety hereby proposes to amend Chapter 158, "Ignition Interlock Devices," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 321J.20.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321J.20.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Purpose and Summary

The purposes of the proposed amendments to Chapter 158, regarding ignition interlock devices (IIDs), are to increase the efficiency of the current IIDs that are required by Iowa law for all offenders of the state's OWI law and to provide better compliance-based monitoring. The amendments will require that camera technology be used in all instances where IIDs are installed in an offender's vehicles. Adding a camera to an ignition interlock device will help to ensure that the system is not being circumvented. Additional amendments are intended to assist IID providers with guidance on the requirement to report noncompliance to the Department of Transportation.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The fees that are incurred are paid by the participants.

Jobs Impact

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

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 28, 2019. Comments should be directed to:

Chandler Collins
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: collins@dps.state.ia.us

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 1. Amend rule 661—158.2(321J) as follows:

661—158.2(321J) Definitions. The following definitions apply to rules 661—158.1(321J) through 661—158.9(321J):

“Accuracy check” means the verification of the adjustment of an IID.

“Adjustment” means setting the measured alcohol result of an IID to the equivalent of the known alcohol value of the standard measured.

“Alcohol” means any member of the class of organic compounds known as alcohols and, specifically, ethyl alcohol.

“Alcohol standard” means either a certified wet bath simulator solution or a dry gas tank, at a known alcohol concentration.

“Authorized service provider” or “ASP” means a person or company meeting all qualifications outlined in this chapter and approved and trained by the manufacturer to service, install, monitor or calibrate check the accuracy of IIDs approved pursuant to this chapter.

“Breath alcohol concentration” or “BrAC” means the amount of alcohol determined by chemical analysis of the individual’s breath measured in grams of alcohol per 210 liters of breath.

“Bypassing” or “tampering” means the attempted or successful circumvention of the proper functioning of an IID including, but not limited to, the push start of a vehicle equipped with an IID;₂ disabling, disconnecting, or altering an IID;₂ or introduction of a breath sample into an IID other than a nonfiltered direct breath sample from the driver of the vehicle in order to defeat the intended purpose of the IID.

“DCI” means the Iowa division of criminal investigation.

“DOT” means the Iowa department of transportation, office of driver and identification services.

“Fail level” means a BrAC equal to or greater than 0.025 grams per 210 liters of breath, at which level the IID will prevent the vehicle from starting or will indicate a violation once the vehicle is running.

“Ignition interlock device” or “IID” means an electronic device that is installed in a vehicle and that requires the completion of a breath sample test prior to starting operating the vehicle and at periodic intervals after the vehicle has been started. If the IID detects an alcohol concentration of 0.025 grams or greater per 210 liters of breath, the vehicle shall be prevented from starting.

“Laboratory” means the division of criminal investigation criminalistics laboratory.

“Lessee” means a person who has entered into an agreement with a manufacturer or an ASP to lease an IID and whose driving privileges are contingent on the use of an IID.

“Lockout condition” means a situation in which a proper breath sample was not provided to an IID when required, or when a random retest results in an alcohol concentration equal to or greater than 0.025 BrAC. Once a lockout condition occurs, the IID shall be reset by the manufacturer or the ASP within five days, or the IID shall render the vehicle ignition incapable of starting the vehicle the vehicle becomes inoperable.

“Manufacturer” means the person, company, or corporation that produced the IID.

“Random retest” means a breath sample that is collected in a nonscheduled, random manner after the vehicle has been started.

“Single monitoring period” means a period of time from when the vehicle is started until the vehicle comes to a complete stop and the vehicle is turned off.

“User” means a person operating a vehicle equipped with an IID.

“Violation” means a condition caused by either (1) failure to provide a proper breath sample to the IID during a random retest, or (2) the IID indicating a concentration exceeding the maximum allowable concentration of 0.025 0.024 BrAC during a random retest, or (3) the IID indicating that bypassing the device or tampering with the device occurred or was attempted.

ITEM 2. Amend rule 661—158.3(321J) as follows:

661—158.3(321J) Approval. To be approved, an IID shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices, as published in the current Federal Register, April 7, 1992, pages 11772-11787. Only a notarized an independent statement

PUBLIC SAFETY DEPARTMENT[661](cont'd)

from a laboratory capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

158.3(1) No change.

158.3(2) At the discretion of the laboratory administrator, the laboratory may accept test results from other ~~public~~ independent laboratories or authorities.

158.3(3) The laboratory shall maintain a list of IIDs approved by the commissioner of public safety. The list is available without cost by writing to the Iowa Department of Public Safety, Division of Criminal Investigation, Criminalistics Laboratory, 2240 South Ankeny Blvd., Ankeny, Iowa 50023; by ~~telephoning~~ calling (515)725-1500; or by accessing the list on the laboratory's ~~Web site~~ website.

NOTE: As of ~~October 1, 2009~~ November 2016, the ~~Web site~~ website of the breath alcohol section of the laboratory is http://www.dps.state.ia.us/DCI/Crime_Lab/index.shtml [breathalcohol.iowa.gov](http://www.dps.state.ia.us/DCI/Crime_Lab/index.shtml).

158.3(4) No change.

ITEM 3. Amend rule 661—158.4(321J) as follows:

661—158.4(321J) Revocation of approval. The approval of an IID shall remain valid until either voluntarily surrendered by the manufacturer or until the approval of the IID has been revoked by the commissioner of public safety for cause.

158.4(1) Reasons for revocation include but are not limited to the following.

158.4(1) a. Evidence of repeated IID failures due to defects in design, materials, or workmanship during manufacture, installation, ~~or monitoring,~~ ~~or calibration~~ of the IID such that the accuracy ~~of the IID~~ or the reliability of the IID as approved is not being met as determined by the laboratory.

158.4(2) b. A pattern of evidence that the mandatory operational features of the IID as described in rule 661—158.6(321J) are not functioning properly.

158.4(3) c. A pattern of evidence indicating that the IID may be easily circumvented, tampered with, or bypassed.

158.4(4) d. Any ~~violation~~ illegality on the part of the manufacturer of the IID of any laws or regulations related to the installation, servicing, monitoring, and ~~calibration~~ accuracy checks of IIDs, ~~or failure of a manufacturer to address repeated violations by an ASP.~~

e. Failure of a manufacturer to address repeated infractions by an ASP.

158.4(5) f. Cancellation of the manufacturer's required liability insurance coverage.

158.4(6) g. Cessation of business operations by the manufacturer.

158.4(7) h. Failure to notify the laboratory in writing of any material modifications or alterations to the components or the design of the approved IID.

158.4(8) i. Failure of the manufacturer or an ASP to notify the DOT and the county attorney of the county of residence of the lessee within 30 days of the discovery of evidence of circumvention or tampering with ~~or attempting to bypass~~ an IID.

158.4(9) j. Evidence that the manufacturer or ASP(s), or its owners, employees, or agents, has committed any act of theft or fraud, deception or material omission of fact related to the distribution, installation, or operation of any IID subject to this chapter.

158.4(10) k. Revocation of approval in another state for any of the reasons for revocation listed in subrules 158.4(1) through 158.4(9). paragraphs 158.4(1) "a" to "k."

158.4(11) 158.4(2) A revocation shall be effective 30 days from the date of the letter sent to the manufacturer via certified mail, return receipt requested, unless ~~otherwise specified by the commissioner~~ an appeal is filed. ~~A copy of each notice of revocation shall be provided to the director of the Iowa department of transportation.~~

158.4(12) 158.4(3) Upon voluntary surrender or revocation, all IIDs subject to the surrender or revocation shall be removed and replaced by an approved IID within 60 days of the effective date of such surrender or revocation. The manufacturer or the ASP must notify all affected lessees of the surrender or revocation and the requirement that a new IID must be installed by an existing ASP within the time frame specified in this subrule. The cost associated with the removal of the IID and installation of a replacement IID will be the responsibility of the manufacturer of the revoked or voluntarily surrendered IID.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~158.4(13)~~ **158.4(4)** A revocation of a previously approved IID may be appealed to the department of public safety by the filing of an appeal in accordance with the procedures specified in rule 661—10.101(17A) within ten days of the issuance of the notice of revocation.

ITEM 4. Amend rule 661—158.5(321J) as follows:

661—158.5(321J) Modifications to an approved IID. The manufacturer shall inform the laboratory in writing of any modifications that will affect the accuracy, reliability, ease of use, or general function of the approved IID. The notification shall include, but not be limited to, a listing of those modifications that were made, those components that were redesigned or replaced, and any additional alterations. Each of these changes should also include a narrative explaining how the modifications or alterations will affect the accuracy, reliability, ease of use, or general function of the IID. The laboratory reserves the right to test the IID to determine if the IID meets or exceeds ~~the requirements established in this chapter~~ performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices, as published in the current Federal Register.

ITEM 5. Amend rule 661—158.6(321J) as follows:

661—158.6(321J) Mandatory operational features. In addition to any requirements established elsewhere in this chapter, an approved IID shall comply with the following.

158.6(1) No change.

158.6(2) The IID shall be designed and constructed so that ~~the ignition system of the vehicle in which it is installed will not be activated~~ operable if the breath alcohol concentration of the person using the IID exceeds ~~0.025~~ 0.024 BrAC.

158.6(3) The IID shall ~~prevent engine ignition if the IID has not been calibrated within 67 days subsequent to the last calibration. Calibration may be required more frequently at the discretion of the manufacturer or the ASP~~ utilize an alcohol-specific fuel cell technology.

EXCEPTION: The laboratory administrator may approve a device using fuel cell technology to be recalibrated within 187 days of the previous calibration provided that the device passes specific precision and functionality testing approved by the laboratory administrator and carried out by the laboratory or an independent laboratory acceptable to the laboratory administrator.

158.6(4) The IID shall ~~record every instance when the vehicle is started, the results of the breath sample test, how long the vehicle was operated, and any indications that the IID may have been tampered with or bypassed~~ require the use of camera technology for positive identification.

a. At installation, a reference picture of the lessee shall be taken and kept on file with the ASP or the manufacturer.

b. A photo shall be taken by the IID for each test event, including initial operation, all random retests and whenever a violation is recorded.

c. Camera technology should be maximized to provide the most benefit to the reviewer, including the use of available anticircumvention technology. In the event that anticircumvention technology is not available, a full cabin view may be required.

NOTE: On July 1, 2019, and thereafter, any IID installed in a vehicle in Iowa pursuant to this chapter, including a replacement for a device previously installed, shall utilize camera technology.

158.6(5) The IID shall ~~require the operator to submit to a random retest within 10 minutes of starting the vehicle. A minimum of two additional random retests shall occur within 60 minutes of starting the vehicle, and a minimum of two random retests shall occur within every 60 minutes thereafter. Random retests may be achieved during operation of the vehicle. The IID shall enter a lockout condition within five days if two or more violations are recorded in a single monitoring period. An IID may, at the discretion of the manufacturer or the ASP, enter a lockout condition on the basis of a single violation~~ a minimum of 1.5 liters of continuously delivered breath prior to the acceptance of the sample.

EXCEPTION: The breath volume can be lowered at the discretion of the laboratory in situations where a physician licensed under Iowa Code chapter 148 has certified in writing that the lessee suffers from a

PUBLIC SAFETY DEPARTMENT[661](cont'd)

physical or medical condition that prevents the lessee from providing the required breath volume and if the lowering of the breath volume is requested in advance by the ASP or manufacturer.

158.6(6) The IID shall permit a sample-free restart for a maximum period of two minutes unless the IID has initiated a random retest, in which case the operator must successfully perform a breath sample test before the vehicle may be restarted prevent engine ignition if the IID has not been checked for accuracy within 67 days subsequent to the last accuracy check. Accuracy checks may be required more frequently at the discretion of the manufacturer or the ASP.

EXCEPTION: The laboratory administrator may approve an IID that uses alcohol-specific fuel cell technology to be checked for accuracy within 187 days of the last accuracy check. In order to be approved, the IID must pass specific precision and functionality testing approved by the laboratory administrator and carried out by the laboratory or an independent laboratory.

158.6(7) The IID shall automatically and completely purge residual alcohol before allowing subsequent tests record every instance when the vehicle is operated, the results of the breath sample test, how long the vehicle was operated, and any indications that the IID may have been tampered with, bypassed, or circumvented.

158.6(8) The IID shall be installed in such a manner that it will not interfere with the normal operation of the vehicle after the vehicle has been started require the operator to submit to a random retest between 5 and 10 minutes of starting the vehicle. A minimum of two additional random retests shall occur within 60 minutes of starting the vehicle, and a minimum of one random retest shall occur every 60 minutes thereafter.

158.6(9) The IID shall be equipped with a method of immediately notifying peace officers if the retest required by subrule 158.6(5) is not performed or if the result of a random retest exceeds the alcohol concentration of 0.025 BrAC. Examples of acceptable forms of notification are repeated honking of the vehicle's horn and repeated flashing of the vehicle's headlights. Such notification may be disabled only by switching the engine off or by achievement of a retest at a level below 0.025 BrAC permit a sample-free restart for a maximum period of 2 minutes unless the IID has initiated a random retest, in which case the operator must successfully perform a breath sample test before the vehicle can be restarted.

158.6(10) Each IID shall be uniquely identified by a serial number. Along with any other information required by the DOT or by an originating court, all reports to the DOT or to an originating court concerning a particular IID shall include the name, address, and driver's license number of the lessee and the unique serial number of the IID. The name, address, telephone number, and contact person of the manufacturer or the ASP furnishing the report shall also be included as part of the report. The IID shall enter a lockout condition after five days if any of the following occurs.

a. Two or more violations within a single monitoring period.

EXCEPTION: A lockout condition may be entered on the basis of a single violation at the discretion of the manufacturer or ASP.

b. Four or more violations within any 60-day period.

c. Evidence of circumvention of or tampering with the IID.

d. Nonpayment of lessee's account by 30 days or more.

e. Failure to have the IID accuracy checked or serviced when required.

EXCEPTION: Lockout condition will occur seven days after a missed accuracy check.

158.6(11) The IID shall automatically and completely purge residual alcohol before allowing subsequent tests.

158.6(12) The IID shall be installed in such a manner that it will not interfere with the normal operation of the vehicle.

158.6(13) The IID shall be equipped with a method to immediately notify peace officers if the retest required by subrule 158.6(8) is not performed or if the result of a random retest exceeds the alcohol concentration of 0.024 BrAC. Examples of acceptable forms of notification are repeated honking of the vehicle's horn, repeated flashing of the vehicle's headlights, or both. Such notification may be disabled only by switching the engine off or by achievement of a retest at a level below 0.024 BrAC.

158.6(14) Each IID shall be uniquely identified by a model name and serial number.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

158.6(15) All reports to the DOT or to an originating court concerning a particular IID shall include the name, address, and driver's license number of the lessee; the year, make, model and vehicle identification number of the lessee's vehicle; the unique serial number of the handset of the IID; and any other information required or requested by the DOT. The name, address, telephone number, and contact person of the manufacturer or the ASP furnishing the report shall also be included as part of the report.

ITEM 6. Amend rule 661—158.7(321J), introductory paragraph, as follows:

661—158.7(321J) IID security. The manufacturer and its ASPs shall take all reasonable steps necessary to prevent ~~tampering with or physical~~ the circumvention of or tampering with the IID. These steps shall include the following.

ITEM 7. Amend rule 661—158.8(321J) as follows:

661—158.8(321J) IID maintenance and reports.

158.8(1) An IID utilized in accordance with the provisions of this chapter shall ~~have the calibration checked and shall be recalibrated~~ be checked for accuracy at least once every 60 days using either a certified wet bath simulator solution or dry gas standard found on the federal Conforming Products List of Calibrating Units for Breath Alcohol Testers. Accuracy checks shall be completed by the manufacturer or the ASP. Accuracy checks found to be within 0.005 grams per 210 liters or 5 percent, whichever is greater, of the reference standard will be considered accurate and no adjustment to the IID is required. ~~Calibration shall be completed by the manufacturer or the ASP.~~ In lieu of ~~calibration~~ an accuracy check of an installed IID, ~~an~~ the installed IID may be exchanged for another ~~calibrated~~ properly adjusted IID. The laboratory administrator may approve a device that employs fuel cell technology to be used for up to 180 days from the date of the previous ~~calibration~~, ~~provided that the device passes specific precision and functionality testing approved by the laboratory administrator and carried out by the laboratory or an independent laboratory acceptable to the laboratory administrator~~ accuracy check (see exception in subrule 158.6(6)). An IID shall automatically enter a lockout condition if the IID has not been ~~calibrated~~ checked for accuracy within ~~7~~ seven days after the deadlines established in this subrule.

158.8(2) The ~~calibration~~ service record for the IID currently installed in a vehicle pursuant to Iowa Code section 321J.4 and this chapter and for any other IID installed in the same vehicle shall be maintained by the manufacturer or the ASP. The record shall include, but not be limited to, the following:

- a. Name of the person performing the ~~calibration~~ accuracy check;
- b. Date;
- c. Value and type of standard used;
- d. Batch or lot number of standard;
- e. ~~Unit type and identification number of the IID; and~~ Expiration date of the standard;
- f. ~~Model and serial number of the IID~~;
- f. g. Description of the vehicle in which the IID is installed, including:
 - (1) Registration plate number and state;
 - (2) Make;
 - (3) Model;
 - (4) Vehicle identification number;
 - (5) Year; and
 - (6) Color.

158.8(3) The IID must be ~~calibrated~~ checked for accuracy according to the manufacturer's procedures. All data contained in the IID's memory must be downloaded, and the manufacturer or the ASP shall make a hard copy or the electronic equivalent of a hard copy of client data and results of each examination available to the DOT upon request.

158.8(4) All information obtained as a result of each inspection shall be retained by the manufacturer or the ASP for ~~five~~ three years from the date the IID is removed from the vehicle.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

158.8(5) Any manufacturer or ASP who discovers evidence of ~~tampering with or attempting to bypass an~~ circumventing an IID, a lockout event, tampering with an IID, attempting to bypass an IID, or photographic evidence of someone other than the driver providing a required sample into the IID shall, within 30 days of the discovery, prepare a report documenting the finding and notify the DOT and the county attorney of the county of residence of the lessee of that evidence.:

a. The DOT, and

b. The county attorney of the county of residence of the lessee (Iowa residents only).

158.8(6) ~~The manufacturer or the ASP must provide, upon request, additional reports in a format acceptable to, and at no cost to, the DOT and the DCI~~ When required or requested, the manufacturer or ASP must provide report forms, in a format that is acceptable to, and at no cost to, the DOT dealing with the installation; de-installation (removal); violations, including specifically violations due to the IID indicating a concentration exceeding the maximum allowable concentration of 0.024 BrAC; lockout events; evidence of circumvention of or tampering with an IID and any other additional information that is required by the DOT.

158.8(7) The manufacturer or the ASP shall notify the DOT within ~~40~~ ten days if an IID is not ~~calibrated~~ checked for accuracy within the time period specified in subrule 158.6(3).

ITEM 8. Amend rule 661—158.9(321J) as follows:

661—158.9(321J) Other provisions. In addition to any other applicable provisions of this chapter, each manufacturer of an approved IID, either on its own or through its ASPs, shall comply with the following provisions.

158.9(1) Each manufacturer and ASP of IIDs approved for use in Iowa pursuant to this chapter shall maintain general liability insurance coverage that is effective in Iowa and that has been issued by an insurance carrier authorized to operate in Iowa ~~by the Iowa division of~~. Each manufacturer must maintain general liability insurance in an amount of not less than \$1 million per occurrence and \$3 million in the aggregate. Each ASP must maintain general liability insurance in an amount of not less than \$100,000 per occurrence and \$300,000 in the aggregate. Each manufacturer and ASP shall ~~furnish~~ provide the DCI laboratory with proof of this insurance coverage in the form of a certificate of insurance from the insurance company issuing the policy. All insurance policies required by this subrule shall carry an endorsement requiring that the ~~DCI laboratory~~ be provided with written notice of cancellation of insurance coverage required by this subrule at least ten days prior to the effective date of cancellation.

158.9(2) Each manufacturer and ASP of IIDs approved for use in Iowa shall maintain an ~~E-mail~~ email address and a telephone number that are available 24 hours a day, 365 days a year, for lessees or users to contact the manufacturer or the ASP if lessees or users have problems with the IID leased from the manufacturer or the ASP.

158.9(3) Each manufacturer and ASP of IIDs approved for use in Iowa shall provide the lessee with instructions on how to properly use the IID. The instructions shall include recommending a 15-minute waiting period between the last ~~drink use of an alcoholic~~ use of an alcoholic a beverage that contains alcohol and the ~~time~~ of initial breath sample delivery into the IID.

158.9(4) No change.

158.9(5) The department of public safety, ~~or the DOT,~~ reserves the right to inspect any IID, manufacturer, or ASP at any time at the department's discretion. All records of IIDs installed, IIDs removed, results of calibrations accuracy checks, violations, evidence of attempted or successful circumvention of or tampering with an IID, and data logs, and results of known alcohol standards shall be made available for inspection upon request to any representatives of the department of public safety, the department of transportation, or any peace officer. Records shall be maintained for a minimum of three years after removal from the vehicle.

ARC 4416C**UTILITIES DIVISION[199]****Notice of Intended Action****Proposing rule making related to assessments
and providing an opportunity for public comment**

The Utilities Board hereby proposes to amend Chapter 17, “Assessments,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 477C and sections 476.10, 476.10A and 476.95B.

Purpose and Summary

The Utilities Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this review is to identify and update or eliminate rules that are outdated or inconsistent with statutes and other administrative rules.

On February 21, 2018, the Board issued an order requesting stakeholder comment on potential rule changes and shared proposed amendments to Chapter 17 with stakeholders and the public. The Board received and reviewed comments from the Office of Consumer Advocate, a division of the Iowa Department of Justice; Quest Corporation d/b/a CenturyLink QC; the Iowa Communications Alliance; Interstate Power and Light Company; MidAmerican Energy Company; the Iowa Association of Electric Cooperatives; and the Iowa Association of Municipal Utilities.

The Board issued an order on April 19, 2019, commencing this rule making. The order is available on the Board’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2016-0025.

Fiscal Impact

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

Jobs Impact

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

Waivers

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 28, 2019. Comments should be directed to:

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

UTILITIES DIVISION[199](cont'd)

Public Hearing

An oral presentation at which persons may present their views orally or in writing will be held as follows:

June 13, 2019
9 to 11 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 199—17.1(475A,476,546) as follows:

199—17.1(475A,476,546) Purpose. ~~The purpose of this chapter is to describe and implement the method the board uses to assess expenses incurred by the board and the consumer advocate on utilities and other parties pursuant to Iowa Code Supplement section 476.10 and Iowa Code section 476.101(10) sections 476.10, 476.10A, and 476.95B and chapter 477C. Rules in this chapter refer to the Iowa Code sections and rules that govern assessments under Iowa Code chapters 478, 479, 479A, and 479B. As used in this chapter, a reference to expenses of the board includes expenses of the entire utilities division. The consumer advocate shall determine and certify the consumer advocate's direct and remainder assessments to the board pursuant to Iowa Code section 475A.6. In determining whether to directly assess a person, the consumer advocate may consider the factors under rule 199—17.4(476).~~

ITEM 2. Amend rule 199—17.2(475A,476) as follows:

199—17.2(475A,476) Definitions. The following definitions apply to the rules in this chapter.

17.2(1) A “direct assessment” is the charge to a person bringing a proceeding or matter before the board or to persons participating in proceedings or matters before the board:

~~a. For and includes expenses incurred by the board attributable to the board's duties related to such proceeding or matter; and~~

~~b. For certified expenses incurred and directly chargeable by the consumer advocate in the performance of its duties related to such proceeding or matter.~~

~~The term “person” includes any legal entity. However, “person” does not include the consumer advocate.~~

17.2(2) An “industry direct assessment” is the charge to the utilities in a specific industry for expenses associated with regulation of that specific industry that are not directly assessed. An industry direct assessment includes a direct assessment in a specific industry for which no person is directly assessed under rule 199—17.4(476). The industries assessed are as follows:

a. Electric utilities are assessed for expenses associated with electric service, including expenses associated with the board's participation in or consideration of regional and federal issues.

b. Natural gas utilities are assessed for expenses associated with natural gas service, including expenses associated with the board's participation in or consideration of regional and federal issues.

UTILITIES DIVISION[199](cont'd)

c. Water utilities are assessed for expenses associated with water service, including expenses associated with the board's participation in or consideration of regional and federal issues.

d. Sanitary sewer utilities are assessed for expenses associated with sanitary sewer services.

e. Storm water drainage utilities are assessed for expenses associated with storm water drainage services.

f. Telecommunications companies, including all companies providing local exchange service and interexchange service in Iowa whether by landline or voice over Internet protocol, are assessed for expenses associated with telecommunications service, including expenses associated with the board's participation in or consideration of regional and federal issues.

~~17.2(2)~~ 17.2(3) A "remainder assessment" is the charge to all persons providing service over which the board has jurisdiction for the total expenses incurred during each fiscal year in the performance of the board's duties under law ~~and the certified expenses of the consumer advocate~~ after deducting the direct assessments, industry direct assessments, and other revenues. ~~The remainder assessment may consist of two parts: expenses that can be identified with a specific type of utility service, and expenses that cannot be so identified.~~

~~17.2(3)~~ 17.2(4) "Overhead expenses" are all operating costs of the board ~~and the consumer advocate excluding salaries and related benefit costs borne by the state~~ not directly attributable to a proceeding or matter, or a specific industry, which are included in direct and industry direct assessments.

~~17.2(4)~~ 17.2(5) "Gross operating revenues from intrastate operations" include all revenues from Iowa intrastate utility operations during the last calendar year, except ~~uncollectible~~:

a. Uncollectible revenues, amounts

b. Amounts included in the accounts for interdepartmental sales and rents, and gross

c. Gross receipts received by a cooperative corporation or association for wholesale transactions with members of the cooperative corporation or association, provided that the members are subject to assessment by the board based upon the members' gross operating revenues, or provided that such member is an association whose members are subject to assessment by the board based upon the members' gross operating revenues.

17.2(6) As used in this chapter, a reference to expenses of the board includes expenses of the entire utilities division.

17.2(7) A "person" includes individuals and legal entities as defined in Iowa Code section 4.1(20), except the definition does not include the consumer advocate.

17.2(8) An "individual" is a human being as distinguished from legal entities.

17.2(9) Industry direct assessments and remainder assessments for gas and electric utilities exempted from rate regulation by the board shall be computed at one-half of the rate used in computing industry direct assessments and remainder assessments for other persons.

ITEM 3. Amend rule 199—17.3(476) as follows:

199—17.3(476) Expenses to be included in direct assessments. ~~In its direct assessments, the board does not bill more than costs assigned to a docket.~~ Direct assessments include the following expenses:

~~17.3(1)~~ 17.3(1) Salaries of board ~~and consumer advocate~~ employees are computed at an expertise level on an hourly rate obtained by dividing the individual's merit class average annual salary and related benefit and related costs borne by the state by the appropriate number of standard working hours for the year.

~~The time of all board and consumer advocate employees engaged on the matter for which a direct assessment is to be made, whether on the property of a public utility, in the offices of the board, or elsewhere, including travel time, is included.~~

~~17.3(2)~~ 17.3(2) Travel expenses incurred in an investigation or in rendering services by the board ~~and the consumer advocate personnel~~ or by others employed by the board ~~or consumer advocate~~ are included. Travel expenses include costs of transportation, lodging, meals and other normal expenses attributable to traveling.

~~17.3(3)~~ 17.3(3) Costs of ~~necessary~~ consultants, contractors, facilities, ~~or~~ and equipment ~~are included if~~ directly related to a proceeding or matter.

UTILITIES DIVISION[199](cont'd)

~~17.3(4)~~ Overhead expenses of the board and the consumer advocate reasonably attributable to activities of the board and consumer advocate that can be directly assessed under Iowa Code Supplement section 476.10 or Iowa Code section 476.101(10) are included. The following method is used to calculate the overhead expense factor used to calculate the overhead expenses reasonably attributable to activities of the board and consumer advocate.

~~a.~~ The overhead expense factor used in direct billing overhead expenses is recalculated and implemented with the July billing each year. The overhead expense factor is determined using the following formula:

$$\frac{\text{20XX Fiscal Year Overhead Expense Factor}}{\text{20XX Approved Budget Fiscal Year Expenditures}} = \frac{\text{20XX Approved Budget Fiscal Year Expenditures}}{\text{20XX Approved Budget Fiscal Year Salaries}}$$

~~b.~~ The “Approved Budget Fiscal Year Expenditures” and “Approved Budget Fiscal Year Salaries” are for those of the board and the consumer advocate added together.

~~c.~~ For each merit class salary, the overhead expense factor is multiplied by the salary computed pursuant to subrule 17.3(1) to produce the hourly rate to be charged in the direct assessment.

ITEM 4. Amend rule 199—17.4(476) as follows:

199—17.4(476) Direct assessments under Iowa Code Supplement section 476.10.

~~17.4(1)~~ **Applicability.** This rule applies only to direct assessments under Iowa Code Supplement section 476.10. The following persons shall not be directly assessed for participating in a board proceeding or matter unless the board issues an order finding that the person may be directly assessed for that participation:

~~17.4(2) a.~~ The board will not directly assess an An individual who files a complaint against a public utility, so long as the individual’s participation in the proceeding is in good faith.

~~b.~~ The board will not directly assess an An individual who files a protest or inquiry or intervenes in a proceeding involving a rate change by a public utility, so long as the individual’s participation in the proceeding is in good faith.

~~c.~~ The board will not directly assess any Any person for filing written or oral comments in a rule-making proceeding.

~~17.4(3) d.~~ Ordinarily, the board will not directly assess a person who intervenes An intervenor in a board proceeding. However, the board may decide to directly assess a person who intervenes if the board determines that the person’s intervention or participation is not in good faith, the board determines the intervention significantly expands the scope of the proceeding without contribution to the public interest, or the board determines there are unusual circumstances warranting assessment. ~~If the board determines there are unusual circumstances warranting assessment, it will issue an order at the earliest reasonable opportunity.~~

~~17.4(4)~~ **17.4(2)** The board considers the following factors in deciding whether to directly assess a person as defined in subrule 17.2(7), and the amount to be directly assessed, pursuant to Iowa Code Supplement section 476.10.

~~a.~~ Whether the person’s intervention and participation in a board proceeding expanded the scope of the proceeding without contributing to the public interest.

~~b.~~ Whether the person’s intervention and participating participation in a board proceeding was in good faith.

~~c.~~ The financial resources of the person.

~~d.~~ The impact of assessment on participation by intervenors.

~~e.~~ The nature of the proceeding or matter.

~~f.~~ The contribution of the person’s participation to the public interest.

~~g.~~ Whether directly assessing costs would be fair and in the public interest.

~~h.~~ Other factors deemed appropriate by the board in a particular case.

UTILITIES DIVISION[199](cont'd)

~~17.4(5)~~ The board may decide not to directly assess a person after considering the factors in subrule 17.4(4).

~~17.4(6)~~ In determining the financial resources of the person in 17.4(4) “c” above, the board may use revenue information previously submitted by the person to the board. If the person has not previously provided revenue information to the board, or has submitted incomplete information, the board may request that the person submit revenue information and, if the person does not do so, may make assumptions regarding the person’s financial resources for purposes of the direct assessment.

~~17.4(7)~~ Most Iowa Code section 476.97 proceedings are considered for direct assessment under Iowa Code Supplement section 476.10 and this rule. The only exception is a section 476.97 complaint brought under section 476.101(8), which is assessed under section 476.101(10).

ITEM 5. Amend rule 199—17.5(476) as follows:

199—17.5(476) Reporting of operating revenues. Each year, the board sends an annual report form to every public utility. On or before April 1 of each year, every public utility shall file with the board its annual a report that includes a verified report, on forms prescribed by the board, showing its the utility’s gross operating revenues from Iowa intrastate operations during the preceding calendar year. Such revenues are to be reported on the accrual basis or the cash basis consistent with the annual report filed with the board.

ITEM 6. Amend rule 199—17.6(475A,476) as follows:

199—17.6(475A,476) Compilation and billing of assessment.

~~17.6(1) *Direct assessments.*~~ The board shall ascertain, and add to the direct assessment, determine its own expenses to be billed and shall add the certified expenses incurred by the consumer advocate directly chargeable to the person. The board does not review the expenses certified to it by the consumer advocate. The board may present a bill for the direct assessment to any person either at the conclusion of the proceeding or matter, or from time to time during its progress.

~~17.6(2) *Remainder assessments.*~~

~~a.~~—The revenues for the remainder assessment shall be compiled by the board based on the report provided pursuant to rule 17.5(476).

~~b.~~—The board shall ascertain the total of the division’s expenses incurred during each fiscal year and add to it the certified expenses of the consumer advocate. Next, the board shall add together all amounts directly assessed, pipeline assessments, electric transmission line assessments, federal reimbursements, and miscellaneous reimbursements. This total shall be deducted from the total of the division’s and consumer advocate’s expenses. The remaining amount is the amount to be recovered through the remainder assessment. Subject to paragraphs 17.6(2) “c” and “d,” the board may assess the remaining amount to all persons providing service over which the board has jurisdiction in proportion to the respective gross operating revenues of such persons from Iowa intrastate operations over which the board has jurisdiction during the last calendar year.

~~c.~~—If any portion of the remainder can be identified with a specific type of utility service, the board shall assess those expenses only to the entities providing that type of service over which the board has jurisdiction.

~~d.~~—The remainder assessments for gas and electric public utilities exempted from rate regulation pursuant to Iowa Code chapter 476 will be computed at one-half the rate used to compute the assessment for other persons.

~~e.~~—The board may make the remainder assessments on a quarterly basis, based upon estimates of the expenditures for the fiscal year for the division and the consumer advocate. The board shall conform the amount of the estimated prior fiscal year’s assessments to the actual fiscal year expenditures not more than 90 days following the close of the fiscal year.

UTILITIES DIVISION[199](cont'd)

~~f. If a utility has gross operating revenue of \$50,000 or less for the prior calendar year, the board may decide not to bill the utility for its share of the remainder assessment.~~

~~17.6(3) 17.6(2) The bill or accompanying letter of transmittal to each utility shall indicate the assessable revenue for the utility, the rate at which the assessment was computed, and the assessment amount. Bills Unless otherwise ordered by the board, bills must be paid within 30 days of receipt unless an objection is filed in writing pursuant to Iowa Code Supplement section 476.10. In the event an objection is filed under rule 199—17.10(476,475A), the portion of the bill not contested must be paid within 30 days of receipt. The board shall develop procedures for the collection of unpaid bills.~~

~~17.6(3) A person participating in a board proceeding or matter may file a request in that proceeding or matter for the board to determine how the expenses of that proceeding or matter will be assessed.~~

ITEM 7. Amend rule 199—17.7(476) as follows:

199—17.7(476) Funding of Iowa energy center and center for global warming center and regional environmental research. The board will send a bill to each gas and electric utility for funding the Iowa energy center and center for global warming center and regional environmental research. Within 30 days of receipt of the bill, each gas and electric utility shall remit to the utilities division of the department of commerce a check made payable to the treasurer of state for one-tenth of one percent of the total gross operating revenue during the last calendar year derived from its intrastate public utility operations for the funding of the Iowa energy center and center for global warming center and regional environmental research. ~~This remittance shall not be represented on customers' bills as a separate item.~~

ITEM 8. Amend rule 199—17.8(476) as follows:

199—17.8(476) Assessments under Iowa Code section ~~476.101(10)~~ 476.95B.

17.8(1) Applicability. This rule applies to assessments under Iowa Code section ~~476.101(10)~~ 476.95B.

17.8(2) In making assessments under Iowa Code section ~~476.101(10)~~ 476.95B, the board will allocate costs and expenses to all parties and participants. The allocation will not necessarily be an equal allocation.

17.8(3) The specific method of allocation will be made on a case-by-case basis, and ~~ordinarily~~ will be included in the final order in the docket, unless otherwise ordered by the board.

17.8(4) The factors the board will consider may include, but are not limited to, Iowa revenues, grouping of parties and participants on the basis of position on the issues, and the factors under rule ~~199—17.4(476)~~. Joint participation by ~~similarly oriented parties and participants~~ parties with similar positions on the issue will be encouraged by favorable allocations.

17.8(5) ~~The most recent revenue reports filed pursuant to rule 17.5(476) will be used to determine assessments, if available. If the participant has not previously provided revenue information to the board, or has provided incomplete revenue information, the board may request that the participant submit revenue information. If the participant does not do so, the board may make assumptions regarding the participant's revenue for purposes of the assessment. The board may make adjustments to the revenue figures as appropriate for the particular type of case.~~

ITEM 9. Rescind rule 199—17.9(478,479,479A,479B) and adopt the following new rule in lieu thereof:

199—17.9(477C) Assessments of expenses for dual party relay service program and equipment distribution program.

17.9(1) Wireless carriers and wireline local exchange carriers providing telecommunications services in Iowa shall comply with Iowa Code section 477C.7 for payment of assessments to fund the dual party relay service program and equipment distribution program. Those carriers shall pay assessments in the amount of three cents per month for each telecommunications service phone number. "Telecommunications service phone number" means a revenue-producing telephone number.

UTILITIES DIVISION[199](cont'd)

17.9(2) Wireless carriers and wireline local exchange carriers shall file the number of telecommunications service phone numbers with the payment required by Iowa Code section 477C.7. The number of telecommunications service phone numbers may be filed as confidential and may be withheld from public inspection pursuant to the procedures in 199—subrule 1.9(8).

17.9(3) The board shall periodically audit the payment of Iowa Code section 477C.7 assessments for any purpose the board deems necessary, including, but not limited to, examining whether wireless carriers and wireline local exchange carriers providing telecommunications services in Iowa are paying assessments in appropriate amounts.

ITEM 10. Adopt the following new rule 199—17.10(476,475A):

199—17.10(476,475A) Objection procedures.

17.10(1) A person subject to an assessment shall either pay the amount assessed or file an objection to the assessment as set forth in this rule within 30 days of the date the board provides notice of the amount due to the person.

17.10(2) An objection must be in writing and must set forth the specific grounds upon which the person claims the assessment is excessive, unreasonable, erroneous, unlawful, or invalid. The objection shall identify whether the person objects to the assessment of expenses certified by the board, to the assessment of expenses certified by the consumer advocate, or both. If the person wishes to orally present argument to the board, the request for oral argument must be included in the objection. Absent a request for oral argument, the board will consider the objection based solely on the submission of written evidence and argument. The person may include with the objection such evidence or information the person believes relevant to support the person's claim.

17.10(3) Upon receipt of an objection as described in subrule 17.10(2), the objection will be assigned a docket number in the board's electronic filing system, which shall include all filings pertaining to the objection. The consumer advocate shall receive notice of the objection through the board's electronic filing system.

17.10(4) This rule does not preclude the consumer advocate or board staff from directly resolving an objection concerning the assessment of expenses certified by the consumer advocate with the person raising the objection. In the event an objection is informally resolved, the fact that a resolution has occurred shall be filed in the docket.

17.10(5) If the objection concerns the assessment of expenses certified by the consumer advocate, within 30 days from the date of the objection, the consumer advocate may file responsive argument, evidence, and other information with the board. In the event the person filing an objection has not requested oral argument, the consumer advocate may request oral argument.

17.10(6) If oral argument is requested or if the objecting person or the consumer advocate requests additional opportunity to submit written argument and evidence, the board will issue a scheduling order. At the time and place for oral argument, the objecting person and the consumer advocate, if applicable, will be afforded the opportunity to present argument to the board.

17.10(7) Following the final submission of written material or oral argument, the board shall issue an order in accordance with its findings. In the event the board affirms the assessment, in whole or in part, the person shall pay the amount identified in the board's order within 30 days from the date of the order.

17.10(8) The objection procedures set forth in this rule may not be used by a person to challenge or revisit a direct assessment determination made in a final board order, including those issued under subrule 17.6(3). An objection to a direct assessment determination made in a final board order must be brought pursuant to Iowa Code section 476.12 or the judicial review procedures in Iowa Code chapter 17A.

17.10(9) Board expenses incurred in an objection proceeding shall be included in industry direct assessments.

UTILITIES DIVISION[199](cont'd)

ITEM 11. Adopt the following new rule 199—17.11(476,477C):

199—17.11(476,477C) Refunds. If a person makes a payment in excess of the assessed amount, the board may issue a refund to the person for the excess amount or credit the excess amount toward the person's next assessment. For overpayments of less than \$50, absent exigent circumstances, the board will not issue a refund and will hold the excess amount as a credit toward the person's next assessment through the fiscal year in which the overpayment occurred. If a credit remains at the end of the fiscal year in which the overpayment occurred, the board will issue a refund for any excess amount remaining.

ARC 4417C

UTILITIES DIVISION[199]

Notice of Intended Action

Proposing rule making related to electric vehicle charging services and providing an opportunity for public comment

The Utilities Board hereby proposes to amend Chapter 20, "Service Supplied by Electric Utilities," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 476.1 and 476.25.

Purpose and Summary

On July 27, 2018, Iowa 80 Truckstop, Inc. and Truckstops of Iowa, Inc. (collectively Truckstops), filed a Petition for Declaratory Order with the Utilities Board challenging an Interstate Power and Light Company (IPL) tariff which prohibited IPL electric customers from providing electric vehicle charging services at commercial and public stations on a per kWh basis. On August 27, 2018, the Board denied the request for declaratory relief and instead initiated a rule making regarding electric vehicle charging infrastructure and charging in Docket No. RMU-2018-0100. On October 17, 2018, the Board held a workshop and received 23 comments. From the utility industry, the Board received comments from the Iowa Association of Municipal Utilities (IAMU), MidAmerican Energy Company (MidAmerican), IPL, and the Iowa Association of Electric Cooperatives (IAEC). The Board also received comments from businesses, including the Truckstops; Tesla, Inc.; Siemens Digital Grid; ChargePoint, Inc.; and Kwik Trip, Inc. Other stakeholders filed comments, including the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; the Environmental Law and Policy Center and the Iowa Environmental Council (Environmental Advocates); the Iowa Chapter of the Sierra Club (Sierra Club); Americans for Prosperity; the Energy Equality Coalition; the Electric Auto Association; and the Alliance for Transportation Electrification.

Taking into consideration the information presented at the workshop and the comments received, on February 6, 2019, the Board issued an order requesting stakeholder comment on potential rule changes in which the Board requested comments on proposed rule language for Chapter 20. The Board received comments from the Truckstops, OCA, the Environmental Advocates, the Sierra Club, IAEC and IAMU, IPL, the Alliance for Transportation Electrification, MidAmerican, Greenlots, ChargePoint, Inc., and other interested individuals.

The Board issued an order on April 19, 2019, commencing this rule making. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2018-0100.

UTILITIES DIVISION[199](cont'd)

Fiscal Impact

Because proposed rule 199—20.20(476) simply clarifies that electric vehicle charging stations are not public utilities so the stations do not fall under the scope of the Board's regulatory authority, it is anticipated the amendment will have no fiscal impact.

Jobs Impact

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

Waivers

No waiver provision is included in the proposed amendment because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 28, 2019. Comments should be directed to:

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

Public Hearing

An oral presentation at which persons may present their views orally or in writing will be held as follows:

June 12, 2019
9 to 11 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** rule 199—20.20(476):

199—20.20(476) Electric vehicle charging service.

20.20(1) Electric energy sold for the purpose of electric vehicle charging at a commercial or public electric vehicle charging station constitutes neither the furnishing of electricity to the public nor the resale of electric service. If the electricity used for electric vehicle charging is obtained from a rate-regulated

UTILITIES DIVISION[199](cont'd)

public utility, the terms and conditions of the service to the electric vehicle charging station shall be governed by and subject to the utility's filed tariff. A rate-regulated public utility shall not, through its filed tariff, prohibit electric vehicle charging or restrict the method of sale of electric vehicle charging at a commercial or public electric vehicle charging station.

20.20(2) A person, partnership, business association, or corporation, foreign or domestic, furnishing electricity to a commercial or public electric vehicle charging station shall comply with Iowa Code section 476.25.

20.20(3) Electric utilities and entities providing commercial or public electric vehicle charging shall comply with all applicable statutes and regulations governing the provision of electric vehicle charging service, including, but not limited to, all taxing requirements, and shall, if necessary, file all appropriate tariffs.

ARC 4419C**UTILITIES DIVISION[199]****Notice of Intended Action****Proposing rule making related to telecommunications service and providing an opportunity for public comment**

The Utilities Board hereby proposes to rescind Chapter 22, "Service Supplied by Telephone Utilities," and to adopt a new Chapter 22, "Regulation of Telecommunications Service," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 476.2 and 476.103.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 476.

Purpose and Summary

New statutory provisions affecting the Utilities Board's regulation of telecommunications service in Iowa became effective July 1, 2018. The new provisions exempt providers of telecommunications service from certain regulatory requirements in Iowa Code chapter 476 and establish requirements for those providers to register with the Board. In addition, the Board has over the past year been meeting with the telecommunications industry to discuss what rules are needed in the current deregulated regulatory environment. The Board is proposing to rescind its current rules in Chapter 22 and adopt a new Chapter 22 with updated provisions. The proposed chapter retains those provisions that the Board considers applicable to the current regulation of telecommunications service.

The Board issued an order commencing rule making on April 19, 2019. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2018-0022.

Fiscal Impact

The proposed rules will not have a financial impact on city utilities since the rules reflect the current competitive environment for telecommunications providers, including municipal telecommunications providers.

Jobs Impact

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

UTILITIES DIVISION[199](cont'd)

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 28, 2019. Comments should be directed to:

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

Public Hearing

An oral presentation at which persons may present their views orally or in writing will be held as follows:

June 13, 2019
1 to 3 p.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind 199—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
REGULATION OF TELECOMMUNICATIONS SERVICE

199—22.1(476) General information.

22.1(1) Application and purpose of rules. These rules shall apply to any telecommunications service provider operating within the state of Iowa subject to Iowa Code chapter 476, including local exchange utilities, interexchange utilities, or alternative operator services companies. These rules are intended to govern the exercise of the board's powers and duties relating to the provision of telecommunications service in the state of Iowa, and to govern the form, contents, and filing of registrations, tariffs, and other documents necessary to carry out the board's powers and duties. A request to waive the application of any rule on a permanent or temporary basis may be made in accordance with rule 199—1.3(17A,474,476).

UTILITIES DIVISION[199](cont'd)

22.1(2) Definitions. For the administration and interpretation of these rules, the following words and terms shall have the meanings indicated below:

“Alternative operator services company” or *“AOS company”* means a nongovernmental company which receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones. This definition is further limited to include only companies which provide operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones, and does not include services provided under contract to rate-regulated local exchange utilities.

“Board” means the Iowa utilities board.

“Calls” means telephone messages attempted by customers or users.

“Competitive local exchange carrier” or *“CLEC”* means a utility, other than an incumbent local exchange carrier, that provides local exchange service.

“Customer” means any person as defined in Iowa Code section 4.1(20) responsible by law for payment for communications service from the telephone utility.

“Exchange” means a unit established by a telephone utility for the administration of communications services.

“Exchange service” means communications service furnished by means of exchange plant and facilities.

“Exchange service area” or *“exchange area”* means the general area in which the telephone utility holds itself out to furnish exchange telephone service.

“High-volume access service” or *“HVAS”* is any service that results in an increase in total billings for intrastate exchange access for a local exchange utility in excess of 100 percent in less than six months. By way of illustration and not limitation, HVAS typically results in significant increases in interexchange call volumes and can include chat lines, conference bridges, call center operations, help desk provisioning, or similar operations. These services may be advertised to consumers as being free or for the cost of a long distance call. The call service operators often provide marketing activities for HVAS in exchange for direct payments, revenue sharing, concessions, or commissions from local service providers.

“Incumbent local exchange carrier” or *“ILEC”* means a utility, or successor to such utility, that was the historical provider of local exchange service pursuant to an authorized certificate of public convenience and necessity within a specific geographic area described in maps approved by the board as of September 30, 1992.

“Information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. The board does not have jurisdiction over information service.

“Interexchange service” is the provision of intrastate telecommunications services and facilities between local exchanges.

“Interexchange utility” means a utility, a resale carrier or other entity that provides intrastate telecommunications services and facilities between exchanges within Iowa, without regard to how such traffic is carried. A local exchange utility that provides exchange service may also be considered an interexchange utility.

“InterLATA toll service” means toll service that originates and terminates between local access transport areas.

“Internet protocol-enabled service” means any service, capability, functionality, or application that uses Internet protocol or any successor protocol and enables an end user to send or receive voice, data, or video communications in Internet protocol format or a successor format.

“IntraLATA toll service” means toll service that originates and terminates within the same local access transport area.

“Intrastate access services” are services of telephone utilities which provide the capability to deliver intrastate telecommunications services which originate from end users to interexchange utilities and the capability to deliver intrastate telecommunications services from interexchange utilities to end users.

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“*Local exchange service*” means telephone service furnished between customers or users located within an exchange area.

“*Local exchange utility*” means a registered telephone utility that provides local exchange service. The utility may also provide other services and facilities such as access services.

“*Message*” means a completed telephone call by a customer or user.

“*Rates*” means amounts billed to customers for alternative operator services or intrastate access services.

“*Retail services*” means those communications services furnished by a telephone utility directly to end-user customers. For an alternative operator services company, the terms and conditions of its retail services are addressed in an approved intrastate tariff.

“*Registration*” means compliance by all telecommunications service providers with Iowa Code chapter 476. Registration shall be in the form as provided by the board in 199—Chapter 23.

“*Tariff*” means the entire body of rates, classifications, rules, procedures, policies, etc., adopted and filed with the board by a local exchange utility for wholesale services, not governed by an interconnection agreement or commercial agreement, or by an alternative operator services company for retail services, in fulfilling its role of furnishing communications services.

“*Telecommunications service provider*” means a provider of local exchange or long distance telephone services, or both, other than commercial mobile radio service.

“*Telephone utility*” or “*utility*” means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing communications service to the public for compensation, but does not include a provider of Internet protocol-enabled service or voice over Internet protocol service with regard to the provider’s provision of such service to retail customers. The board shall not directly or indirectly regulate the entry, rates, terms, or conditions for Internet protocol-enabled service or voice over Internet protocol service, but voice over Internet protocol service may be subject to fees subsequently established by state or federal statute, rule, or requirement, such as 911 or dual party relay service.

“*Toll message*” means a message made between different exchange areas for which a charge is made, excluding message rate service charges.

“*Traffic*” means telephone call volume, based on number and duration of calls.

“*Transitional intrastate access service*” means annual reductions affecting terminating end office access service that was subject to intrastate access rates as of December 31, 2011; terminating tandem-switched transport access service subject to intrastate access rates as of December 31, 2011; and originating and terminating dedicated transport access service subject to intrastate access rates as of December 31, 2011.

“*Voice over Internet protocol service*” means an Internet protocol-enabled service that facilitates real-time, two-way voice communication that originates from, or terminates at, a user’s location and permits the user to receive a call that originates from the public switched telephone network and to terminate a call on the public switched telephone network.

“*Wholesale services*” means those communications services furnished by one telephone utility to another provider of communications services. The terms and conditions of wholesale services may be addressed in a telephone utility’s approved intrastate access tariff, local interconnection tariff, interconnection agreement reached under Sections 251 and 252 of the federal Telecommunications Act, or in a commercial agreement reached between the providers. Nothing in this chapter shall affect, limit, modify, or expand an entity’s obligations under Sections 251 and 252 of the federal Telecommunications Act; any board authority over wholesale telecommunications rates, services, agreements, interconnection, providers, or tariffs; or any board authority addressing or affecting the resolution of disputes regarding intercarrier compensation.

199—22.2(476) Tariffs.

22.2(1) Tariffs to be filed with the board. Telecommunications service providers required to file tariffs with the board, including alternative operator services companies and providers of wholesale services, shall maintain their tariffs in a current status. A copy of the tariffs shall be available upon

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request. The tariffs shall be classified, designated, arranged, and submitted so as to conform to the requirements of this chapter or board order. Provisions in the tariffs shall be definite and stated so as to minimize ambiguity or the possibility of misinterpretation. The form, identification, and content of tariffs shall be in accordance with these rules unless otherwise provided.

22.2(2) Form and identification. All tariffs shall conform to the following requirements:

a. The tariff shall be printed so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side. In the case of utilities subject to regulation by any federal agency, the format of the sheets of the tariff filed with the board may be the same format as is required by the federal agency, provided that the requirements of the board as to title page; identity of superseding, replacing or revising sheets; identity of amending sheets; identity of the filing utility, issuing official, date of issue and effective date; and the words "Filed with the board" shall be applied to modify the federal agency format for the purposes of filing with this board.

b. The title page of every tariff and supplement shall show the following in the order set forth below:

(1) The first page shall be the title page, which shall show:

Name of Public Utility

Telephone Tariff

Filed with

Iowa Utilities Board

_____ (date)

(2) When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on its title page that it is a revision of a tariff on file.

(3) When a revision or amendment is made to a filed tariff, the revision or amendment shall show on each sheet the designation of the original tariff or the number of the immediately preceding revision or amendment which it replaces.

(4) When a new part of a tariff eliminates an existing part of a tariff, it shall so state and clearly identify the part eliminated.

c. Any tariff modifications as described above shall be marked in the right-hand margin of the replacing tariff sheet with symbols as here described to indicate the place, nature and extent of the change in text. The marked version shall show all additions and deletions, with all new language marked by underlined text and all deleted language indicated by strike-through. The following symbols are to be used in identifying changes to tariffs.

(1) The symbol C shall indicate a change in regulation.

(2) The symbol D shall indicate a discontinued rate or regulation.

(3) The symbol I shall indicate an increased rate.

(4) The symbol N shall indicate a new rate or regulation.

(5) The symbol R shall indicate a reduced rate.

(6) The symbol T shall indicate a change in the text that does not include a change in rate or regulation.

d. All sheets except the title page shall have, in addition to the information required above, the following further information:

(1) The name of the public utility, which shall be set forth above the words "Telecommunications Provider Tariff" under which shall be set forth the words "Filed with board." If the utility is not a corporation and a trade name is used, the name of the individual or partners must precede the trade name.

(2) The issue date and the name of the issuing official.

(3) The effective date.

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199—22.3(476) Customer complaints. Complaints from customers about telecommunications service shall be processed pursuant to the board's rules in 199—Chapter 6. Unless a customer agrees to an alternative form of notice, local exchange utilities shall notify customers by bill insert or notice on the bill form of the address and telephone number where a utility representative can be reached. The bill insert or notice shall also include a statement: "If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by writing to the Iowa Utilities Board, 1375 E. Court Avenue, Des Moines, Iowa 50319; by calling 515-725-7321 or toll-free 877-565-4450; or by email to customer@iub.iowa.gov." The bill insert or notice on the bill shall be provided no less than annually.

199—22.4(476) Intrastate access charge application, tariff procedures, and rates.**22.4(1) Application of intrastate access charges.**

a. Intrastate access charges shall apply to all intrastate access services rendered to interexchange utilities. Intrastate access charges shall not apply to extended area service (EAS) traffic. In the case of resale of services of interexchange utilities, interstate access charges shall apply as follows:

- (1) The interexchange utilities shall be billed as if no resale were involved.
- (2) The resale carrier shall be billed only for access services not already billed to the underlying interexchange utility.
- (3) Specific billing treatment and administration shall be provided pursuant to tariff.

b. Except as provided in subparagraph 22.4(1) "b"(3), no person shall make any communication of the type and nature transmitted by telephone utilities, between exchanges located within Iowa, over any system or facilities, which are or can be connected by any means to the intrastate telephone network, and uses exchange utility facilities, unless the person shall pay to the exchange utility or utilities which provide service to the exchange where the communication is originated and the exchange where it is terminated, in lieu of the carrier common line charge, a charge in the amount of \$25 per month per circuit that is capable of interconnection. However, if the person provides actual access minutes to the exchange utility, the charge shall be the charge per access minute or fraction thereof, not to exceed \$25 per line per month. The charge shall apply in all exchanges. However, if the person attests in writing that the person's facility cannot interconnect and is not interconnected with the exchange in question, the person will not be subject to the charge in that exchange.

(1) In the event that a communication is made without compliance with this rule, the telephone utility or utilities serving the person shall terminate telephone service after notice to the person. The utility shall not reinstate service until the board orders the utility to restore service. The board shall order service to be restored when the board has reasonable assurance that the person will comply with this rule.

(2) In any action concerning this rule, the burden of proof shall be upon the person making intrastate communications.

(3) This rule shall be inapplicable to administrative communications made by or to a telephone utility.

22.4(2) Filing of intrastate access service tariffs.

a. Tariffs providing for intrastate switched access services shall be filed with the board by a local exchange utility that provides such services. A local exchange utility whose tariff or concurring tariff does not contain automatic reductions to implement the applicable transitional intrastate access service reductions shall file revised transitional intrastate access services rates with the board to become effective on or about July 1 of each year until such terminating rates are removed from the tariff. A competitive local exchange carrier that is required to benchmark its intrastate access service rates to the rates of an incumbent local exchange carrier shall file revised transitional intrastate access rates with the board to become effective on or about August 1 of each year until such terminating rates are removed from the tariff. Unless otherwise provided, the filings are subject to the applicable rules of the board.

b. Except in situations involving HVAS, a local exchange utility may concur in the intrastate access tariff filed by another local exchange utility serving the same exchange area. However, a competitive local exchange carrier may not concur in the intrastate access tariff of an incumbent local exchange carrier that qualifies as a rural telephone company pursuant to 47 U.S.C. § 153(44) unless the competitive local exchange carrier is also a rural CLEC pursuant to 47 CFR 61.26(a)(6).

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(1) Alternatively, a local exchange utility may voluntarily elect to join another local exchange utility or utilities in forming an association of local exchange utilities. The association may file intrastate access service tariffs.

(2) All elements of the filings under this rule, including access service rate elements, shall be subject to review and approval by the board.

22.4(3) Notice of intrastate access service tariffs.

a. Each telephone utility that files new or changed tariffs relating to access charges or access service shall give written notice of the new or changed tariffs to the utility's interexchange utility access customers, the board, and the consumer advocate. Notice shall be given on or before the date of the filing of the tariff. The notice shall consist of: the file date and proposed effective date of the tariff, a description of the proposed changes, and the tariff section number where the service description is located. If two or more local exchange utilities concur in a single tariff filing, the local exchange utilities may send a joint written notice to the board, the consumer advocate, and the interexchange utilities.

b. The board shall not approve any new or changed tariff described in paragraph 22.4(3) "a" until after the period for resistance.

22.4(4) Resistance to intrastate access service tariffs.

a. If an interexchange utility affected by an access service filing or the consumer advocate desires to file a resistance to a proposed new or changed access service tariff, it shall file its resistance within 14 days after the filing of the proposed tariff. The interexchange utility shall send a copy of the resistance to all telephone utilities filing or concurring in the proposed tariff.

b. After receipt of a timely resistance, the board may:

(1) Deny the resistance if it does not on its face present a material issue of adjudicative fact or the board determines the resistance to be frivolous or otherwise without merit and allow the tariff to go into effect by order or by operation of law; or

(2) Either suspend the tariff or allow the tariff to become effective subject to refund; and initiate informal complaint proceedings; or

(3) Either suspend the tariff or allow the tariff to become effective subject to refund; and initiate contested case proceedings; or

(4) Reject the tariff, stating the grounds for rejection.

c. The interexchange utility or the consumer advocate shall have the burden to support its resistance.

d. If contested case proceedings are initiated upon resistance filed by an interexchange utility, the interexchange utility shall pay the expenses reasonably attributable to the proceedings unless the interexchange utility is the successful party as determined by the board.

22.4(5) Access charge rules to prevail. The provisions of this rule shall be determinative of the procedures relating to intrastate access service tariffs and shall prevail over all inconsistent rules.

199—22.5(476) Interexchange utility service and access.

22.5(1) Interexchange utility service. An interexchange utility may provide interexchange service by complying with the laws of this state and the rules of this board. Any company or other entity accessing local exchange facilities or services in order to provide interexchange communication services to the public shall be considered to be an interexchange utility and subject to the rules herein, unless otherwise exempted. Such utilities are required to file a registration form, reports, and other items and are subject to service standards as specified in utilities division rules, unless otherwise exempted.

22.5(2) Interexchange utility intrastate access. Intrastate access to local exchange services or facilities may be obtained by an interexchange utility by ordering and paying for such intrastate access pursuant to the applicable tariff filed by the exchange utility in question, or as otherwise provided by agreement between the parties.

199—22.6(476) Alternative operator services.

22.6(1) Tariffs. Alternative operator service companies must provide service pursuant to board-approved tariffs covering both rates and service.

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22.6(2) Blocking. AOS companies shall not block the completion of calls which would allow the caller to reach a long distance telephone utility different from the AOS company. All AOS company contracts with contracting entities must prohibit call blocking by the contracting entity. The contracting entity shall not violate that contract provision.

22.6(3) Posting.

a. Contracting entities must post on or in close proximity to all telephones served by an AOS company the following information:

- (1) The name and address of the AOS company;
- (2) A customer service number for receipt of further service and billing information; and
- (3) Dialing directions to the AOS operator for specific rate information.

b. Contracts between AOS companies and contracting entities shall contain provisions for posting the information. The AOS companies also are responsible for the form of the posting and shall make reasonable efforts to ensure implementation, both initially and on an updated basis.

22.6(4) Oral identification. All AOS companies shall announce to the end-user customer the name of the provider carrying the call and, before billing begins, shall include a sufficient delay period to permit the caller to terminate the call or advise the operator to transfer the call to the end-user customer's preferred carrier.

22.6(5) Billing. All AOS company bills to end-user customers shall comply with the following requirements:

a. All calls, except those billed to commercial credit cards, shall be itemized and identified separately on the bill. All calls will be rated solely from the end-user customer's point of origin to point of termination.

b. All bills, except those for calls billed to commercial credit cards, shall be rendered within 60 days of the provision of the service.

c. All charges for the use of a telephone instrument shall be shown separately for each call, except for calls billed to a commercial credit card.

22.6(6) Emergency calls. All AOS companies shall have a board-approved methodology to ensure the routing of all emergency zero-minus (0-) calls in the fastest possible way to the proper local emergency service agency.

22.6(7) Service to inmates in correctional facilities. With board approval, AOS companies that provide local or intrastate calling services to inmates housed in correctional facilities may provide service that is not consistent with the requirements in this rule by including a statement of noncompliance in the AOS company's tariffs.

199—22.7(476) Service territories. Service territories are defined by the telephone exchange area boundary maps on file with the Iowa utilities board.

22.7(1) Map availability. The maps are available for viewing at the board's office during regular business hours, and copies are available at the cost of reproduction.

22.7(2) Map specifications. All ILECs shall have on file with the board maps which identify their exchanges and both the internal exchange boundaries where the utility's own exchanges abut and the ultimate boundaries where the utility's exchanges abut the exchanges of other utilities. A CLEC shall either file its own exchange boundary map or adopt the exchange boundary map filed by the ILEC serving that exchange. Maps shall be filed in electronic format as approved by the board.

199—22.8(476) Registration of telecommunications service providers. Each telecommunications service provider shall register with the board as part of the filing of an annual report with the board pursuant to 199—Chapter 23. If a telecommunications service provider is not required to file an annual report, that provider shall file an annual registration in compliance with the requirements for filing annual reports. Registration is required even though a telecommunications service provider has a certificate of public convenience and necessity issued prior to July 1, 2018, and the provider retains the rights conferred by that certificate.

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199—22.9(476) Unauthorized changes in telephone service.

22.9(1) Definitions. As used in this rule, unless the context otherwise requires:

“*Change in service*” means the designation of a new provider of a telecommunications service to a customer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a customer account.

“*Consumer*” means a person other than a service provider who uses a telecommunications service.

“*Cramming*” means the addition or deletion of a product or service for which a separate charge is made to a telecommunications service customer’s account without the verified consent of the affected customer. “Cramming” does not include the addition of extended area service to a customer account pursuant to board rules, even if an additional charge is made. “Cramming” does not include telecommunications services that are initiated or requested by the customer, including dial-around services such as “10-10-XXX,” directory assistance, operator-assisted calls, acceptance of collect calls, and other casual calling by the customer.

“*Customer*” means the person other than a service provider whose name appears on the account and others authorized by that named person to make changes to the account.

“*Executing service provider*” means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider or from its own customer.

“*Jamming*” means the addition of a preferred carrier freeze to a customer’s account without the verified consent of the customer.

“*Letter of agency*” means a written document complying with the requirements of paragraph 22.9(2) “b.”

“*Preferred carrier freeze*” means the limitation of a customer’s preferred carrier choices so as to prevent any change in preferred service provider for one or more services unless the customer gives the service provider from which the freeze was requested the customer’s express consent.

“*Service provider*” means a person providing a telecommunications service, not including commercial mobile radio service.

“*Slamming*” means the designation of a new telecommunications service provider to a customer, including the initial selection of a service provider, without the verified consent of the customer. “Slamming” does not include the designation of a new provider of a telecommunications service to a customer made pursuant to the sale or transfer of another carrier’s customer base, provided that the designation meets the requirements of paragraph 22.9(2) “e.”

“*Soft slam*” means an unauthorized change in service by a service provider that uses the carrier identification code (CIC) of another service provider, typically through the purchase of wholesale services for resale.

“*Submitting service provider*” means a service provider who requests another service provider to execute a change in service.

“*Telecommunications service*” means a local exchange or long distance telephone service other than commercial mobile radio service.

“*Verified consent*” means verification of a customer’s authorization for a change in service.

22.9(2) Prohibition of unauthorized changes in telecommunications service. Unauthorized changes in telecommunications service, including but not limited to cramming and slamming, are prohibited. Telecommunications service providers shall comply with Federal Communications Commission requirements regarding verification of customer authentication of a change in service and change in service provider as provided for in 47 CFR 64.1120 and 47 CFR 64.2401.

a. Verification required.

(1) No service provider shall submit a preferred carrier change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with one of the following procedures:

1. The service provider has obtained the customer’s written authorization in a form that meets the requirements of this rule; or

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2. The service provider has obtained the customer's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in numbered paragraph 22.9(2) "a"(1)"1" above. Service providers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit or to a similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or

3. An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data. The independent third party must not be owned, managed, controlled, or directed by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred carrier change; or

4. The local service provider may change the preferred service provider, for customer-originated changes to existing accounts only, through maintenance of sufficient internal records to establish a valid customer request for the change in service. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification of the identification of the person requesting the change in service. The burden will be on the local service provider to show that its internal records are adequate to verify the customer's request for the change in service.

All verifications shall be maintained for at least two years from the date the change in service is implemented, and all complaints regarding a change in preferred service provider must be brought within two years of the date the change in service is implemented. Verification of service freezes shall be maintained for as long as the preferred carrier freeze is in effect.

(2) For other changes in service resulting in additional charges to existing accounts only, a service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification under the circumstances of the identification of the person requesting the change in service. Any of the three verification methods in numbered paragraphs 22.9(2) "a"(1)"1" to "3" are also acceptable. The burden will be on the telecommunications service provider to show that its internal records are adequate to verify the customer's request for the change in service. Where the additional charge is for one or more specific telephone calls, examples of internal records a carrier may submit include call records showing the origin, date, time, destination, and duration of the calls, and any other data the carrier relies on to show the calls were made or accepted by the customer, along with an explanation of the records and data.

b. Letter of agency form and content.

(1) A service provider may use a letter of agency to obtain written authorization or verification of a customer's request to change the customer's preferred service provider selection. A letter of agency that does not conform with this subrule is invalid for purposes of this rule.

(2) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or web page and contain only the authorizing language described in subparagraph 22.9(2) "b"(5) having the sole purpose of authorizing a service provider to initiate a preferred service provider change. The letter of agency must be signed and dated by the customer to the telephone line(s) requesting the preferred service provider change. A local exchange carrier may use a written or electronically signed letter of agency to obtain authorization or verification of a customer's request to change service.

(3) The letter of agency shall not be combined on the same document, screen, or web page with inducements of any kind.

(4) Notwithstanding subparagraphs 22.9(2) "b"(2) and (3), the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in subparagraph

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22.9(2)“b”(5) and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a preferred service provider change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(5) At a minimum, the letter of agency must be printed in a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

1. The customer's billing name and address and each telephone number to be covered by the preferred service provider change order;

2. The decision to change the preferred service provider from the current service provider to the soliciting service provider;

3. That the customer designates [insert the name of the submitting service provider] to act as the customer's agent for the preferred service provider change;

4. That the customer understands that only one service provider may be designated as the customer's interstate or interLATA preferred interexchange service provider for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred service providers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange), the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

5. That the customer understands that any preferred service provider selection the customer chooses may involve a charge to the customer for changing the customer's preferred service provider.

(6) Any service provider designated in a letter of agency as a preferred service provider must be the service provider directly setting the rates for the customer.

(7) Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current service provider.

(8) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

c. Customer notification. Every change in service shall be followed by a written notification to the affected customer to inform the customer of the change. Such notice shall be provided within 30 days of the effective date of the change. Such notice may include, but is not limited to, a conspicuous written statement on the customer's bill, a separate mailing to the customer's billing address, or a separate written statement included with the customer's bill. Each such statement shall clearly and conspicuously identify the change in service, any associated charges or fees, the name of the service provider associated with the change, and a toll-free number by which the customer may inquire about or dispute any provision in the statement.

d. Preferred carrier freezes.

(1) A preferred carrier freeze (or freeze) prevents a change in a customer's preferred service provider selection unless the customer gives the service provider from whom the freeze was requested express consent. All local exchange service providers who offer preferred carrier freezes must comply with the provisions of this subrule.

(2) All local exchange service providers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customers' service provider selections.

(3) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The service provider offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(4) Solicitation and imposition of preferred carrier freezes.

1. All solicitation and other materials provided by a service provider regarding preferred carrier freezes must include:

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- An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;
 - A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the verification requirements in this rule for changing a customer's preferred service provider selections; and an explanation that the customer will be unable to make a change in service provider selection unless the freeze is lifted; and
 - An explanation of any charges associated with the preferred carrier freeze.
2. No local exchange carrier shall implement a preferred carrier freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:
- The local exchange carrier has obtained the customer's written or electronically signed authorization in a form that meets the requirements of this rule; or
 - The local exchange carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization shall confirm appropriate verification data. Service providers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit or to a similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or
 - An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data and the information required in this rule. The independent third party must not be owned, managed, or directly controlled by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred carrier freeze requests for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred carrier freeze.
3. A local exchange service provider may accept a written and signed authorization to impose a freeze on the customer's preferred service provider selection. Written authorization that does not conform with this subrule is invalid and may not be used to impose a preferred carrier freeze.
- The written authorization shall comply with this rule concerning the form and content for letters of agency.
 - At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:
 - The customer's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;
 - The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred service provider selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;
 - That the customer understands that the customer will be unable to make a change in service provider selection unless the preferred carrier freeze is lifted; and
 - That the customer understands that any preferred carrier freeze may involve a charge to the customer.
- (5) All local exchange service providers that offer preferred carrier freezes must, at a minimum, offer customers the following procedures for lifting a preferred carrier freeze:
1. A local exchange service provider administering a preferred carrier freeze must accept a customer's written or electronically signed authorization stating the intention to lift a preferred carrier freeze; and
 2. A local exchange service provider administering a preferred carrier freeze must accept a customer's oral authorization stating the intention to lift a preferred carrier freeze and must offer a

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mechanism that allows a submitting service provider to conduct a three-way conference call with the service provider administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the service provider administering the freeze shall confirm appropriate verification data and the customer's intent to lift the particular freeze.

e. Procedures in the event of sale or transfer of customer base. A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's customer base without obtaining each customer's authorization if the acquiring carrier complies with the following procedures. A telecommunications carrier may not use these procedures for any fraudulent purpose, including any attempt to avoid liability for violations under this rule.

(1) No later than 30 days before the planned transfer of the affected customers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the board a letter notifying the board of the transfer and providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected customers, and the date of the transfer of the customer base to the acquiring carrier. In the letter, the acquiring carrier also shall certify compliance with the requirement to provide advance customer notice in accordance with this rule and with the obligations specified in that notice. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected customers.

(2) If, subsequent to the filing of the letter of notification with the board any changes to the required information develop, the acquiring carrier shall file written notification of these changes with the board no more than ten days after the transfer date announced in the prior notification. The board may require the acquiring carrier to send an additional notice to the affected customers regarding such material changes.

(3) Not later than 30 days before the transfer of the affected customers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected customer. The acquiring carrier must fulfill the obligations set forth in the written notice. The written notice must inform the customer of the following:

1. The date on which the acquiring carrier will become the customer's new telecommunications service provider;
2. The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the customer's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the customer of any change(s) to these rates, terms, and conditions;
3. The acquiring carrier will be responsible for any carrier change charges associated with the transfer;
4. The customer's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available;
5. All customers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier unless the customers select a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the customers must contact their local service providers to arrange a new freeze;
6. Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier; and
7. The toll-free customer service telephone number of the acquiring carrier.

These rules are intended to implement Iowa Code sections 476.1D, 476.2, 476.91, 476.95, 476.95A, 476.95B, 476.100, and 476.103.

ARC 4420C**UTILITIES DIVISION[199]****Notice of Intended Action****Proposing rule making related to annual reports
and providing an opportunity for public comment**

The Utilities Board hereby proposes to amend Chapter 23, “Annual Report,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 474.5 and 476.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 476.2, 476.9 and 476.10.

Purpose and Summary

The Utilities Board (Board) is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this review is to identify and update or eliminate rules that are outdated or inconsistent with statutes and other administrative rules.

On December 19, 2018, the Board issued an order requesting stakeholder comment on proposed amendments and shared the proposed amendments to Chapter 23 with stakeholders and the public. The Board received comments from Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy; the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; BKD, LLP; Interstate Power and Light Company; and the Iowa American Water Company.

The Board issued an order on April 19, 2019, commencing this rule making. The order is available on the Board’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2016-0036.

Fiscal Impact

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

Jobs Impact

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

Waivers

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in this chapter.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 28, 2019. Comments should be directed to:

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

UTILITIES DIVISION[199](cont'd)

Public Hearing

An oral presentation at which persons may present their views orally or in writing will be held as follows:

June 12, 2019
1 to 3 p.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 23.1(2) as follows:

23.1(2) Each public utility subject to Iowa Code chapter 476 shall file an annual report with this board, on or before April 1 of each year, ~~an annual report as described in this chapter and covering operations during the immediately preceding calendar year. Pursuant to Iowa Code chapter 476, this~~ This information will be used to apportion the costs of the utilities division pursuant to Iowa Code section 476.10. If a utility ceases operations through merger or sale of its plant during the calendar year, each utility involved in the transaction shall separately file, within 90 days after the merger or sale, an annual report covering the portion of the calendar year operations to the date of sale or merger.

ITEM 2. Amend subrule 23.1(3) as follows:

23.1(3) ~~All pages of the report must be completed and submitted to the board. The words "none" or "not applicable" may be used to complete a schedule when they accurately and fully state the facts. The board shall be notified of the nature, amount, and purpose of any accounts used in addition to those prescribed in utilities division 199—Chapter 16. A copy shall be retained in the respondent's file. All reports are to be prepared for and certified to the Iowa utilities board. The forms that are to be completed by each utility shall be made available on the board's website or by other means readily accessible. The board may require the completed forms to be filed electronically through either a portal on the board's website or the board's electronic filing system.~~

ITEM 3. Rescind subrule **23.1(4)**.

ITEM 4. Rescind rule 199—23.2(476) and adopt the following new rule in lieu thereof:

199—23.2(476) Annual report requirements. Annual report forms shall be provided by the board for the following utilities.

23.2(1) Investor-owned electric utilities.

a. Investor-owned, rate-regulated electric utilities shall file Form IE-1. Such utilities shall also include a copy of FERC Annual Report Form No. 1 or 1A as applicable.

b. Investor-owned, non-rate-regulated electric utilities shall file Form EC-1.

23.2(2) Investor-owned gas utilities. Investor-owned gas utilities shall file Form IG-1. Such utilities shall also include a copy of FERC Annual Report Form No. 2 or 2A as applicable.

23.2(3) Water utilities. Regulated water utilities shall file Form WA-1.

UTILITIES DIVISION[199](cont'd)

23.2(4) Cooperative electric utilities corporations or associations. Cooperative electric utilities shall file Form EC-1.

23.2(5) Municipal utilities.

a. Municipally owned electric utilities shall file Form ME-1.

b. Municipally owned gas utilities shall file Form MG-1.

23.2(6) Providers of telecommunications service. Providers of telecommunications service shall file Form TC-1.

23.2(7) Competitive natural gas providers and aggregators. Competitive natural gas providers and aggregators shall file Form CNGP-1.

23.2(8) Generation and transmission cooperatives. Generation and transmission cooperatives shall file Form EC-1N.

23.2(9) Additional requirements for rate-regulated utilities. Reports by rate-regulated utilities which have multistate operations shall provide information concerning their Iowa operations as requested on the forms provided by the board. A rate-regulated utility shall file as part of its annual report:

a. A list (by title, author, and date) of any financial, statistical, technical or operational reviews or reports that a company may prepare for distribution to stockholders, bondholders, utility organizations or associations or other interested parties; and

b. A list (by form number and title) of all financial, statistical, technical and operational review-related documents filed with an agency of the federal government.

23.2(10) Storm water drainage and sanitary sewage utilities. Storm water drainage and sanitary sewage utilities shall file Form SW-1.

ITEM 5. Rescind and reserve rule ~~199—23.3(476)~~.

ARC 4425C

ENERGY AND GEOLOGICAL RESOURCES DIVISION[565]

Adopted and Filed

Rule making related to transfer of geological programs

The Department of Natural Resources (Department) hereby rescinds Chapter 50, “General,” and Chapter 51, “Oil, Gas, and Metallic Minerals,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 458A.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 458A.

Purpose and Summary

This rule making is necessary to conform Department rules with 2018 Iowa Acts, House File 2303, signed by Governor Reynolds on March 21, 2018. House File 2303 transferred the State Geologist and the Iowa Geological Survey to the University of Iowa. Therefore, existing Chapter 50 is rescinded since that chapter applies to the Iowa Geological Survey. The content of Chapter 51, oil, gas, and mineral drilling, is moved into the Department’s main administrative rules location: agency identification number 561. Therefore, Chapter 51 is also rescinded, and a new 561—Chapter 17 is adopted in a companion rule making (**ARC 4434C**, IAB 5/8/19). The rule making adopting 561—Chapter 17 makes no substantive changes from Chapter 51, with the exception of replacing references to the State Geologist in Chapter 51 with references to the Director of the Department and making other minor clarifying revisions to the chapter consistent with 2018 Iowa Acts, House File 2303.

This rule making is related to Natural Resources Department[561] rule making **ARC 4434C**, IAB 5/8/19, and Environmental Protection Commission[567] rule making **ARC 4426C**, IAB 5/8/19.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4278C**. A public hearing was held on March 5, 2019, from 10 a.m. to 12 noon in Conference Room 4 West, Wallace State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Director on April 16, 2019.

Fiscal Impact

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

Jobs Impact

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

ENERGY AND GEOLOGICAL RESOURCES DIVISION[565](cont'd)

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 12, 2019.

The following rule-making actions are adopted:

- ITEM 1. Rescind and reserve **565—Chapter 50**.
- ITEM 2. Rescind and reserve **565—Chapter 51**.

[Filed 4/16/19, effective 6/12/19]

[Published 5/8/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4426C

ENVIRONMENTAL PROTECTION COMMISSION[567]**Adopted and Filed****Rule making related to geological survey, small fish animal unit, and land recycling program**

The Environmental Protection Commission (Commission) hereby amends Chapter 50, "Scope of Division—Definitions—Forms—Rules of Practice," Chapter 51, "Water Permit or Registration—When Required," Chapter 52, "Criteria and Conditions for Authorizing Withdrawal, Diversion and Storage of Water," Chapter 53, "Protected Water Sources—Purposes—Designation Procedures—Information in Withdrawal Applications—Limitations—List of Protected Sources," Chapter 65, "Animal Feeding Operations," Chapter 72, "Criteria for Approval," Chapter 82, "Well Contractor Certification," and Chapter 137, "Iowa Land Recycling Program and Response Action Standards," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455B.173, 455B.263, 455H.105 and 459.103.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.173, 455B.263, 455H.107 and 459.102.

Purpose and Summary

2018 Iowa Acts, House File 2303: Transfer of State Geologist and Iowa Geological Survey to the University of Iowa. These amendments are being made in order to conform Chapters 50 to 53, 72, and

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

82 with 2018 Iowa Acts, House File 2303, signed by Governor Reynolds on March 21, 2018. House File 2303 transferred the State Geologist and the Iowa Geological Survey to the University of Iowa. Prior to the enactment of this legislation, the State Geologist was employed by, and the Iowa Geological Survey was contained within, the Department of Natural Resources (Department). There are multiple references to the Iowa Geological Survey that need to be updated to clarify that the Iowa Geological Survey is no longer part of the Department. As such, this rule making amends Chapters 50 to 53, 72, and 82.

2018 Iowa Acts, House File 2281: Addition of animal unit for small fish. These amendments are being made in order to conform Chapter 65 with amendments from 2018 Iowa Acts, House File 2281, signed by Governor Reynolds on April 4, 2018. House File 2281 added an animal unit capacity for fish weighing less than 25 grams to the definitions in the animal feeding operation statute, and this rule making amends the definitions in Chapter 65 to make the same change.

2018 Iowa Acts, House File 2464: An increase in the reimbursement cap for the Land Recycling Program (LRP). These amendments are being made in order to conform Chapter 137 with amendments from 2018 Iowa Acts, House File 2464, signed by Governor Reynolds on April 10, 2018. House File 2464 amended the Iowa Code chapter related to the LRP, Iowa Code chapter 455H. The General Assembly created the LRP in 1997 with a goal to promote the voluntary investigation and cleanup of contaminated sites under a cooperative, regulatory-friendly framework. Voluntary cleanups reduce risk to human health and the environment while working to remove the stigma attached to contaminated sites. Incentives for voluntary participation include Department verification of site assessment and cleanup plans, as well as state “sign-off” on site cleanup completion, known as a No Further Action Certificate (Certificate).

All LRP participants must enter into an agreement with the Department for reimbursement of costs incurred by the Department for oversight review associated with enrollment of the site. Prior to the enactment of House File 2464, reimbursement to the Department was capped at \$7,500 per site. For sites that had received a Certificate, participant reimbursements covered 70 percent of oversight costs and other funding sources were used to subsidize a participant’s costs that exceeded \$7,500. However, those funding sources have become increasingly overburdened. To encourage continued use of the LRP, it was determined that the \$7,500 reimbursement cap needed to be increased. House File 2464 increased the cap to \$25,000 for new sites enrolled in the program on or after July 1, 2018. This rule making implements this change from House File 2464.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4277C**. A public hearing was held on March 5, 2019, from 10 a.m. to 12 noon in Conference Room 4 West, Wallace State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made, except to update references to the Soil Conservation and Water Quality Division within the Iowa Department of Agriculture.

Adoption of Rule Making

This rule making was adopted by the Commission on April 16, 2019.

Fiscal Impact

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

Jobs Impact

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 12, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **50.6(1)“a”(1)** as follows:

(1) Test drilling. In cases where test drilling is needed for geological information relevant to the application, the applicant is responsible for employing a driller who will collect, bag and properly label cutting samples at each five-foot interval and at each apparent change in geological formation from a test hole or production well hole at least the approximate depth of the proposed production well. The cutting samples must be saved for collection ~~by the department~~ in sample bags provided by the ~~department's~~ Iowa geological survey (IGS). The samples shall be submitted to IGS and be accompanied by a driller's log showing the location and total depth of the hole and a description of the materials encountered at successive intervals.

ITEM 2. Amend subrule 51.6(3) as follows:

51.6(3) Test pumping. The department may authorize by registration, as described in 51.6(5), test pumping of sources of water to determine adequacy of the source and effects of such withdrawals. The department may require the applicant to ~~conduct the test pumping under the supervision of or acquire technical assistance from the department's Iowa geological survey (IGS) or its designee~~ submit the results to the department. No such registration for test pumping shall be for a period of more than one year. A registration must be obtained from the department for any pumping test in which more than 25,000 gallons of water will be withdrawn in a period of 24 hours or less.

ITEM 3. Amend subrule 51.6(6) as follows:

51.6(6) Research contracts. The withdrawal of water for research purposes by the ~~department's IGS~~ Iowa geological survey through its agents, employees, or contractees may be authorized by registration under 51.6(5) and may be subject to conditions set by the department.

ITEM 4. Amend paragraphs **52.4(4)“b”** and **“c”** as follows:

b. Observation wells. In addition to the requirement of 52.6(3) for construction of an access port to allow measurement of water levels in each production well, an applicant or permittee may also be required to construct, maintain, and monitor observation wells as a condition of obtaining or keeping a water permit if the department, ~~after consultation with the department's IGS,~~ finds observation wells necessary to monitor the effects of the proposed or authorized withdrawals of water. Observation wells must be properly constructed and responsive to water level fluctuations in the aquifer. Plans for and monitoring of the observation wells must be approved by the department.

c. Prohibition of excessive water level declines. If the department, ~~after consultation with the department's IGS,~~ determines that withdrawals of water from the Dakota Sandstone formation of the Cretaceous system within a designated geographical area are causing water level declines which constitute a significant threat to the public interest in the availability of water for sustained beneficial

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

use of the aquifer, renewals of permits shall be denied, and permits shall be modified or canceled in accordance with procedures in Iowa Code section 455B.271, as necessary to protect the aquifer for sustained use.

ITEM 5. Amend subrule 52.6(4) as follows:

52.6(4) Aquifer tests and observation wells. A permittee may be required to conduct a controlled aquifer test as a condition of keeping a water permit if the department, ~~after consultation with the department's IGS,~~ finds an aquifer test to be necessary to determine the effects which the authorized withdrawals have on other water uses. A controlled aquifer test, authorized by the department and supervised by a certified well contractor, licensed professional engineer or other designee of the department, may be required for an administrative resolution of a well interference conflict pursuant to 567—Chapter 54. The permittee may be required to construct, develop, and maintain adequate observation wells for use in an aquifer test and for subsequent water level measurements or water quality monitoring.

ITEM 6. Amend rule 567—53.2(455B), introductory paragraph, as follows:

567—53.2(455B) Designation of protected sources. The department, after consultation with the ~~department's~~ Iowa geological survey (IGS) and other authorities, may designate a surface water or groundwater source within a defined geographical area as a protected source.

ITEM 7. Amend subrule 53.7(1) as follows:

53.7(1) Ralston Site, Linn County. The area within a one-mile radius of a point which is 600 feet south of the midpoint of the northern edge of Section 2, Township 83 North, Range 7 West in Linn County is a protected water source. Any new application for a permit to withdraw groundwater or to increase an existing permitted withdrawal of groundwater from within the protected water source area will be restricted or denied, if necessary to preserve public health and welfare or to minimize movement of groundwater contaminants from the Ralston Site. The Ralston Site is identified in the Registry of Hazardous Waste or Hazardous Substance Disposal Sites pursuant to Iowa Code section 455B.426.

Withdrawal of groundwater from within the protected water source area may also be restricted or denied from what would otherwise be nonregulated wells, if necessary to preserve public health and welfare or to minimize movement of groundwater contaminants from the Ralston Site. The Linn County health department will refer any application for a construction permit for a private well within the protected water source area to the department's water supply section that will, ~~after consultation with the department's IGS,~~ determine whether the proposed well will be allowed.

ITEM 8. Amend subrule **65.1(1)**, definition of "Animal unit," as follows:

"Animal unit" means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

1. Slaughter and feeder cattle	1.000
2. Immature dairy cattle	1.000
3. Mature dairy cattle	1.400
4. Butcher or breeding swine weighing more than 55 pounds	0.400
5. Swine weighing 15 pounds or more but not more than 55 pounds	0.100
6. Sheep or lambs	0.100
7. Goats	0.100
8. Horses	2.000
9. Turkeys weighing 7 pounds or more	0.018

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

10. Turkeys weighing less than 7 pounds	0.0085
11. Broiler or layer chickens weighing 3 pounds or more	0.010
12. Broiler or layer chickens weighing less than 3 pounds	0.0025
13. Ducks	0.040
14. Fish <u>weighing 25 grams or more</u>	0.001
15. <u>Fish weighing less than 25 grams</u>	<u>0.00006</u>

ITEM 9. Amend paragraph **72.51(4)“c”** as follows:

c. Interested agency notification. Notify regional planning commissions, county boards of supervisors, city councils, soil conservation districts through which the nominated stream runs, the fish and wildlife ~~division~~ bureaus of the department, the soil conservation and water quality division of the department of agriculture and land stewardship, the department of agriculture and land stewardship and the Iowa geological survey bureau of the department.

ITEM 10. Amend paragraph **72.51(5)“c”** as follows:

c. Interagency coordination. Invite the fish and wildlife ~~division~~ bureaus of the department, the Iowa geological survey bureau, and any other agency or governmental subdivision expressing an interest in the proceeding to participate in the field investigation and preparation of the report, and request their assessment of whether extension of department jurisdiction over the nominated stream would have either an adverse or beneficial impact on their agency’s water resource programs.

ITEM 11. Amend subrule 82.12(1) as follows:

82.12(1) Submission of records and samples. Each certified well contractor shall submit drilling records and drill cutting samples, when required, to the ~~Iowa Geological Survey, Department of Natural Resources, Oakdale Campus, University of Iowa, Iowa City, Iowa 52242, telephone (319)338-1575, or as otherwise directed by the department,~~ department and to the Iowa geological survey as follows:

a. Within 30 days of completion of any water well used as part of a public water supply, a well used for withdrawal of water for which a permit is required by rule 567—50.1(455B), or wells used to monitor groundwater quantity or quality required by the department if so directed by the ~~Iowa geological survey (IGS), department of natural resources~~ department. The certified well contractor must submit to the department the drilling records ~~and samples~~ required by subrules 82.12(2) and 82.12(3) and must submit to the Iowa geological survey the samples required by subrule 82.12(4).

b. Within 30 days of the completion of any water well used as part of a nonpublic water supply or other water wells used to access groundwater. The certified well contractor must submit to the department the drilling records ~~and samples~~ required by subrules 82.12(2) and 82.12(3).

c. Prior to constructing a water well to be used as part of a nonpublic water supply or other water well used to access groundwater, the certified well contractor must contact the local health department in the county in which the water well is to be located to determine if submittal of drill cutting samples is required.

ITEM 12. Amend subrule 82.12(2) as follows:

82.12(2) Drilling records. Drilling records must be submitted on the Iowa water well driller’s log form provided by the Iowa geological survey, department of natural resources available on the department’s website.

ITEM 13. Amend subrule 82.12(4) as follows:

82.12(4) Cutting samples. Drill cutting samples shall be collected at intervals of 5 feet and at each pronounced change in geological formation. The Iowa geological survey, ~~department of natural resources,~~ will provide drill cutting bags.

ITEM 14. Amend subrule 137.3(3), introductory paragraph, as follows:

137.3(3) Enrollment fees and oversight costs. A nonrefundable enrollment fee of \$750 must be submitted with the program application. This fee is intended to cover the department’s cost of reviewing the program application and a minimum amount of subsequent oversight costs. Subsequent fees in

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

excess of the minimum \$750 may be assessed for actual oversight costs incurred by the department as provided in this chapter. Department oversight activities may include, but are not limited to: review of documents, meetings with the participant(s), site visits, sampling, and laboratory costs related to verification of submitted materials. The total fees for oversight costs shall not exceed \$7,500 per enrolled site enrolled prior to July 1, 2018. For sites enrolled on or after July 1, 2018, the fee shall not exceed \$25,000 per enrolled site. Fees shall be assessed and collected as follows:

[Filed 4/16/19, effective 6/12/19]

[Published 5/8/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4427C

HISTORICAL DIVISION[223]

Adopted and Filed

Rule making related to awards

The Department of Cultural Affairs hereby amends Chapter 21, "Membership in the Society," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 303.1A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 303.8.

Purpose and Summary

Through this rule making, the State Historical Society of Iowa is updating its board history awards to reflect more appropriate deadlines and submission processes in addition to introducing new awards to ensure all Iowa history categories and works are eligible for recognition.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 13, 2019, as **ARC 4330C**. No public comments were received. One change from the Notice was made. The name of the Excellence in Archaeology and Historic Preservation Award was corrected in paragraphs 21.3(2)"h" and 21.3(3)"c."

Adoption of Rule Making

This rule making was adopted by the Department on April 17, 2019.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. This rule making adds new awards and clarifies rules for existing awards. These awards are honorary, not financial.

Jobs Impact

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

HISTORICAL DIVISION[223](cont'd)

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 12, 2019.

The following rule-making action is adopted:

Amend rules 223—21.2(303) and 223—21.3(303) as follows:

223—21.2(303) Fees. Fees are charged for benefits and services provided to members. The membership program is administered by the Historical Division of the Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319, telephone ~~(515)281-8741~~ (515)281-5111.

223—21.3(303) Awards.

21.3(1) Purpose. The society shall make annual awards to individuals, government entities, groups, or organizations for the purposes of encouraging and rewarding contributions to the ~~field~~ fields of Iowa history, archaeology and historic preservation; establishing an image of tradition and continuity; creating greater public and academic visibility for the society; and promoting high-quality rehabilitation of historic buildings.

21.3(2) Award programs. Awards ~~shall~~ may be made in ~~seven~~ nine programs.

a. *William J. Petersen/Edgar Harlan Award.* This award recognizes an individual, government entity, group, or organization that has made significant long-term or continuing contributions to Iowa history. No more than one award ~~shall~~ may be ~~given~~ made annually.

b. *Loren Horton Community History Award.* This award recognizes an individual, government entity, group, or organization that has made a significant contribution to local history through a local history project during the previous calendar year. No more than one award ~~shall~~ may be given annually. One certificate of recognition may be awarded in each of the following categories each year:

- (1) Program or event;
- (2) Volunteers;
- (3) Project in museum, library, archives, historic preservation, or education;
- (4) Research or publications;
- (5) Youth.

c. to e. No change.

f. ~~Kids Count!~~ *Research Matters Award.* This award recognizes outstanding library, archives, historic site and museum service provided to National History Day student researchers in Iowa during the previous program year. The board may give award up to two certificates of merit and one certificate of achievement annually.

g. *Preservation Projects of Merit Award.* This award recognizes historic preservation projects that exemplify the best of preservation practices, meet the U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Buildings, and utilize the state historic preservation ~~and cultural and entertainment~~ ~~district~~ tax credit program. The board may give one award annually in each of the following four categories.

HISTORICAL DIVISION[223](cont'd)

(1) Judith A. McClure Award. This award recognizes outstanding preservation of a residential property using state historic preservation ~~and cultural and entertainment district~~ tax credit program incentives. For purposes of this award, residential property shall be as defined in rule 223—48.2(303,404A).

(2) Adrian D. Anderson Award. This award recognizes outstanding preservation of a small historic preservation project using state historic preservation ~~and cultural and entertainment district~~ tax credit program incentives. For purposes of this award, small projects are defined as those projects having total qualified costs, ~~as determined by Iowa Code chapter 404A as amended by 2007 Iowa Acts, chapter 165,~~ of \$500,000 ~~\$750,000~~ or less.

(3) Margaret Keyes Award. This award recognizes outstanding preservation of a large historic preservation project using state historic preservation ~~and cultural and entertainment district~~ tax credit program incentives. For purposes of this award, large projects are defined as those projects having total qualified costs, ~~as determined by Iowa Code chapter 404A as amended by 2007 Iowa Acts, chapter 165,~~ of more than \$500,000 ~~\$750,000~~.

(4) William J. Wagner Award. This award recognizes the historic preservation project which best exemplified use of the U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Buildings while using state historic preservation ~~and cultural and entertainment district~~ tax credit program incentives.

h. Excellence in Archaeology and Historic Preservation Award. This award recognizes the best archaeology or historic preservation project at the local or state level. The board may give one award and one certificate of merit annually.

i. Dorothy Schwieder Excellence in Research Award. This award recognizes on a biennial basis the most significant research and contribution to the body of knowledge in Iowa history and is the top research and writing award given by the board during the two-year period.

21.3(3) Selection.

a. *Committees.* The chairperson of the society board of trustees shall appoint awards committees at the first meeting of the board held in each fiscal year. The nonvoting staff member on each committee shall be appointed by the administrator of the society to coincide with the other committee appointments. The term of office shall be one year.

(1) and (2) No change.

(3) ~~Kids Count!~~ Research Matters Award. Nominations for this category shall be reviewed by an awards committee composed of, at a minimum, three voting members; including at least one member of the society board of trustees and one practicing National History Day teacher. The committee shall also include one staff member of the society serving in a nonvoting capacity.

(4) No change.

(5) Excellence in Archaeology and Historic Preservation Award. Nominations for this category shall be reviewed by an awards committee composed of, at a minimum, three voting members including at least one member of the society board of trustees. The committee shall also include one staff member of the society serving in a nonvoting capacity.

(6) Dorothy Schwieder Excellence in Research Award. Nominations for this category shall be reviewed by an awards committee composed of, at a minimum, three voting members including at least one member of the society board of trustees. The committee shall also include one staff member of the society serving in a nonvoting capacity.

b. *Period of eligibility.* Awards in the Mildred Throne/Charles Aldrich, George Mills/Louise Noun, Benjamin F. Shambaugh, ~~and Loren Horton,~~ and Excellence in Archaeology and Historic Preservation categories shall be made for activities and publications produced during the calendar year prior to the nomination. Awards in the ~~Kids Count!~~ Research Matters category shall be made for activities during the most recently completed National History Day competition in Iowa. Awards in the Preservation Projects of Merit category shall be made for state historic preservation ~~and cultural and entertainment district~~ tax credit projects ~~completed~~ with a Part 3 approved in the previous fiscal year.

c. *Call for nominations.*

HISTORICAL DIVISION[223](cont'd)

(1) William J. Petersen/Edgar Harlan Award, Loren Horton Award, Mildred Throne/Charles Aldrich Award, George Mills/Louise Noun Award, Benjamin F. Shambaugh Award, Excellence in Archaeology and Historic Preservation Award, and Dorothy Schwieder Excellence in Research Award. The public may nominate entries for the William J. Petersen/Edgar Harlan Award by mail awards. Nominators shall submit the name and address of the nominee and a detailed description of significant long-term or continuing contributions to Iowa history complete and submit respective award paperwork for awards. Nomination forms are available by contacting the State Historical Society of Iowa or electronically on the State Historical Society of Iowa web page: www.iowahistory.org. Nominations for the Shambaugh Award must be postmarked by January 2. All other awards must be postmarked by February 1 and must be submitted to the Administrator, State Historical Society of Iowa, 600 East Locust Street, Des Moines, Iowa 50319-0290. Nominations may also be submitted electronically to the E-mail address posted on the State Historical Society of Iowa Web web page: www.iowahistory.org.

(2) Loren Horton Award. The public may nominate entries for the Horton Award by mail. Required nomination papers for the Loren Horton Award shall be obtained from the Administrator, State Historical Society of Iowa, 600 East Locust Street, Des Moines, Iowa 50319-0290. Nominations shall be postmarked by February 1 and shall be returned to the administrator at the society.

(3) Mildred Throne/Charles Aldrich Award. The public may nominate articles for the Mildred Throne/Charles Aldrich Award by mail. Nominators shall submit the title of the article, name of author, name and address of publication, and year of publication to the Administrator, State Historical Society of Iowa, 600 East Locust Street, Des Moines, Iowa 50319-0290. Nominations may be submitted electronically to the E-mail address posted on the State Historical Society of Iowa Web page: www.iowahistory.org.

(4) George Mills/Louise Noun Award. The public may nominate articles for the George Mills/Louise Noun Award by mail. Nominators shall submit the title of the article, name of author, name and address of publication, and year of publication to the Administrator, State Historical Society of Iowa, 600 East Locust Street, Des Moines, Iowa 50319-0290. Nominations may be submitted electronically to the E-mail address posted on the State Historical Society of Iowa Web page: www.iowahistory.org.

(5) Benjamin F. Shambaugh Award. The public may nominate entries for the Shambaugh Award by mail. Nominators shall submit the title of the book, name and address of author, name and address of publisher, and year of publication to the Editor, The Annals of Iowa, State Historical Society of Iowa, 402 Iowa Avenue, Iowa City, Iowa 52240-1806. Nominations may be submitted electronically to the E-mail address posted on the State Historical Society of Iowa Web page: www.iowahistory.org.

(6) (2) Kids Count! Research Matters Award. National History Day student researchers may nominate research libraries, archives, historic sites and museums on forms provided by the National History Day in Iowa program. Nominations shall include the name of the library, archive, historic site or museum nominated for the award and a description of the services provided by that library, archive, historic site or museum to National History Day student researchers in Iowa. Nominations must be received by the date of the annual state National History Day Contest. Nominations must be submitted to the Administrator, State Historical Society of Iowa, 600 East Locust Street, Des Moines, Iowa 50319-0290. Nominations may also be submitted electronically to the email address posted on the State Historical Society of Iowa web page: www.iowahistory.org.

(7) (3) Preservation Projects of Merit Award. All historic rehabilitation projects completed with Part 3 approved in the previous fiscal year, as determined by state historic preservation and cultural and entertainment district tax credit program staff, shall be considered for this award.

d. to f. No change.

21.3(4) Criteria.

a. to e. No change.

f. Kids Count! Research Matters Award. Each nominated institution shall be evaluated on its commitment to research support for young historical researchers as demonstrated by the institution's positive attitude toward young researchers, its level of research knowledge, and its assistance to individual researchers. These criteria shall be weighted equally.

g. No change.

HISTORICAL DIVISION[223](cont'd)

h. Excellence in Archaeology and Historic Preservation Award. Projects shall be evaluated based on:

- (1) Level of effort needed to preserve the resource;
- (2) Historic significance of the resource;
- (3) Application of the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation;
- (4) Local impact of the project and benefit to the community;
- (5) Potential to replicate the project in another community;
- (6) Additional steps taken to share this history with the public;
- (7) Application of state or federal preservation laws.

i. Dorothy Schwieder Excellence in Research Award. Each nomination shall be evaluated on its contribution to knowledge about Iowa history, scholarship, readability, and appropriateness for the intended audience. Eligible works include, but are not limited to, articles in popular periodicals or academic journals, books, dissertations, films, National Register of Historic Places nominations, or online projects. Winners of other State Historical Society of Iowa awards—the George Mills/Louis Noun Award, the Mildred Throne/Charles Aldrich Award, or the Benjamin F. Shambaugh Award—are also eligible for this prize. One award will be given biennially.

21.3(5) and 21.3(6) No change.

[Filed 4/18/19, effective 6/12/19]

[Published 5/8/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4428C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to assessment levels for nursing facilities

The Human Services Department hereby amends Chapter 36, "Facility Assessments," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4 and 2018 Iowa Acts, Senate File 2418.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2018 Iowa Acts, Senate File 2418.

Purpose and Summary

These amendments change the assessment levels for nursing facilities effective July 1, 2019. The assessment level cap was removed during the 2018 Legislative Session by 2018 Iowa Acts, Senate File 2418. The Department, in collaboration with stakeholders, developed new assessment levels and requested an effective date of July 1, 2019.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4287C**. The Department received no comments during the public comment period. No changes from the Notice have been made.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on April 10, 2019.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa of \$100,000 annually or \$500,000 over five years. Assumptions for this fiscal impact include:

- Annual non-Medicare revenue: \$1,499,417,079
- Non-Medicare patient days: 7,016,276
- Estimates were based on changes expected for state fiscal year (SFY) 2020 and not on current revenue levels. A model was developed to estimate the impact of this change. Based on this model, it is estimated that annual assessment fee revenues will increase from \$32,726,360 under the current policy to \$58,570,397 under the proposed policy, an increase of \$25,844,037. These expenditures will be 100 percent state funds.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 36.6(2) as follows:

36.6(2) Assessment level. Effective July 1, 2012, the assessment level for each nursing facility shall be determined on an annual basis and shall be effective for the state fiscal year.

a. Effective July 1, ~~2015~~ 2019, nursing facilities with 46 or fewer licensed beds are required to pay a quality assurance assessment of ~~\$1.36~~ \$2.45 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, the number of licensed beds on file with the department of inspections and appeals as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

b. Effective July 1, ~~2015~~ 2019, nursing facilities designated as continuing care retirement centers (CCRCs) by the insurance division of the Iowa department of commerce are required to pay a quality assurance assessment of ~~\$1.36~~ \$2.45 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, continuing care retirement center designations as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

c. Effective July 1, ~~2015~~ 2019, nursing facilities with annual Iowa Medicaid patient days of ~~26,500~~ 21,000 or more are required to pay a quality assurance assessment of ~~\$1.36~~ \$2.45 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2012, the annual number of Iowa Medicaid patient days reported in the most current cost report submitted to the Iowa Medicaid

HUMAN SERVICES DEPARTMENT[441](cont'd)

enterprise as of May 1 of each year shall be used to determine the assessment level for the following state fiscal year.

d. Effective July 1, ~~2015~~ 2019, all other nursing facilities are required to pay a quality assurance assessment of ~~\$7.13~~ \$12.75 per non-Medicare patient day.

ITEM 2. Amend paragraph **81.6(21)“b”** as follows:

b. *Quality assurance assessment rate add-on.* Effective with the implementation of the quality assurance assessment paid pursuant to 441—Chapter 36, Division II, a quality assurance add-on of ~~\$10~~ \$15 per patient day shall be added to the Medicaid per diem reimbursement rate as otherwise calculated pursuant to this rule.

[Filed 4/10/19, effective 7/1/19]

[Published 5/8/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4429C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to a passive managed care enrollment process

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

These amendments revise language to reflect the Department’s implementation of a passive managed care enrollment process. For Medicaid eligibility groups subject to mandatory managed care enrollment, members will be passively enrolled with a managed care plan no earlier than the first day of the month of the member’s application to Medicaid, with no initial fee-for-service (FFS) period. Additionally, outdated language is being removed in order to appropriately reflect the responsibility that managed care organizations (MCOs) have for retroactive eligibility periods.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4289C**. The Department received no comments during the public comment period. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on April 10, 2019.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa of less than \$100,000 annually or \$500,000 over five years. The Medicaid actuary has communicated that no material fiscal impact is anticipated. The cost would be shifted from FFS claims payments to MCO cap payments. Theoretically,

HUMAN SERVICES DEPARTMENT[441](cont'd)

in the aggregate, there should not be a substantial difference in the cost. However, home- and community-based services (HCBS) members would not have received any HCBS services for those first one to two months (or longer). With passive managed care enrollment, the MCO will immediately receive the HCBS cap rate, so in those instances the MCO may perhaps receive a higher payment than would have otherwise been paid out in FFS. There will be a capitation payment sooner for HCBS members, but member expenditures are typically less while awaiting MCO assignment, which will be reflected in capitation rate development (increasing member months with a small decrease in expenditures evens out any difference).

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definition of “Passive enrollment process” in rule **441—73.1(249A)**:

“*Passive enrollment process*” means the process by which the department assigns a member to a managed care organization and which, in accordance with 42 CFR 438.54, seeks to preserve existing provider-member relationships and relationships with providers that have traditionally served Medicaid members, if possible. In the absence of existing relationships, the process ensures that members are equally distributed among all available managed care organizations.

ITEM 2. Amend rule 441—73.3(249A) as follows:

441—73.3(249A) Enrollment.

73.3(1) and **73.3(2)** No change.

73.3(3) Enrollment process. The department shall notify members who must be enrolled in a managed care organization of enrollment and the effective date of enrollment. The department will implement an enrollment process in accordance with federal funding requirements, including 42 CFR 438 as amended to ~~October 16, 2015~~ May 6, 2016.

a. No change.

b. **Tentative Passive assignment. Members** Effective no earlier than the first day of the month of the member's application to Medicaid, the member shall be tentatively assigned to a managed care organization using the department's passive enrollment process and offered the opportunity to choose from the available managed care organizations within a time frame specified in the tentative passive assignment letter.

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. Request to change enrollment. An enrollee may, within 90 days of initial enrollment, request to change enrollment from one managed care organization and enroll in another managed care organization. The request may be made on a form designated by the department, in writing, or by telephone call to the enrollment broker's toll-free member telephone line. Enrollment changes are effective no later than the first day of the second month beginning after the date on which the enrollment broker receives the enrollee's written or verbal request.

~~(1) A member shall have a minimum of ten days from the date of the tentative assignment letter to request enrollment with a different managed care organization. The request may be made on a form designated by the department, in writing, or by telephone call to the enrollment broker's toll-free member telephone line. Changes are subject to the effective date provisions of subrule 73.3(4).~~

~~(2) An enrollee may, within 90 days of initial enrollment, request to change enrollment from one managed care organization and enroll in another managed care organization. The request may be made on a form designated by the department, in writing, or by telephone call to the enrollment broker's toll-free member telephone line. Changes are subject to the effective date provisions of subrule 73.3(4).~~

d. and e. No change.

~~**73.3(4) Effective date of enrollment.** The effective date of enrollment shall be no later than the first day of the second month beginning after the date on which the managed care organization receives the designated managed health care choice form or written or verbal request.~~

~~**73.3(5) 73.3(4) Benefit reimbursement prior to enrollment.**~~

~~*a.* Prior to the effective date of managed care enrollment, except as provided in paragraph 73.3(5) "b," 73.3(4) "b," the Medicaid program shall reimburse providers for covered program benefits pursuant to 441—Chapters 74 to 91, as applicable for eligible members.~~

~~*b.* The managed care organization shall be responsible for covering newly retroactive Medicaid eligibility periods, prior to the effective date of enrollment, in the following cases:~~

~~(1) Babies for babies born to Medicaid-enrolled women who are retroactively eligible to the month of birth; and~~

~~(2) Children enrolled in the HAWK-I program retroactive to the date of application. For purposes of this requirement, a retroactive Medicaid eligibility period is defined as a period of time up to three months prior to the Medicaid determination month.~~

[Filed 4/10/19, effective 7/1/19]

[Published 5/8/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4430C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to consumer choices option

The Human Services Department hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

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Purpose and Summary

These amendments make several changes to the Consumer Choices Option (CCO) program available within the AIDS/HIV, brain injury, elderly, health and disability, intellectual disability, and physical disability waivers. The amendments consolidate the CCO service description rules into one subrule, 78.34(13). The amendments change the monthly budget billing methodology for the financial management services (FMS) provider from a prepay method to a postpay method. The amendments clarify who may self-direct services. The amendments also clarify the budget and employer authority responsibilities and define how the monthly CCO budget may be used by a member self-directing services. The amendments make technical changes to remove the references to the Department service workers who are no longer involved in the CCO program. Finally, the amendments add new member and employee responsibilities to ensure proper payments for CCO services are made.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4288C**. The Department received comments from seven respondents during the public comment period. The comments, which have been lightly edited to correct cross references and typos and make other similar nonsubstantive corrections, and the Department's responses are as follows:

Comment 1: I see an issue with the proposed 78.34(13)"m"(5), the part where it states, "When timecard information is submitted to the financial management service provider in an electronic format, the member shall retain the signed employee timecard for five years from the date of service."

This makes sense if a paper time sheet was used and it was faxed or scanned/mailed to Veridian. This seems to indicate that if the timecard was mailed, the employee wouldn't be required to keep a signed copy; that's unclear to me. Also, many people use web entry timecards, nothing to save. There is a portal for employees to enter hours and for employers to approve the entries. After entered by employee and approved by employer, FMS is then able to extract them for payroll; in this case, there is nothing to retain, but it is electronic format. This seems clear but impossible without the system being updated to include an option for it.

Department response 1: Subparagraph 78.34(13)"m"(4) requires a CCO employee to use Form 470-4429, Consumer Choices Option Semi-Monthly Time Sheet, to document employee time worked. This is the document of record for the CCO program. Information from the Consumer Choices Option Semi-Monthly Time Sheet may be submitted electronically to the FMS provider for payment and processing, but the Consumer Choices Option Semi-Monthly Time Sheet must be completed by the employee and then signed and dated. Even though the FMS electronic web entry system is used for submitting time sheets, the Consumer Choices Option Semi-Monthly Time Sheet must be completed to support the electronic timecard submission.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 2: I have a comment about 78.34(13)"m"(4). I have been involved in CCO for over eight years and have never known about the information in 79.3(2)"c"(3). This is welcome knowledge. I think this is great to include here in the CCO rules. However, I think this needs to be easily accessible by all employers and employees. I think it should be part of the member and employee packets. Having it accessible on the FMS and Iowa Medicaid Enterprise (IME) websites would be great also. The common person does not know where to find this info. People must know about these rules before they can follow them. I have always referred employees and employers to ask their case managers what they expect for documentation, and the answers vary; case managers having this info readily available would be great also.

Department response 2: This is a new provision to specify that the documentation for CCO must adhere to subparagraph 79.3(2)"c"(3). Previous rules in CCO were not specific to the documentation requirements in 79.3(2)"c"(3). The provision was added to clearly identify the documentation rule

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requirement for CCO. The Department agrees that the documentation requirements in 79.3(2)“c”(3) should be incorporated into the employee packets.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 3: I noticed in 78.34(13) six waivers are listed, but when it breaks down which services are allowed with each waiver, there are only five waivers listed, the health and disability waiver is not listed.

Department response 3: The proposed CCO rules use the health and disability waiver rules found in rule 441—78.34(249A) as the base for all CCO rules. The CCO rules applicable to the AIDS/HIV, brain injury, elderly, intellectual disability, and physical disability waivers refer back to rule 441—78.34(249A). The CCO services for the health and disability waiver are found in subparagraph 78.34(13)“b”(1). There is no change to that subparagraph, and as such, it was not included in the Notice as a rule change for public comment.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 4: I cannot make sense out of the fees in 79.1(2). It says rate set by member. It has been my understanding that the Department sets the rate for CCO and the managed care organization (MCO) cannot go below that set rate. I do see that the rates I can understand are much higher than the rates for CCO. I read several places where it refers to CCO being cost neutral. As an independent support broker (ISB), we have to rely on the MCOs to get the current rates and our only source of information from the MCO comes from the case managers, and many of those are confused on how CCO works. Could rates for CCO possibly be reevaluated to make them more cost neutral?

Department response 4: The basis of reimbursement for self-directed personal care, self-directed community supports and employment and individual-directed goods and services in subrule 79.1(2) is the “rate negotiated by member.” This means that the member has the authority to set the wages of the employees and to determine how much the member will pay for goods and services. This rule has not changed.

Subparagraphs 78.34(13)“b”(8) through (12) determine how the monthly CCO budget amount is created based on the services that are authorized in the member’s service plan. The individual service rates for use in CCO are calculated by IME. The calculated rate for each service is shared with the MCOs for use in creating the monthly CCO budget for the members the MCOs manage. The MCOs use the same rates that are used for the fee-for-service (FFS) members that are managed by the Department. Once the monthly budget amount is established, the member may negotiate rates with employees and service providers to meet the member’s needs.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 5:

(1) There are inconsistencies with CCO forms; example I have is the ISB fee. If you print out the ISB agreement from the IME website, the form says maximum pay is \$15.00. If you print it out from the Veridian website, the MCO ISB agreement says \$15.91 and the IME ISB agreement says \$15.15. If you look at the monthly CCO budget, it states the max is \$15.91. The MCO United Health Care (UHC) says it’s \$16.07, and the MCO Amerigroup says it’s \$16.09. I believe it is \$16.07. It would be great if that was consistent information. When ISB fills out the form for a monthly budget and it states that the max is \$15.91 and we enter \$16.07, that seems like an integrity issue, but we have no way of changing the \$15.91 on the form.

(2) ISB training is not relevant to what we are expected to do, and there is much gray area. IME and each MCO have different expectations, and all claim they cannot direct us and we must refer to our training; however, the training is vague. There is also no current way for the ISBs to get updated information.

(3) The next issue is with the ISB payroll. We are considered vendors and expected to do our job in completion each month, no matter how much time it takes. We receive a 1099 at the end of the year and are considered contract labor. But we turn in a time sheet and are paid by the hour. It seems to me that

HUMAN SERVICES DEPARTMENT[441](cont'd)

as a vendor, we should be paid a set rate each month like Veridian. That would take care of all the issues I had in (2). We have to do our job or none of the employees get paid. The budget being submitted and approved and the employees getting paid correctly are proof we did our job. When I read Iowa labor laws, it seems to me that we are contract labor and should be paid for the job, not the hour.

(4) We have recently been notified in the form of a “reminder” that we cannot use electronic or photocopied signatures. I was never notified of this, so I do not consider it a reminder. I believe there are federal laws making digital signatures legal. Also, I email a consumer and they print, sign and email back to me, so when we print it out again, it is a copied signature. If I were to drive to the member for each signature, I would need more than 2.5 hours a month. Driving two to three hours round trip for a signature does not seem an efficient use of time. I know other Medicaid papers are digitally, electronically and copy signatures. Case managers have consumers sign on their tablets. Doctors’ offices have members sign on tablets. Veridian sends out the member packet to be filled out with their signatures already copied on them. I know there are people being investigated for copied signatures. Isn’t the purpose of our signature to indicate we agree with what the document says, so wouldn’t the person who signed be the only one who should object to the signature?

(5) I also believe Veridian has a rule that is a violation of labor laws. If someone doesn’t get their time sheet turned in within 30 days, they don’t pay it. I understand it gets hard when people don’t turn in time sheets on time, but I don’t think they cannot pay them. If Veridian doesn’t pay the employee, then the employee can file a complaint with the labor board, but the complaint would be against the employer and the employer has no control over that.

(6) An ISB pays a maximum of \$40.18 a month for a consumer; if someone was going to run a scam for money, ISB is not a good choice. We usually do it for more of a service because we care about the members of our community. When I started as an employee, there were no ISBs in my area. We had to search so hard for an ISB, I decided I would become an ISB for others. Many ISBs have family members that are consumers. ISBs are even more important now that we have MCOs and the case manager works for the MCO; sometimes the ISB is the only voice to advocate with the member. It seems that people that work with disabled and elderly members are very compassionate, and CCO is a way for the state to save money by taking advantage of that compassion.

Department response 5: The comments are not directly related to the proposed amendments in **ARC 4288C**. The respondent was referred to the correct venue to address these concerns.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 6: Please clarify who a “service worker” is. I am my son’s direct care provider and his medical power of attorney and help answer the questions on the assessment because he can’t! Are you trying to cut out parents in this important process because privatized case managers do NOT know our kids or their needs!! This is illegal.

Department response 6: Department of Human Services service workers were previously involved in authorization of CCO services in a member’s service plan. As noted in the summary section of **ARC 4288C**, one purpose of the proposed rule amendments was to “make technical changes to remove the references to the Department service workers who are no longer involved in the CCO program.” The removal of the term “service worker” in the rules is in reference to Department service workers and not to a direct service worker of the member.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 7: I am a little concerned about the implications and unintended consequences of the new rule roll out. Has it been vetted by families that use CCO? How is calendar year going to be tracked? Is the onus of responsibility on the family to know when their year ends in order to use saved time before it is reset?

I am not one to fear all change, but I would like a public meeting held so that brains bigger than mine might foresee how it affects families.

Department response 7: The change to the time span for creating and using a savings plan is designed to coincide with the member’s service plan year. The use of a CCO savings plan, as well as all CCO

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services, should be addressed at the annual service plan meeting with the member's case manager or community-based case manager.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 8: I am co-guardian of a Medicaid member who utilizes the CCO program. This program has been exactly what she needs and is an example of thinking outside of the box to provide services in a unique and individualized setting.

I do not want any rule changes that would restrict or increase the administrative burden of this program. This may decrease availability and user groups. This program offers members the flexibility they want as well as a cost savings to the State of Iowa since CCO reimbursement rates are less than that of ICF-ID or HCBS SCL services rates, both per-unit and daily rate.

I would request that there is more training provided to the administrators of the program similar to IME training for other programs. In addition I believe the CCO rates should be reviewed and increased in similar fashion as the other settings and their reimbursement rates.

Department response 8: The proposed amendments in **ARC 4288C** were included to:

- Change the payment methodology for the FMS,
- Clarify the roles and responsibilities of members when taking on the budget and employer authorities, and
- Clarify the responsibilities of the member and the employee to ensure program integrity within CCO.

Some changes to the responsibilities for the member and employee may increase the administrative burden of members or their representatives but are needed to ensure the integrity of the CCO program.

It is anticipated that the amendments will require additional training to implement the changes statewide, including training for ISBs, case managers, MCOs and the FMS.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 9: The respondent requested clarification to the proposed amendments as follows:

(1) Subrule 78.34(13): In this section there are multiple references to the service of basic individual respite care. [The respondent] would like to note that the service of group respite is no longer included as a service description and is still being used by current CCO members. It would be advised that a plan be put into place to transition these members from group respite to individual respite prior to the adoption of these new rules.

(2) Paragraph 78.34(13)“h,” employer authority: This section indicates the member has the authority to be the common-law employer. It further explains the employer authority tasks may be delegated if the member is a child or an adult member who cannot complete the employer authority tasks. Would the delegation of the employer authority tasks also include the delegated person being the enrolled employer of record with the Internal Revenue Service (IRS)? [The respondent] would recommend this language clearly state who is the employer of record with the IRS.

(3) Subparagraph 78.34(13)“l”(18), responsibilities of the financial management service: This section indicates the Department may request that the financial management service provider withhold payments from the member's employee to offset any overpayment. It must be noted that the financial management service provider must comply with the laws regarding an employee's pay. [The respondent] would need the Department to provide a signed document with the employee's signature authorizing these funds to be withheld before [the respondent] could offset these payments.

(4) Item 8, rescind and reserve subrule 79.1(9): This section rescinds the subrule that outlines how the FMS organization will receive payment for the services provided to the CCO member. There are fundamental flaws with rescinding this subrule without proper planning and documentation as a part of this administrative rule change to address the following:

- A system in place for the FMS to be able to track member eligibility with timely notification.
 - A process to provide the FMS with proper service authorizations for fee-for-service members.
- This could result in payments being issued and the FMS being unaware of the missing authorizations or

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the FMS having to delay payments with authorization issues until a resolution is in place impacting the member's service.

- The system currently in place has members assigned incorrectly between fee for service and the managed care organizations. This could result in significant payments being issued without a means to resolve these payments.
- Systems incompatibility between the state's individualized services information system (ISIS) and the state's Medicaid management information system (MMIS).
- A negotiated prepayment amount with the FMS and a negotiated administrative rate for the additional costs associated with moving to postpayment.

Department response 9:

(1) Group respite is not a service that can be authorized in a member's service plan to create the monthly CCO budget amount. Only basic respite can be authorized. This is not a rule change from previous CCO rules. However, a member may choose to purchase group respite services using funds in the CCO budget that come from basic respite.

(2) The provision described in (2) in Comment 9 has not changed. A common-law employer has the right to direct and control the performance of the services. The FMS will continue to be the employer of record with the tasks as described in paragraph 78.34(13)“1.”

(3) The rules do not direct the FMS to disregard other state and federal laws and regulations. As needed, the FMS should have policies and procedures in place to allow the Department to withhold payment from a CCO employee.

(4) The provisions in subrule 79.1(9) designed to implement the prepay process for FMS reimbursement are no longer applicable to the FMS provider or the CCO billing process. The CCO rules are designed to have the FMS follow the same billing processes as all Medicaid providers follow as described in rule 441—79.1(249A). CCO services will be authorized in a member's service plan for payment to the FMS provider number. The authorization will allow the FMS to bill for services that are authorized after the provision of services. The FMS will take on the same risk as all other Medicaid providers and will have access to the same supports (i.e., track member eligibility, service plan authorization, etc.) as other providers.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 10: The respondent that provided Comment 9 provided additional comments during the Administrative Rules Review Committee meeting held on March 7, 2019:

The Department did make [the respondent] aware of this proposed change. [The respondent] is not opposed to the change if the state can successfully mitigate the financial risk that will shift to [the respondent], along with the state successfully testing all the systems changes that will need to happen within the state's systems, and provide training needed prior to the effective date. [The respondent] is concerned about the timeline of the implementation of these new rules, especially given the implementation of a new managed care organization.

Department response 10: The Department has been working with the respondent over the past year as the system moves from a prepay to a postpay system:

- The Department is in process of approving an escrow account for the respondent to cover three billing cycles to reduce the financial risk the respondent takes on when making payment for goods and services for the FFS population that uses the CCO program. This is being done to reduce the financial risk.
- The Department has requested and received input from the respondent on systems changes to ISIS. The respondent has been invited to assist and participate in the testing of ISIS systems changes before they go into production.
- The Department sends a monthly Medicaid eligibility file to the respondent that identifies all current FFS CCO members that are eligible for the month. ISIS upgrades have been made that allow the IME CCO program manager to develop a point-in-time list of Medicaid-eligible members. This can be requested by the respondent at any time during the month.

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- The need for training has been identified and will be provided prior to the implementation of the CCO rules on July 1, 2019.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 11: “With the exception of savings to pay Emergency Overtime.” Death, illness and weather cannot be predicted or contained within any specified time. Employees are subject to emergency overtime year-round. If, in the last month of the waiver service year, an employee suffers injury or death, funds need to be available to pay existing caregivers until a new employee is approved.

Department response 11: The Consumer Choices Option Individual Budget (Form 470-4431) requires a member to have an emergency backup plan in place that identifies a provider(s) that is available in situations such as those identified by the respondent. The CCO individual budget emergency backup plan states:

“All consumers must have a plan for emergency situations. This emergency plan may be paid through your individual budget, but reductions may need to be made from other services on your budget anytime this is accessed. The Financial Management agency must have an employee packet completed if your emergency backup provider is to be paid.”

If emergency overtime pay is needed, the member should have a plan in place to address how CCO services will continue to be provided and stay within the monthly budget amount.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 12: [Member’s name] receives a daily rate of \$173 whereas HCBS and ICF/ID receives \$340 to \$370 per day per individual.

One hundred seventy-three dollars per day is a totally unrealistic figure to cover all expenses. Consumer-directed attendant care (CDAC) and transportation were taken away. Natural support was listed at four hours per day.

Department response 12: This provision has not changed and has been in rule since CCO began in 2007. Subparagraphs 78.34(13)“b”(8) through (12) determine how the monthly CCO budget amount for each service is created. Services provided by an enrolled HCBS provider or an intermediate care facility for persons with an intellectual disability (ICF/ID) have different cost structures and methods of rate development. The individual service rates for use in CCO are calculated by IME using the rate methodology in rule. The calculated rate for each service is shared with the MCOs for use in creating the monthly CCO budget for the members the MCOs manage. The MCOs use the same rates that are used for the FFS members that are managed by the Department.

CDAC and transportation are still available for use in creating a CCO budget.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

Comment 13: Budget should be based on fee for service.

Department response 13: The individual monthly budget amount is based on the CCO rate-setting methodology as noted in Department response 12. This provision has not changed.

The Department did not make any changes to the proposed amendments in **ARC 4288C** based on the comment.

One change has been made to correct the cross reference in subparagraph 78.34(13)“m”(5). No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on April 10, 2019.

Fiscal Impact

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

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Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 78.34(13) as follows:

78.34(13) Consumer choices option. The consumer choices option (CCO) provides a member with a flexible monthly individual budget that is based on the member's service needs. With the individual budget, the member shall have the authority to purchase goods and services to meet the member's assessed needs and may choose to employ providers of services and supports. The services, supports, and items that are purchased with an individual budget must be directly related to a member's assessed need or goal established in the member's service plan. The consumer choices option is available to any member receiving the AIDS/HIV, brain injury, elderly, health and disability, intellectual disability, or physical disability waiver programs who has the ability and desire to perform all budget authority tasks identified in paragraph 78.34(13) "g" and employer authority tasks identified in paragraph 78.34(13) "h," or who delegates the budget or employer authority tasks identified in paragraph 78.34(13) "i." Components of this service are set forth below.

a. No change.

b. *Individual budget amount.* A monthly individual budget amount shall be established for each member based on the assessed needs of the member and based on the services and supports authorized in the member's service plan. The member shall be informed of the individual budget amount during the development of the service plan.

(1) No change.

(2) ~~The department shall determine an average unit cost for each service listed in subparagraph 78.34(13) "b"(1) based on actual unit costs from the previous fiscal year plus a cost of living adjustment.~~ Services that may be included in determining the individual budget amount for a member in the HCBS elderly waiver are:

1. Assistive devices.
2. Chore service.
3. Consumer-directed attendant care (unskilled).
4. Home and vehicle modification.
5. Home-delivered meals.
6. Homemaker service.
7. Basic individual respite care.
8. Senior companion.
9. Transportation.

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~~(3) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the member's service plan before calculating the value of that service to be included in the individual budget amount. Services that may be included in determining the individual budget amount for a member in the HCBS AIDS/HIV waiver are:~~

- ~~1. Consumer-directed attendant care (unskilled).~~
- ~~2. Home-delivered meals.~~
- ~~3. Homemaker service.~~
- ~~4. Basic individual respite care.~~

~~(4) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent. The department shall analyze and adjust the utilization adjustment factor at least annually in order to maintain cost neutrality. Services that may be included in determining the individual budget amount for a member in the HCBS intellectual disability waiver are:~~

- ~~1. Consumer-directed attendant care (unskilled).~~
- ~~2. Day habilitation.~~
- ~~3. Home and vehicle modification.~~
- ~~4. Prevocational services.~~
- ~~5. Basic individual respite care.~~
- ~~6. Supported community living.~~
- ~~7. Supported employment.~~
- ~~8. Transportation.~~

~~(5) Individual budgets for respite services shall be computed based on the average cost for services identified in subparagraph 78.34(13) "b"(2). Respite services are not subject to the utilization adjustment factor in subparagraph 78.34(13) "b"(3). Services that may be included in determining the individual budget amount for a member in the HCBS brain injury waiver are:~~

- ~~1. Consumer-directed attendant care (unskilled).~~
- ~~2. Home and vehicle modification.~~
- ~~3. Prevocational services.~~
- ~~4. Basic individual respite care.~~
- ~~5. Specialized medical equipment.~~
- ~~6. Supported community living.~~
- ~~7. Supported employment.~~
- ~~8. Transportation.~~

~~(6) Anticipated costs for home and vehicle modification are not subject to the average cost in subparagraph 78.34(13) "b"(2) or the utilization adjustment factor in subparagraph 78.34(13) "b"(3). Anticipated costs for home and vehicle modification shall not include the costs of the financial management services or the independent support broker. Before becoming part of the individual budget, all home and vehicle modifications shall be identified in the member's service plan and approved by the case manager or service worker. Costs for home and vehicle modification may be paid to the financial management services provider in a one-time payment. Services that may be included in determining the individual budget amount for a member in the HCBS physical disability waiver are:~~

- ~~1. Consumer-directed attendant care (unskilled).~~
- ~~2. Home and vehicle modification.~~
- ~~3. Specialized medical equipment.~~
- ~~4. Transportation.~~

~~(7) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.~~

~~(7) The department shall determine an average unit cost for each service listed in subparagraphs 78.34(13) "b"(1) to (6) based on actual unit costs from the previous fiscal year plus a cost-of-living adjustment.~~

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(8) In aggregate, costs for individual budget services shall not exceed the current costs of waiver program services. In order to maintain cost neutrality, the department shall apply a utilization adjustment factor to the amount of service authorized in the member's service plan before calculating the value of that service to be included in the individual budget amount.

(9) The department shall compute the utilization adjustment factor for each service by dividing the net costs of all claims paid for the service by the total of the authorized costs for that service, using at least 12 consecutive months of aggregate service data. The utilization adjustment factor shall be no lower than 60 percent.

(10) Individual budgets for respite services shall be computed based on the average cost for services identified in subparagraph 78.34(13) "b"(7). Respite services are not subject to the utilization adjustment factor in subparagraph 78.34(13) "b"(8).

(11) Anticipated costs for home and vehicle modification, assistive devices, and specialized medical equipment are not subject to the average cost in subparagraph 78.34(13) "b"(7) or the utilization adjustment factor in subparagraph 78.34(13) "b"(8). The anticipated costs may include the costs of the financial management services and the independent support broker when the home and vehicle modification, assistive device, or specialized medical equipment is the only service included in the CCO monthly budget and the total cost for the home and vehicle modification, assistive device, or specialized medical equipment, including the cost of the financial management services and the independent support broker, is approved by the Iowa Medicaid enterprise or managed care organization as the least costly option to meet the member's need. Costs for the home and vehicle modification, assistive device, or specialized medical equipment may be paid to the financial management services provider in a one-time payment. Before becoming part of the CCO monthly budget, all home and vehicle modifications, assistive device, and specialized medical equipment shall be identified in the member's service plan and authorized by the case manager or community-based case manager.

(12) The individual budget amount may be changed only at the first of the month and shall remain fixed for the entire month.

c. No change.

d. Optional service components. A member who elects the consumer choices option may purchase the following goods, services and supports, which shall be provided in the member's home or at an integrated community setting:

(1) Self-directed personal care services. Self-directed personal care services are services ~~or goods~~ that provide a range of assistance in activities of daily living and incidental activities of daily living that help the member remain in the home and community. These services must be identified in the member's service plan developed by the member's case manager or ~~service worker~~ community-based case manager.

(2) Self-directed community supports and employment. Self-directed community supports and employment are services that support the member in developing and maintaining independence and community integration. These services must be identified in the member's service plan developed by the member's case manager or ~~service worker~~ community-based case manager.

(3) No change.

e. Development of the individual budget. The independent support broker shall assist the member in developing and implementing the member's individual budget. The individual budget shall include:

(1) and (2) No change.

(3) The costs of any optional service component chosen by the member as described in paragraph 78.34(13) "d." At a minimum, the CCO monthly budget must include the purchase of self-directed personal care, individual-directed goods and services, or self-directed community supports and services needed to meet the amount of service authorized for use in CCO identified in the member's service plan. After funds have been budgeted to meet the identified needs, remaining funds from the monthly budget amount may be used to purchase additional self-directed personal care, individual-directed goods and services, or self-directed community supports and services as allowed by the monthly budget. The additional self-directed personal care, individual-directed goods and services, or self-directed community supports and services may exceed the amount of service or supports authorized in the

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member's service plan. Costs of the following items and services shall not be covered by the individual budget:

1. to 22. No change.

23. Services provided in the family home by a parent, stepparent, legal representative, sibling, or stepsibling during overnight sleeping hours unless the parent, stepparent, legal representative, sibling, or stepsibling is awake and actively providing direct services as authorized in the member's service plan.

24. Residential services provided to three or more members living in the same residential setting.

(4) The costs of any approved home or vehicle modification, assistive device, or specialized medical equipment. When authorized, the budget may include an amount allocated for a home or vehicle modification, an assistive device, or specialized medical equipment. Before becoming part of the individual budget, all home and vehicle modifications, assistive devices, and specialized medical equipment shall be identified in the member's service plan and approved by the case manager or ~~service worker~~ community-based case manager. The authorized amount shall not be used for anything other than the specific modification, assistive device, or specialized medical equipment, as identified in subparagraph 78.34(13) "b" (11).

(5) No change.

f. Savings plan. A member savings plan must be in writing and be approved before the start of the savings plan by the department ~~before the start of the savings plan~~ for fee-for-service members or by the member's managed care organization for members in managed care. ~~Amounts~~ Budget amounts allocated to the savings plan must result from efficiencies in meeting ~~identified~~ the member's service needs of the member identified in the member's service plan.

(1) The savings plan shall identify:

1. to 4. No change.

5. Specific time spans for accumulating the savings allocation, not to exceed the member's current service plan year end date.

(2) With the exception of funds allocated for respite care, the savings plan shall not include funds budgeted for direct services or supports that were not received. ~~The budgeted amount associated with unused direct services other than respite care shall revert to the Medicaid program at the end of each month.~~ Funds from unused respite services may be allocated to the savings plan but shall not be used for anything other than future respite care.

(3) ~~Funds accumulated under a savings plan shall be used only to purchase items that increase independence or substitute for human assistance to the extent that expenditures would otherwise be made for human assistance, including additional goods, supports, services or supplies.~~ Funds allocated to a savings plan may be used to purchase additional self-directed personal care, individual-directed goods and services, or self-directed community supports and services. The additional self-directed personal care, individual-directed goods and services, or self-directed community supports and services included in the monthly budget may exceed the amount of service or supports authorized in the member's service plan. The self-directed personal care, individual-directed goods and services, or self-directed community supports and services purchased with funds from a savings plan must:

1. and 2. No change.

3. Be approved by the member's case manager ~~or service worker~~ or community-based case manager.

(4) ~~All funds allocated to a savings plan that are not expended by December 31 of each year shall revert to the Medicaid program~~ to purchase additional self-directed personal care, individual-directed goods and services, or self-directed community supports and services must be used during the member's waiver year in which the saving occurred.

(5) No change.

g. Budget authority. The member shall have authority over the individual budget authorized by the department or managed care organization to perform the following tasks:

(1) No change.

(2) Determine the amount to be paid for services. Reimbursement rates for employees shall be consistent with employee reimbursement rates or the prevailing wages paid by others in the community

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for the same or substantially similar services. Reimbursement rates for the independent support broker and the financial management service are subject to the limits in 441—subrule 79.1(2). The reimbursement rate for a member's legal representative who provides services to the member as allowed by 441—paragraph 79.9(7)“b” must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.

(3) Schedule the provision of services. Whenever a member's legal representative provides services to the member as allowed by 441—paragraph 79.9(7)“b,” the legal representative may not be paid for more than 40 hours of service per week and a A contingency plan must be established in the member's service plan to ensure service delivery in the event the legal representative member's employee is unable to provide services due to illness or other unexpected event.

(4) Authorize payment for optional service components identified in the individual budget. When the member's guardian or legal representative is a paid employee, payment authorization for optional service components must be delegated to a representative pursuant to paragraph 78.34(13)“i.”

(5) No change.

h. Delegation of budget authority. The member may delegate responsibility for the individual budget to a representative in addition to the independent support broker.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the member.

(3) The member shall sign a consent form that designates who the member has chosen as a representative and what responsibilities the representative shall have.

(4) The representative shall not be paid for this service.

h. Employer authority. The member shall have the authority to be the common-law employer of employees providing services and support under the CCO. A common-law employer has the right to direct and control the performance of the services. If the member is a child, the parent or the legal representative shall be responsible for completing all employer authority tasks. Adult members who do not have the ability to complete all employer authority tasks shall have a representative delegated to complete the employer authority tasks identified in this paragraph. Documentation of the person responsible for the employer authority tasks, whether the member or another entity, shall be included in the member's service plan. The member or the delegated employer authority may perform the following functions:

(1) Recruit and hire employees.

(2) Verify employee qualifications.

(3) Specify additional employee qualifications.

(4) Determine employee duties.

(5) Determine employee wages and benefits.

(6) Schedule employees.

(7) Train and supervise employees.

i. Employer authority. ~~The member shall have the authority to be the common-law employer of employees providing services and support under the consumer choices option. A common-law employer has the right to direct and control the performance of the services. The member may perform the following functions:~~

(1) ~~Recruit employees.~~

(2) ~~Select employees from a worker registry.~~

(3) ~~Verify employee qualifications.~~

(4) ~~Specify additional employee qualifications.~~

(5) ~~Determine employee duties.~~

(6) ~~Determine employee wages and benefits.~~

(7) ~~Schedule employees.~~

(8) ~~Train and supervise employees.~~

i. Delegation of budget and employer authority. The member may delegate responsibilities for the individual budget or employer authority functions to a representative. If the member is a child, the

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parent or the legal representative shall be delegated all budget and employer authority tasks. Adult members aged 18 and older who do not have the ability to complete all budget or employer authority tasks shall have a representative delegated to complete the applicable budget authority tasks identified in paragraph 78.34(13)“g” and employer authority tasks identified in paragraph 78.34(13)“h.” Documentation of the person responsible for the budget and employer authority tasks, whether the member or a representative, shall be included in the member’s service plan.

(1) The representative must be at least 18 years old.

(2) The representative shall not be a current provider of service to the member.

(3) The member shall sign a consent form that designates who the member has chosen as a representative and the responsibilities of the representative.

(4) The representative shall not be paid for this service.

j. No change.

k. Responsibilities of the independent support broker. The independent support broker shall perform the following services as directed by the member or the member’s representative:

(1) Assist the member with developing the member’s initial and subsequent individual budgets and with making any changes to the individual budget.

(2) Have monthly contact with the member for the first four months of implementation of the initial individual budget and have, at a minimum, quarterly contact thereafter.

(3) to (11) No change.

l. Responsibilities of the financial management service. The financial management service shall perform all of the following services:

(1) and (2) No change.

(3) ~~Enter~~ Monitor and track the approved individual budget into the web-based tracking system chosen by the department amount authorized each month and ~~enter~~ document all expenditures as they are paid.

(4) to (17) No change.

(18) The department may request that the financial management service provider withhold payment to any member or member’s employee to offset any overpayment or enforce any sanction placed on the service provider pursuant to rule 441—79.3(249A).

m. Responsibilities of the member and the employee. A member participating in the CCO and the member’s employee(s) are responsible for the following:

(1) A member participating in the CCO shall be jointly and severally liable with any of the member’s employees for any overpayment of medical assistance funds used through a CCO budget.

(2) A member may not employ any person who has been sanctioned, or who is affiliated with a person or an entity that has been sanctioned, under 441—Chapter 79. For purposes of this subparagraph, “sanction” also includes anyone who has been temporarily suspended for a credible allegation of fraud under 42 CFR Part 455. Any CCO funds paid to any employee who or which has been sanctioned is an overpayment that the department shall recoup under 441—Chapter 79.

(3) A member may not employ any person who has been excluded by the Office of the Inspector General of the Department of Health and Human Services under Sections 1128 or 1156 of the Social Security Act and is not eligible to receive federal funds.

(4) Employees shall complete, sign and date Form 470-4429, Consumer Choices Option Semi-Monthly Time Sheet, for each date of service provided to a member. Documentation shall comport with 441—subparagraph 79.3(2)“c”(3), “Service documentation.”

(5) Members shall sign, and certify under penalty of perjury, each employee timecard identified in subparagraph 78.34(13)“m”(4) prior to the timecard’s submission to the financial management service provider for payment in order to verify that all information on the submitted timecard accurately describes the amount, duration, and scope of services provided. When timecard information is submitted to the financial management service provider in an electronic format, the member shall retain the signed employee timecard for five years from the date of service.

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ITEM 2. Rescind subrule 78.37(16) and adopt the following **new** subrule in lieu thereof:
78.37(16) Consumer choices option. The consumer choices option is service activities provided pursuant to subrule 78.34(13).

ITEM 3. Rescind subrule 78.38(9) and adopt the following **new** subrule in lieu thereof:
78.38(9) Consumer choices option. The consumer choices option is service activities provided pursuant to subrule 78.34(13).

ITEM 4. Rescind subrule 78.41(15) and adopt the following **new** subrule in lieu thereof:
78.41(15) Consumer choices option. The consumer choices option is service activities provided pursuant to subrule 78.34(13).

ITEM 5. Rescind subrule 78.43(15) and adopt the following **new** subrule in lieu thereof:
78.43(15) Consumer choices option. The consumer choices option is service activities provided pursuant to subrule 78.34(13).

ITEM 6. Rescind subrule 78.46(6) and adopt the following **new** subrule in lieu thereof:
78.46(6) Consumer choices option. The consumer choices option is service activities provided pursuant to subrule 78.34(13).

ITEM 7. Amend subrule 79.1(2), provider category “HCBS waiver service providers,” paragraphs “32,” “33,” and “34,” as follows:

79.1(2) Basis of reimbursement of specific provider categories.

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
32. Self-directed personal care	Rate negotiated by member	Determined by member’s individual budget. When an individual who serves as a member’s legal representative provides services to the member as allowed by 79.9(7) “b,” the payment rate must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department 441—subparagraph 78.34(13) “g”(2).
33. Self-directed community supports and employment	Rate negotiated by member	Determined by member’s individual budget. When an individual who serves as a member’s legal representative provides services to the member as allowed by 79.9(7) “b,” the payment rate must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department 441—subparagraph 78.34(13) “g”(2).
34. Individual-directed goods and services	Rate negotiated by member	Determined by member’s individual budget. When an individual who serves as a member’s legal representative provides services to the member as allowed by 79.9(7) “b,” the payment rate must be based

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u> on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department 441—subparagraph 78.34(13)“g”(2).
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ITEM 8. Rescind and reserve subrule **79.1(9)**.

[Filed 4/10/19, effective 7/1/19]

[Published 5/8/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4431C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed****Rule making related to subacute mental health care facilities**

The Inspections and Appeals Department hereby amends Chapter 71, “Subacute Mental Health Care Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 10A.104 and 135G.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 135G and 2018 Iowa Acts, House File 2456.

Purpose and Summary

Iowa Code chapter 135G regarding subacute mental health care facilities provides for the establishment of basic standards for the operation of these facilities to ensure the safe and adequate diagnosis, evaluation and treatment of persons with serious and persistent mental illness so that these persons are able to experience recovery and live successfully in the community. Since the adoption of the rules implementing Iowa Code chapter 135G, the Department has received questions from subacute mental health care facility licensees seeking clarification of certain rules. These amendments add definitions, require documentation of background checks for personnel, clarify the time within which a treatment plan must be developed, provide further direction regarding the use of a seclusion room or restraints, clarify provisions related to medication management, add requirements related to nutrition and food preparation, and add requirements related to buildings, furnishings and equipment.

In addition, the amendments implement the changes made to Iowa Code chapter 135G resulting from 2018 Iowa Acts, House File 2456, which eliminated certain requirements for licensure by the Department, including the limit on the number of publicly funded subacute care facility beds licensed under Iowa Code chapter 135G.

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

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 13, 2019, as **ARC 4328C**. The Department received written comments from a subacute mental health care facility licensee. The comments concerned the record required to accompany the resident upon transfer or discharge and the possible use of telescreening to assess residents.

Two changes from the Notice were made. The title of “advanced registered nurse practitioner” was corrected in paragraphs 71.16(3)“b” and 71.16(5)“b.” Paragraph 71.19(4)“a” was changed to clarify that each resident must be provided with a twin-sized or larger bed.

Adoption of Rule Making

This rule making was adopted by the Department on April 17, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 12, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Psychiatric care,” “Recovery” and “Recovery principles” in rule **481—71.2(135G)**:

“*Psychiatric care*” means the provision of care to patients in a psychiatric unit of an acute care hospital; a freestanding psychiatric hospital; or a mental health clinic.

“*Recovery*” means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

“*Recovery principles*” means the ten guiding principles of recovery outlined by the federal Substance Abuse and Mental Health Services Administration (www.samhsa.gov): hope, person-driven, many pathways, holistic, peer support, relational, culture, addresses trauma, strengths/responsibility, and respect.

ITEM 2. Amend paragraph **71.3(1)“e”** as follows:

e. Show evidence of a certificate signed by the state fire marshal or deputy state fire marshal, or the designee of either, certifying compliance with fire safety rules.

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

ITEM 3. Amend paragraph **71.3(3)“c”** as follows:

c. Have an approved, current certificate signed by the state fire marshal or deputy state fire marshal, or the designee of either, certifying compliance with fire safety rules and regulations; and

ITEM 4. Rescind subrules **71.3(5)** and **71.3(6)**.

ITEM 5. Renumber subrule **71.3(7)** as **71.3(5)**.

ITEM 6. Amend paragraph **71.8(3)“e”** as follows:

e. When a defect or failure occurs in the fire sprinkler system for more than 10 hours or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal or the state fire marshal’s designee.)

ITEM 7. Amend paragraph **71.10(2)“a”** as follows:

a. Be a mental health professional, as defined in Iowa Code section ~~228.1(6)~~ 228.1(7), with at least one year of experience in an administrative capacity; or

ITEM 8. Amend paragraph **71.12(2)“c”** as follows:

c. A mental health professional as defined in Iowa Code section ~~228.1(6)~~ 228.1(7);

ITEM 9. Amend paragraph **71.12(2)“d”** as follows:

d. Direct care staff with at least ~~three years~~ one year of experience in a mental health care setting; and

ITEM 10. Amend paragraph **71.12(3)“c”** as follows:

c. Personnel records which are current, accurate, complete, and confidential to the extent allowed by law.

(1) The record shall contain documentation of how the employee’s or consultant’s education and experience are relevant to the position for which the employee or consultant was hired.

(2) The record shall contain documentation of criminal history, child abuse and dependent adult abuse record checks, which shall be conducted prior to employment.

ITEM 11. Amend subrule 71.12(4), introductory paragraph, as follows:

71.12(4) The facility shall require regular health examinations for all personnel. Employees shall have a health examination within 12 months prior to beginning employment and regular examinations thereafter at least every four years. The examination shall include, at a minimum, the health status of the employee, including screening and testing for tuberculosis as described in 481—Chapter 59.

ITEM 12. Amend paragraph **71.12(5)“b”** as follows:

b. The record shall include the employee’s:

- (1) Name and address,
- (2) Social security number,
- (3) Date of birth,
- (4) Date of employment,
- (5) References,
- (6) Position in the facility,
- (7) Job description,
- (8) Documentation of experience and education,
- (9) Criminal history, child abuse and dependent adult abuse background checks,
- ~~(9)~~ (10) Staff development plan training records,
- ~~(10)~~ (11) Annual performance evaluation,
- ~~(11)~~ (12) Documentation of disciplinary action,
- ~~(12)~~ (13) Date and reason for discharge or resignation,
- ~~(13)~~ (14) Current physical examination.

ITEM 13. Adopt the following **new** subrule 71.12(6):

71.12(6) Orders for medications and treatments shall be correctly implemented by qualified personnel.

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

ITEM 14. Amend paragraph **71.13(2)“a”** as follows:

a. Eligibility for individualized subacute mental health services will be determined by the standardized preadmission screening utilized by the facility, ~~which~~. The screening shall be conducted by a mental health professional, as defined in Iowa Code section ~~228.1(6)~~ 228.1(7), a physician, a physician assistant, or an advanced registered nurse practitioner.

ITEM 15. Amend paragraph **71.13(7)“c”** as follows:

c. The facility shall make advance notification to the receiving facility prior to the transfer of any resident if the resident is to be transferred to another facility.

(1) Notification shall be made no less than 24 hours prior to transfer unless paragraph 71.13(6) “d” applies.

(2) Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being transferred.

ITEM 16. Amend paragraph **71.13(7)“d”** as follows:

d. The appropriate record as set forth in subrule ~~71.18(1)~~ 71.20(1) shall accompany the resident when the resident is transferred or discharged.

ITEM 17. Amend subrule 71.14(1) as follows:

71.14(1) A treatment plan must be developed with each resident. The plan must be based on initial and ongoing assessment of need, be designed to resolve the acute or crisis mental health symptoms or the imminent risk of acute or crisis mental health symptoms, and be completed within six hours of admission, or no later than 12 noon following admission if the resident is admitted between 8 p.m. and 6 a.m.

ITEM 18. Amend rule 481—71.16(135G) as follows:

481—71.16(135G) Seclusion and restraint.

71.16(1) *Use of a seclusion room.* Pursuant to Iowa Code section 135G.3(2), a ~~subacute care facility utilizing a seclusion room used by a subacute care facility~~ must meet the conditions of 42 CFR § 483.364(b). ~~Use of the seclusion room shall be approved by a licensed psychiatrist or by order of the resident’s physician, a physician assistant, or an advanced registered nurse practitioner.~~

a. A subacute care facility utilizing a seclusion room shall have written policies regarding its use. The policy shall:

(1) Specify the types of behavior that may result in seclusion room placement.

(2) Delineate the licensed personnel who may authorize use of the seclusion room.

(3) Require documentation of the time in the seclusion room, the reasons for use of the seclusion room, and the reasons for any extension of time beyond one hour. Under no circumstances shall the use of the seclusion room exceed four hours.

(4) Require notice to residents of the types of behavior that may result in seclusion room placement.

b. A staff member shall always be in hearing distance of the seclusion room, and the resident shall be visually checked by the staff at least every 15 minutes. Every check shall be documented in writing.

c. A seclusion room shall not be used for punishment, for the convenience of staff, or as a substitution for supervision. A seclusion room shall only be used when a less restrictive alternative has failed and:

(1) In an emergency to prevent injury to the resident or to others; or

(2) For crisis intervention.

71.16(2) *Use of restraints.* There shall be written policies that define the use of restraint, designate the staff member who may authorize its use, and establish a mechanism for monitoring and controlling its use.

~~**71.16(3)**~~ *a.* Restraint shall not be used for punishment, for the convenience of staff, or as a substitution for supervision. Restraint shall only be used:

~~*a.*~~ (1) In an emergency to prevent injury to the resident or to others; or

~~*b.*~~ (2) For crisis intervention.

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

~~71.16(4)~~ b. Restraint must not result in harm or injury to the resident and must be used only to ensure the safety of the resident or others during an emergency situation until the emergency situation has ceased, even if the restraint order has not expired.

~~71.16(5)~~ c. The use of restraint should be selected only when other less restrictive measures have been found to be ineffective to protect the resident or others. The staff shall demonstrate effective treatment approaches and alternatives to the use of restraint.

~~71.16(6)~~ Standing or as-needed orders for restraint are prohibited.

~~71.16(7)~~ d. Under no circumstances shall a resident be allowed to actively or passively assist in the restraint of another resident.

~~71.16(8)~~ e. Staff trained in the use of emergency safety interventions must be physically present and continually assessing and monitoring the well-being of the resident and the safe use of restraint throughout the duration of the emergency situation.

~~71.16(9)~~ 71.16(3) Orders for restraint or seclusion. An order for restraint or seclusion shall not be written as a standing order or on an as-needed basis.

a. Each order for restraint or seclusion shall include:

(1) The name of the ordering physician, physician assistant or advanced registered nurse practitioner.

(2) The date and time the order is obtained.

(3) The emergency safety intervention ordered, including the length of time for which restraint or seclusion is authorized.

b. Orders for restraint or seclusion must be by a physician or other licensed practitioner permitted by law to order restraint or seclusion, physician assistant or advanced registered nurse practitioner.

~~a.~~ (1) Verbal orders must be received while the emergency safety intervention is being initiated by staff or immediately after the emergency safety situation ends and must be verified in writing in the resident's record by the physician or other licensed practitioner permitted by law to order restraint or seclusion, physician assistant or advanced registered nurse practitioner.

~~b.~~ (2) Once the one-time order for the specific resident in an emergency safety situation has expired, it may not be renewed on a planned, anticipated, or as-needed basis.

71.16(4) Simultaneous use prohibited. Restraint and seclusion shall not be used simultaneously.

~~71.16(10)~~ 71.16(5) Documentation of use of restraint or seclusion. Staff must document in the resident's record and in a centralized tracking system any use of restraint or seclusion.

a. Documentation must be completed by the end of the shift in which the intervention occurs or during the shift in which it ends.

b. Documentation shall include:

(1) The order for restraint or seclusion.

(2) The time the emergency safety intervention began and ended.

(3) The emergency safety situation that required restraint or seclusion.

(4) The name of staff involved in the emergency safety intervention.

(5) The interventions used and their outcomes.

(6) The signature of the physician, physician assistant or advanced registered nurse practitioner.

~~71.16(11)~~ 71.16(6) Meeting to process restraint or seclusion. As soon as reasonably possible after the restraint or seclusion of a resident has terminated, staff must meet to process the restraint or seclusion occurrence and document in writing the meeting.

~~71.16(12)~~ 71.16(7) Multiple occasions of restraint or seclusion. A resident who requires restraint or seclusion on multiple occasions should be considered for a higher level of care.

~~71.16(13)~~ 71.16(8) Staff training. The facility shall provide to the staff training by qualified professionals on physical restraint and seclusion theory and techniques.

a. The facility shall keep a record of the training, including attendance, for review by the department.

b. Only staff who have documented training in physical restraint and seclusion theory and techniques shall be authorized to assist with the seclusion or physical restraint of a resident.

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

ITEM 19. Amend subrule 71.17(1) as follows:

71.17(1) Medications must be ordered by qualified prescribers and administered by qualified personnel. For purposes of this subrule, “qualified personnel” means, at a minimum, a certified medication aide.

ITEM 20. Amend subrule 71.17(7) as follows:

71.17(7) Whenever a resident brings the resident’s own prescribed medications into the facility, such medications must not be administered unless identified by a qualified prescriber or pharmacist and ordered by a qualified prescriber. If such medications cannot be administered, they must be packaged, sealed, and returned to an adult member of the resident’s immediate family or the legal guardian or securely stored and returned to the resident upon discharge. However, if previously prescribed medication would prove harmful to the resident, the medication may be withheld from the resident and disposed of in accordance with subrule 71.17(6). There must be documentation by the qualified prescriber in the resident’s clinical record citing the dangers or contraindications of the medication being withheld.

ITEM 21. Renumber rules **481—71.18(135G)** to **481—71.20(135G)** as **481—71.20(135G)** to **481—71.22(135G)**.

ITEM 22. Adopt the following new rule 481—71.18(135G):

481—71.18(135G) Dietary.

71.18(1) *Nutrition and menu planning.*

- a. Menus shall be planned and followed to meet the nutritional needs of residents.
- b. Menus shall be planned and served to include foods and amounts necessary to meet federal dietary guidelines.
- c. At least three meals or their equivalent shall be served daily, at regular hours.

71.18(2) *Dietary storage, food preparation, and service.* All food shall be handled, prepared, served and stored in compliance with the Food Code adopted pursuant to Iowa Code section 137F.2.

ITEM 23. Adopt the following new rule 481—71.19(135G):

481—71.19(135G) Buildings, furnishings, and equipment.

71.19(1) *Buildings—general requirements.*

- a. All windows shall be supplied with window treatments that are kept clean and in good repair.
- b. Whenever glass sliding doors or transparent panels are used, they shall be marked conspicuously.
- c. The facility shall meet the equivalent requirements of the appropriate group occupancy of the state fire code.

71.19(2) *Furnishings and equipment.*

- a. All furnishings and equipment shall be durable, cleanable, and appropriate to their function.
- b. Upholstery materials shall be moisture- and soil-resistant as needed, except on furniture provided by the resident and the property of the resident.

71.19(3) *Dining area and common area.* Every facility shall have a dining area and a common area easily accessible to all residents.

a. A common area shall be maintained for the use of residents and their visitors and may be used for recreational activities. Common areas shall be suitably furnished.

b. Dining areas shall be furnished with dining tables and chairs appropriate to the size and function of the facility. Dining areas and furnishings shall be kept clean and sanitary.

71.19(4) *Bedrooms.*

a. Each resident shall be provided with a twin-sized or larger bed, substantially constructed and in good repair. Rollaway beds, metal cots, or folding beds are not acceptable.

b. Each bed shall be equipped with the following: casters or glides; clean springs in good repair; a clean, comfortable, well-constructed mattress approximately five inches thick and standard in size for the bed; and clean, comfortable pillows of average bed size.

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

- c. Each resident shall have a bedside table with a drawer to accommodate personal possessions.
- d. There shall be a comfortable chair, either a rocking chair or armchair, per resident bed. The resident's personal wishes shall be considered.
- e. There shall be drawer space for each resident's clothing. In a bedroom in which more than one resident resides, drawer space shall be assigned to each resident.
- f. Beds and other furnishings shall not obstruct free passage to and through doorways.
- g. Beds shall not be placed in such a manner that the side of the bed is against the radiator or in close proximity to it unless the radiator is covered so as to protect the resident from contact with it or from excessive heat.

h. There shall be no more than two residents per room.

71.19(5) Bath and toilet facilities.

- a. There shall be a minimum of one toilet and one sink for each four residents and one shower for each eight residents. For example, a facility with the maximum of 16 beds shall have four toilets and sinks and two showers.
- b. All sinks shall have paper towel dispensers and an available supply of soap.
- c. Toilet paper shall be readily available to residents.

71.19(6) Heating. A centralized heating system shall be maintained in good working order and capable of maintaining a comfortable temperature for residents of the facility. Portable units or space heaters are prohibited from being used in the facility except in an emergency.

71.19(7) Water supply.

- a. Private sources of water supply shall be tested annually and the report made available for review by the department upon request.
- b. A bacterially unsafe source of water supply shall be grounds for denial, suspension, or revocation of license.
- c. The department may require testing of private sources of water supply at its discretion in addition to the annual test. The facility shall supply reports of such tests as directed by the department.
- d. Hot and cold running water under pressure shall be available in the facility.
- e. Prior to construction of a new facility or new water source, private sources of water supply shall be surveyed and shall comply with the requirements of the department.

ITEM 24. Amend renumbered subrule 71.22(1) as follows:

71.22(1) Emergency care. Each facility shall have written policies and procedures for emergency medical and psychiatric ~~care~~ treatment, which shall include immediate notification by the person in charge to the physician, physician assistant, advanced registered nurse practitioner or mental health professional of any accident, injury or adverse change in the resident's condition. "Immediate" for purposes of this subrule means within 24 hours.

ITEM 25. Amend renumbered subrule 71.22(4) as follows:

71.22(4) Safe environment. The licensee of a subacute care facility is responsible for the provision and maintenance of a safe environment for residents and personnel. The subacute care facility shall meet the fire and safety rules as promulgated by the state fire marshal or the state fire marshal's designee.

[Filed 4/17/19, effective 6/12/19]

[Published 5/8/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4432C**INSURANCE DIVISION[191]****Adopted and Filed****Rule making related to unfair trade practices**

The Insurance Division hereby amends Chapter 15, “Unfair Trade Practices,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 507B.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 507B.

Purpose and Summary

This adopted rule making is intended to implement a model regulation adopted by the National Association of Insurance Commissioners whereby the Insurance Division requires insurers to provide to consumers certain disclosures related to participating immediate and deferred income annuities.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 13, 2019, as **ARC 4326C**. A public hearing was held on April 2, 2019, at 11 a.m. at the Insurance Division offices, Fourth Floor, Two Ruan Center, 601 Locust Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by Doug Ommen, Iowa Insurance Commissioner, on April 17, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 12, 2019.

The following rule-making actions are adopted:

INSURANCE DIVISION[191](cont'd)

ITEM 1. Amend paragraph **15.66(6)“h”** as follows:

h. ~~The~~ 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;

ITEM 2. Amend paragraphs **15.66(6)“t”** and **“u”** as follows:

t. Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; ~~and~~

u. Illustrations shall show both annuity income rates per \$1000.00 and the dollar amounts of the periodic income payable; ~~and~~

ITEM 3. Adopt the following new paragraph **15.66(6)“v”**:

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 during:

- 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:

INSURANCE DIVISION[191](cont'd)

- 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 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 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%

[Filed 4/19/19, effective 6/12/19]

[Published 5/8/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4433C

MANAGEMENT DEPARTMENT[541]

Adopted and Filed

Rule making related to calculating net general fund revenues

The Management Department hereby adopts new Chapter 15, "Calculating Net General Fund Revenues," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 8.6 and 2018 Iowa Acts, chapter 1161, section 133.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, chapter 1161, section 133.

MANAGEMENT DEPARTMENT[541](cont'd)

Purpose and Summary

The rule making establishes procedures to calculate net General Fund revenues and defines “total appropriated general fund revenues,” “transfers from reserve funds,” “tax and other refunds,” and “school infrastructure transfers,” including the types and categories of receipts that are included within each definition and in the calculation of net General Fund revenues.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 13, 2019, as **ARC 4327C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on April 17, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 541—1.3(8).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 12, 2019.

The following rule-making action is adopted:

Adopt the following **new** 541—Chapter 15:

CHAPTER 15
CALCULATING NET GENERAL FUND REVENUES

541—15.1(87GA,ch1161) Calculation of net general fund revenues.

15.1(1) Definitions. For purposes of this rule:

“*Comprehensive annual financial report of the state*” means the report established under Iowa Code section 8A.502(8).

“*Fiscal year*” means the fiscal year of government as established in Iowa Code section 8.36.

“*Revenue estimating conference*” means the conference established in Iowa Code section 8.22A(1).

MANAGEMENT DEPARTMENT[541](cont'd)

“*School infrastructure transfers*” means transfers from the general fund of the state to the secure an advanced vision for education fund created under Iowa Code section 423F.2(2) and as determined by the revenue estimating conference.

“*Tax and other refunds*” means tax refunds as determined by the revenue estimating conference under Iowa Code section 8.22A(4).

“*Total appropriated general fund revenues*” means total funds deposited into the general fund of the state as defined in Iowa Code section 444.21 and determined by the revenue estimating conference established in Iowa Code section 8.22A(1).

“*Transfers from reserve funds*” means the transfers established under Iowa Code section 8.55(2) “b” to the general fund from the economic emergency fund established under Iowa Code section 8.55(1).

15.1(2) Calculation of net general fund revenues. Net general fund revenues are calculated for each fiscal year using the total appropriated general fund revenues for each fiscal year, less tax and other refunds and school infrastructure transfers for each fiscal year pursuant to the accounting rules for accruals established under the comprehensive annual financial report of the state.

This rule is intended to implement 2018 Iowa Acts, chapter 1161, section 133.

[Filed 4/17/19, effective 6/12/19]

[Published 5/8/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4434C

NATURAL RESOURCES DEPARTMENT[561]

Adopted and Filed

Rule making related to oil, gas, and metallic minerals

The Department of Natural Resources (Department) hereby adopts new Chapter 17, “Oil, Gas, and Metallic Minerals,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 458A.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 458A.

Purpose and Summary

The Department is charged by the Legislature with responsibility for the oil, gas, and mineral drilling program in Iowa Code chapter 458A. Prior to this year, the State Geologist, who was at the time an employee of the Department, received and reviewed these oil, gas, and mineral drilling permit applications. The details of the State Geologist’s review were set out in 565—Chapter 51. Last year, pursuant to 2018 Iowa Acts, House File 2303, signed by Governor Reynolds on March 21, 2018, the Legislature transferred the State Geologist and the Iowa Geological Survey to the University of Iowa. The oil, gas, and mineral permitting program remained with the Department. Because of the transfer of the State Geologist to the University of Iowa, the Department is now required to update its rules governing the oil, gas, and mineral permitting program. The Department is rescinding 565—Chapter 51 (see **ARC 4425C**, IAB 5/8/19) and moving the contents of that chapter into new Chapter 17, adopted herein.

No substantive changes were made in the transfer of Chapter 17, but wording has been updated to make Chapter 17 consistent with 2018 Iowa Acts, House File 2303. For example, revisions replace the references in 565—Chapter 51 to the State Geologist with references to the Director of the Department

NATURAL RESOURCES DEPARTMENT[561](cont'd)

and include other minor clarifications to the chapter consistent with House File 2303. The revisions clarify that applications for permits to drill oil and gas wells or to drill for minerals in Iowa will be submitted to, and be reviewed by, the Director of the Department and that the Department maintains jurisdiction over the permitting program. Other minor revisions are included as part of the Department's five-year review process.

This rule making is related to Energy and Geological Resources Division[565] rule making **ARC 4425C**, IAB 5/8/19, and Environmental Protection Commission[567] rule making **ARC 4426C**, IAB 5/8/19.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4279C**. A public hearing was held on March 5, 2019, from 10 a.m. to 12 noon in Conference Room 4 West, Wallace State Office Building, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Director on April 16, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 12, 2019.

The following rule-making action is adopted:

Adopt the following **new** 561—Chapter 17:

CHAPTER 17
OIL, GAS, AND METALLIC MINERALS

561—17.1(458A) Definitions. Unless the context otherwise requires, the words defined in this rule shall have the indicated meaning when found elsewhere in these rules.

“*Allowable period*” means the period as designated in which an allowable may be produced.

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“*Artesian water*” means underground water that is confined by impervious material under pressure sufficient to raise it above the upper level of the saturated material in which it lies if this is penetrated by wells or natural fissures.

“*Barrel*” means 42 United States gallons measured at 60 degrees Fahrenheit and atmospheric pressure at sea level.

“*Barrel of oil*” means 42 United States gallons of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.

“*Blowout*” means a sudden or violent escape of oil or natural gas, as from a drilling well when high formation pressure is encountered.

“*Blowout preventer*” means a heavy casinghead control fitted with special gates or rams which can be closed around the drill pipe, or which completely closes the top of the casing.

“*Casinghead gas*” means any gas or vapor, or both gas and vapor, indigenous to an oil stratum and produced from such stratum with oil.

“*Casing pressure*” means the pressure built up between the casing and tubing when the casing and tubing are packed off at the top of the well.

“*Certificate of compliance and authorization to transport oil or gas from lease*” means a form prescribed by the department, which, when executed by an operator or producer, certifies that the operation of the wells involved, and the production of oil or gas therefrom, has been in compliance with the orders and rules of the department. This certificate also authorizes a purchaser of oil or gas to transport same from the lease. Thereby, the department is informed of the purchaser, and the purchaser is informed that the oil or gas purchased has been produced legally. The certificate of clearance by the department is included on the bottom of the producer’s compliance form.

“*Common source of supply*” is synonymous with pool.

“*Completed well*” means a well that has (a) produced or is ready to produce formation hydrocarbons through the permanent wellhead facilities, or (b) been declared a dry hole and temporarily abandoned or plugged and abandoned, or (c) been otherwise readied for operations as in the case of injection and service wells.

“*Condensate*” means liquid hydrocarbons that were originally in the gaseous phase in the reservoir.

“*Cubic foot of gas*” means the volume of gas contained in one cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit.

“*Day*” means a period of 24 consecutive hours from 7 a.m. one day to 7 a.m. the following day.

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

“*Developed area*” means a spacing unit on which a well has been completed that is capable of producing oil or gas, or the acreage that is otherwise attributed to a well by the department for allowable purposes.

“*Development*” means any work which actively looks toward bringing in production.

“*Director*” means the director of the Iowa department of natural resources or the director’s designee.

“*Gas allowable*” means the amount of natural gas authorized to be produced by order of the department.

“*Gas-oil ratio*” means the ratio of the gas produced in cubic feet to the number of barrels of oil concurrently produced during any stated period.

“*Just and equitable share of the production*” means, as to each person, that part of the authorized production from the pool that is substantially in the proportion that the amount of recoverable oil or gas or both in the developed area of the person’s tract or tracts in the pool bears to the recoverable oil or gas or both in the total developed area in the pool.

“*Lease*” means a tract or tracts of land which, by virtue of an oil, gas, or metallic minerals lease, fee or mineral ownership, a drilling, pooling, or other agreement, a rule, or order of governmental authority, or otherwise, constitutes a single tract or leasehold estate for the purpose of the development or operation thereof for oil or gas or both, or for the exploration for or production of metallic minerals.

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“*Nomination*” means the statement made by a purchaser indicating the amount of oil or gas the purchaser has a definite and bona fide need to purchase during a given period.

“*Oil allowable*” means the amount of oil authorized to be produced by order of the department.

“*Oil and gas*” means oil or gas or both.

“*Oil well*” means any well capable of producing oil in paying quantities.

“*Operator*” means any person who, duly authorized, is in charge of the development of a lease, or the operation of a producing well.

“*Overage*” or “*overproduction*” means the oil or gas produced in excess of the allowable fixed by the department.

“*Pipeline oil*” means oil free from water and basic sediment to the degree that is acceptable for pipeline transportation and refinery use.

“*Potential*” means the actual or properly computed daily ability of a well to produce oil as determined by a test made in conformity with rules prescribed by the department.

“*Pressure maintenance*” means the injection of gas, water or other fluids into oil or gas reservoirs to maintain pressure or retard pressure decline in the reservoir for the purpose of increasing the recovery of oil or other hydrocarbons therefrom.

“*Protect correlative rights*” means that the action or regulation by the department should afford a reasonable opportunity to each person entitled therein to recover or receive the oil or gas in the person’s tract, or tracts, or the equivalent thereof, without being required to drill unnecessary wells or to incur other unnecessary expense to recover or receive such oil or gas or its equivalent.

“*Proven oil or gas land*” means that area which has been shown by development or geological information to be such that additional wells drilled thereon are reasonably certain to be commercially productive of oil or gas or both.

“*Purchaser*” means any person who directly or indirectly purchases, transports, takes, or otherwise removes production to the person’s account from a well, wells, or pool.

“*Run*” means oil or gas, measured at standard conditions, moved off the lease or unit for sale.

“*Storer*” means every person as herein defined who stores, terminals, retains in custody under warehouse or storage agreements or contracts, oil which comes to rest in the person’s tank or other receptacle under control of said storer, but excluding the ordinary lease stocks of producers.

“*Transporter*” means and includes any common carrier by pipeline, barge, boat, or other water conveyance or truck or other conveyance except railroads, and any other person transporting oil by pipeline, barge, boat or other water conveyance, or truck and other conveyance.

“*Water flooding*” means the injection into a reservoir through one or several wells of volumes of water, either currently or cumulatively in excess of the volumes of oil and water produced, for the purpose of increasing the recovery of oil therefrom.

“*Well log*” means the written record progressively describing the strata, water, oil, gas or metallic minerals encountered in drilling a well with such additional information as to give volumes, pressures, rate of fill-up, water depths, caving strata, casing record, etc., as is usually recorded in normal procedure of drilling. The well log shall include any electrical or other geophysical logging, detail of all cores, and all drill-stem tests, including depth tested, cushion used, time pool open, flowing and shut-in pressures and recoveries.

“*Wildcat well*” means a well drilled to discover a previously unknown pool.

561—17.2(458A) Application and permit.

17.2(1) Production of oil, gas, or metallic minerals. Prior to commencement of operations, including the drilling of any well, an application on a form prescribed by the department shall be delivered to the director for a permit to drill, deepen, or plug back any well for oil, or gas or metallic mineral production. The application for each well shall be accompanied by a fee of \$50, and an organization report and a bond must be on file in the department or must accompany the application.

An accurate plat, map, or sketch prepared by a licensed surveyor or engineer must accompany the application. The plat shall be drawn neatly and to scale and shall show the distance from the two nearest

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lease lines and from the two nearest section lines, and from the nearest completed or drilling wells on the same lease.

The department shall not issue a permit to drill if the application is not properly completed or if a well drilled at the location applied for would cause or tend to cause waste or violate correlative rights. The applicant may appeal the decision of the department to the environmental protection commission in accordance with 567—Chapter 7.

Unless extended in writing by the department, the permit shall expire six months from the date of issue if the work for which the permit was issued is not being actively pursued.

17.2(2) Stratigraphic test wells. Before commencing exploratory drilling for geological information relating to oil, gas, or metallic mineral production, or the underground storage of natural gas, an application for a drilling permit shall be filed with the director. One application may be filed for a group or series of exploratory wells within a designated area. The application shall be accompanied by a plat of the general area to be covered by township and range listing the approximate number and depth of the holes, and outlining the parcels where drilling is contemplated. The plat shall indicate the nature of the applicant's property interest in each parcel where drilling is contemplated. The application shall be accompanied by a fee of \$200. The applicant shall comply with the requirements in rules 561—17.4(458A) and 561—17.5(458A) concerning organization reports and bonding.

561—17.3(458A) Transfer of drilling permits. No person to whom a permit has been issued shall transfer the permit to any other location or to any other person until the following requirements have been complied with and the transfer has been approved by the department.

17.3(1) Transfer to another location. If, prior to the drilling of a well, the person to whom the permit was originally issued desires to change the location, the person shall submit a letter so stating and another application properly filled out showing the new location. No additional fee is necessary, but drilling shall not be started until the transfer has been approved and the new permit posted at the new location.

17.3(2) Transfer to another person. If, while a well is drilling, or after it has been completed, the person to whom the permit was originally issued disposes of the person's interest in the well, the person shall submit a written statement to the department setting forth the facts and requesting that the permit be transferred to the person who has acquired the well.

17.3(3) Statement of responsibility and bond. Before the transfer of a drilling permit shall be approved, the person who has acquired the well must submit a written statement setting forth that the person has acquired such well and assumes the full responsibility for its operation and abandonment in conformity with the laws of Iowa and the rules and orders of the department. The bond required to guarantee compliance therewith shall be furnished by the person acquiring such well.

561—17.4(458A) Organization reports. Unless accepted by an order of the department, every person acting as a principal or agent for another or independently engaged in the production, storage, transportation (except railroad), refining, reclaiming, treating, marketing, or processing of oil or gas, or engaged in the exploration for or production of metallic minerals, shall file with the department on a form prescribed by the department: the name under which the business is being operated or conducted; the name and post office address of the person, the business or businesses in which engaged; the plan of organization, and in case of a corporation, the law under which it is chartered; and the names and post office addresses of any persons acting as trustees together with the names of the manager, agent or executive thereof, and the names and post office addresses of officers thereof. In the event that business is conducted under an assumed name, the report shall show the names and post office addresses of all owners in addition to the other information required.

Immediately after any change occurs as to facts stated in the report filed, a supplementary report shall be filed with the department with respect to the change.

561—17.5(458A) Bond. The department shall, except as hereinafter provided, require from the owner or operator a good and sufficient bond in the sum of \$15,000 in favor of the state of Iowa, conditioned that the well shall be operated and repaired and, upon abandonment, shall be plugged in accordance with

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the laws of the state of Iowa and the rules and orders of the department. Said bond shall remain in force and effect until the plugging of said well is approved and the bond is released by the department. In lieu of the bond relating to individual wells, any owner or operator may file with the department a good and sufficient blanket bond in the sum of \$30,000 covering all wells drilled or to be drilled in the state of Iowa by the principal in said bond, and the acceptance and approval by the department of the blanket bond shall be in full compliance with the above provisions requiring an individual well bond. Bond or bonds shall be by a corporate surety authorized to do business in the state of Iowa or in cash.

561—17.6(458A) Drilling. Unless altered, modified, or changed for particular common sources of supply, upon notice and hearing before the department, the following rules shall apply to all wells drilled.

17.6(1) Sealing off strata. During the drilling of any well for production of or exploration for oil, gas, or metallic minerals, all oil, gas, and water strata above and below the producing horizon shall be sealed or separated where necessary in order to prevent their contents from passing into other strata.

All fresh waters and waters of present or probable value for domestic, public, commercial or livestock purposes shall be confined to their respective strata and shall be adequately protected by methods approved by the department. Special precautions shall be taken in drilling and abandoning wells to guard against any loss of artesian water from the strata in which it occurs, and the contamination of artesian water by objectionable water, oil, or gas.

All water shall be shut off and excluded from the various oil and gas bearing strata which are penetrated. Water shutoffs shall ordinarily be made by cementing casing with or without the use of mud-laden fluid.

17.6(2) Casing and tubing requirements. All wells drilled for oil, gas or production of metallic minerals shall be completed with strings of casing which shall be properly cemented at sufficient depths to protect all water, oil, or gas bearing strata.

Sufficient cement shall be used on surface to fill the annular space back of the casing to the bottom of the cellar or to the surface of the ground. All strings of casing shall stand cemented under pressure for at least 12 hours before drilling plug or initiating tests. The term “under pressure” as used herein will be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method, or other method approved by the director.

All flowing wells shall be tubed. The tubing shall be set as near the bottom as practicable, but tubing perforations shall not be above the top of pay unless authorized by the department.

17.6(3) Defective casing or cementing. In any well that appears to have defective, faultily cemented, or corroded casing which will permit or may create underground waste, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste. If such hazard of waste cannot be eliminated, the well shall be properly plugged and abandoned.

17.6(4) Blowout prevention. In all drilling operations, proper and necessary precautions shall be taken for keeping the well under control, including the use of a blowout preventer and high-pressure fittings attached to properly cemented casing strings, where indicated by geologic conditions.

17.6(5) Pulling outside string of casing. In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid or cement of adequate specific gravity to seal off all fresh and salt water strata and any strata bearing oil or gas not producing. No casing shall be removed without the prior approval of the department.

17.6(6) Safety rules. All oil wells shall be cleaned into a pit or tank, not less than 40 feet from the derrick floor and 150 feet from any fire hazard. All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler or portable electric lighting generator shall be placed or remain nearer than 150 feet from any producing well or oil tank. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least 150 feet from the vicinity of wells and tanks. All waste shall be disposed of in such manner as to avoid creating a fire hazard and to comply with the rules of the environmental protection commission. The drilling fluid level shall be maintained continuously at a height sufficient to control

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subsurface pressures. During the course of drilling, blowout preventers shall be tested at least once each 24-hour period, and results of the test shall be noted in the driller's record.

17.6(7) *Preservation of cores and samples.* Sample cuttings shall be taken at 5-foot intervals and at each change of formation, if less than 5 feet thick, in all wells drilled for oil, gas, or metallic mineral exploration or production, for the storage of dry natural gas, or casinghead gas, and for the development of reservoirs for the storage of liquid petroleum gas in the state of Iowa, unless a geophysical log is to be taken for the entire depth of the well. Where a geophysical log is to be taken for the entire depth of the well, sample cuttings shall be taken at 10-foot intervals and at each formation change if less than 10 feet thick. The director may grant a variance from the 10-foot sample interval under special conditions. Each sample shall be carefully identified as to well name and depth of sample, and all samples shall be shipped at the operator's expense to the department.

The operator of any well drilled as provided in the foregoing paragraph shall, during the drilling of, or immediately following the completion of, any given well, advise the director of all intervals that are to be cored, or have been cored, and such cores as are taken shall be preserved and forwarded to the department at the operator's expense.

This rule shall not be construed as prohibiting the operator from taking samples of the core for identification and tests pertaining to oil and gas or metallic minerals. In the event that it is necessary for the operator to utilize all or any portion of the core to the extent that representative samples, sufficiently large to analyze, are not available for the state, the operator shall furnish the director with the results of identification or testing procedures.

17.6(8) *Well completion or recompletion report and well log.* Within ten days after completion of a well drilled for oil or gas or production of metallic minerals or for the storage of dry natural gas, or casinghead gas, or for the development of reservoirs for the storage of liquid petroleum gas, the operator or the operator's agent shall file with the director a complete log or record of the well, duly signed, on forms prescribed by the department. This record shall be filed even though samples of the drill cuttings have been taken and preserved for subsequent delivery to the department. The logs on the wells shall be forwarded to the department and shall be confidential for a period of six months when so requested by the operator in writing.

A proper log on any well shall include all normally recorded information on the following:

- a. Depth to and thickness of water-bearing beds, including, where measured, the static water level and volume of such water.
- b. Lithology of formations penetrated, including color, hardness, and character of the rock, and particularly showing the position and thickness of coal beds and deposits of mineral materials of economic value.
- c. Any caverns, large voids, losses of circulation, and sudden appreciable changes in water level.
- d. A record of all oil, gas, and highly mineralized water encountered, including fill-up, volumes, and pressures.
- e. A record of all casing and liner used, including the size, weight, amount, and depth set, the amount of cement used on each casing string, and the amount of casing stripped from the hole on completion or abandonment of the well.
- f. Data on drill stem tests.
- g. Generalized description of any core taken during drilling.
- h. Data on perforating, acidizing, fracturing, shooting, and testing.
- i. Data on bridge plugs set, make and type of plug, depth set, whether left in place or removed, and details of plug back operation below the bridge.
- j. Electrical or other geophysical logging.

17.6(9) *Stratigraphic test wells.* All stratigraphic test wells shall be plugged in accordance with the provisions of rule 561—17.15(458A).

Any mechanical logs taken must be filed with the director within the time limits set forth below. Lithologic samples must be collected during the drilling of all stratigraphic test wells in accordance with the provisions of subrule 17.6(7).

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All records, samples, and logs required under this rule must be filed with the director six months after completion of the program set forth in the original application. If the company so requests in writing, these records, samples, and logs shall be kept confidential for an additional period of one year after filing.

17.6(10) Wells for storage of liquid petroleum gas. Only one fee shall be required for the drilling of wells for the development of each reservoir for the storage of liquid petroleum gas, but an application for a permit to drill shall be filed with the department and a permit issued prior to the drilling of each well. The application for a permit to drill a single well or the first in a series of wells for this purpose shall be accompanied by a complete set of plans for the development of the reservoir and by a plat of the reservoir area with all contemplated wells and the reservoir limits indicated thereon.

A blanket bond of \$30,000 must be filed with the department on a form prescribed by the department conditioned on compliance with the laws of the state of Iowa and the rules and orders of the department. Each bond shall be executed by an acceptable corporate surety authorized to do business in the state of Iowa. Compliance with the blanket bond requirement of rule 561—17.5(458A) shall satisfy the blanket bond requirement herein.

All records, samples and logs required under this rule must be filed with the director in accordance with the provisions of subrule 17.6(8).

When any well is no longer used for the purpose for which it was drilled, the well shall be plugged in accordance with the provisions of rule 561—17.15(458A).

17.6(11) Wells for storage of dry natural gas. No application, fee, organization report, bond or permit shall be required for the drilling of wells for the storage of dry natural gas in underground basins or watercourses for which a permit is required and has been obtained under the provisions of Iowa Code chapter 455B. In lieu of a formal application and permit for wells otherwise required under the provisions of Iowa Code chapter 458A, and these rules adopted pursuant thereto, the owner or operator thereof shall give notice to the director of intent to drill at least 5 days prior to initiation of drilling of each well. The owner or operator of the wells shall submit monthly to the director a report of activities during the preceding 30 days as well as contemplated action during the following 30-day period, providing thereby at least 5 days' prior notice of any contemplated action. Wells may not be drilled at points more than one-quarter mile from the points indicated in the forecasts without at least 5 days' prior notice to the director its specific approval thereof. The owner or operator shall drill, operate, maintain, abandon and plug the wells and shall file reports, records, samples, cores, and logs, in accordance with these rules and the orders and requirements of the department.

561—17.7(458A) Identification of wells. Every producible well shall be identified by a sign, posted on the derrick or not more than 20 feet from the well. Such signs shall be of durable construction and the lettering thereon shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of 50 feet. The wells on each lease or property shall be numbered in nonrepetitive, logical, and distinctive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of these rules. Each sign shall show the number of the well, the name of the lease (which shall be different or distinctive for each lease), the name of the lessee, owner, or operator, the permit number, and the location by quarter, section, township, and range. The signs shall be displayed for each drilling well when so required by the department.

561—17.8(458A) Surface equipment.

17.8(1) Meter fittings. Meter fittings of adequate size to measure the gas efficiently for the purpose of obtaining gas-oil ratios shall be installed on the gas vent line of every separator or proper connections made for orifice well tester. Wellhead equipment shall be installed and maintained in first-class condition so that static bottom hole pressures may be obtained at any time by the duly authorized agents of the department after notification of the operator. Valves shall be installed so that pressures can be readily obtained on both casing and tubing.

17.8(2) Chokes or beans. All flowing wells shall be equipped with adequate chokes or beans, to properly control the flow thereof.

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17.8(3) Oil and gas separators. All flowing oil wells must be produced through an approved oil and gas separator.

17.8(4) Dikes. When it is deemed necessary by the director to protect life, health, or property, the department may require any lease or oil storage tanks to be surrounded by an earthen dike which shall have a capacity of one and one-half times the capacity of the tank or tanks it surrounds, which dike shall be continually maintained; and the reservoir within shall be kept free from vegetation, water, or oil.

561—17.9(458A) Deviation. No well may be intentionally directionally deviated from the vertical without the written approval of the department. Deviation is permitted without special permission for short distances, to straighten the hole, sidetrack junk, or correct other mechanical difficulties. The maximum point at which a well penetrates the producing formation shall not vary unreasonably from the vertical drawn from the center of the hole at the surface. Directional surveys may be required by the department whenever the location of the bottom of the well is in doubt. When necessary to protect correlative rights, the department shall require that the well be straightened.

561—17.10(458A) Vacuum pumps prohibited. The use of vacuum pumps or other devices for the purpose of putting a vacuum on any gas or oil-bearing stratum is prohibited unless authorized by an order of the department upon notice and hearing.

561—17.11(458A) Notification of fire, breaks, leaks, or blowouts. All persons controlling or operating any oil and gas wells or pipelines, or receiving tanks, storage tanks, or receiving and storage receptacles into which crude oil is produced, received, or stored, or through which oil or gas is piped or transported, shall notify the department of fire, breaks, leaks or blowouts as soon as possible but not later than six hours after the incident occurs or is discovered, in accordance with Iowa Code section 455B.386. A written report, giving full details concerning all fires which occur at such oil or gas wells or tanks or receptacles on their property, all tanks or receptacles struck by lightning and any other fire which destroys oil or gas, and any breaks or leaks in or from tanks or receptacles and pipelines from which oil or gas is escaping or has escaped shall be submitted to the department within 30 days. In all reports of fires, breaks, leaks, or escapes, or other accidents of this nature, the location of the well, tank, receptacle, or line break shall be given by section, township, range, and property so that the exact location thereof can be readily located on the ground. The report shall likewise specify what steps have been taken or are in progress to remedy the situation reported, and shall detail the quantity of oil or gas lost, destroyed, or permitted to escape. In case any tank or receptacle is permitted to run over, the escape thus occurring shall be reported as in the case of a leak.

561—17.12(458A) Producing from different pools through the same casing string or multiple completion of wells. No well shall be permitted to produce either oil or gas from different pools through the same string of casing. The multiple-zone completion of any well may be authorized only by special order of the department upon notice and hearing.

561—17.13(458A) Commingling of production prohibited. The production from one pool shall not be commingled with that from another pool in the same field before delivery to a purchaser, unless otherwise ordered by the department.

561—17.14(458A) Reports by producers, transporters or storers.

17.14(1) Producers. The producer or operator of each and every lease shall on or before the fifteenth day of each month succeeding the month in which the production occurs, submit to the department on a form prescribed by the department, a statement showing the amount of production made by each such lease during the preceding month.

17.14(2) Transporters or storers. Each transporter or storer of any oil or gas from any well, lease, pool, or developed unit shall, on or before the fifteenth day of each month succeeding the month in which the purchasing or taking occurs, file with the department, on forms prescribed by the department,

NATURAL RESOURCES DEPARTMENT[561](cont'd)

a statement of oil or gas purchased or taken from any such well, lease, pool, or developed unit during the preceding month.

561—17.15(458A) Abandonment and plugging of wells. Any well drilled in connection with oil or gas operations or metallic mineral exploration or production shall be properly plugged when the well is no longer used for the purpose for which it was drilled. In instances where no completion or recompletion reports are filed, the well(s) in question must be properly abandoned and plugged within 30 days after the permit authorizing the drilling expires.

17.15(1) Notice of intent to abandon and plug. Notice of the proposed method of abandoning and plugging any well drilled in connection with oil or gas operations or metallic mineral exploration or production must be filed on a form prescribed by the department. Approval must be obtained from the director prior to commencing operations. Time must be allowed for a department representative to be present at the plugging operations, if so desired by the director. Where the time required to file notice and obtain approval in writing would constitute an undue hardship, verbal permission to proceed may be granted, but in any case the form must be filed.

17.15(2) Method of plugging. Before any well is abandoned, it shall be plugged in a manner which will confine permanently all oil, gas, and water in the separate strata in which they occur. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the director. In the event that no log or an unsatisfactory log of the well is supplied, the well shall be completely plugged with cement from bottom to top. Casing shall be cut off below plow depth. Seismic, core, or other exploratory holes drilled to or below strata containing fresh water shall be plugged and abandoned in accordance with the applicable provisions recited above.

17.15(3) Extension of time to plug well. Upon written application to defer the abandonment and plugging of any unplugged well, the department may grant an extension for a reasonable period of time when good cause therefor is shown and providing all of the casing is left in the well and is in sound condition. The bond covering such well shall remain in full force and effect until the well is plugged and the other requirements of final abandonment have been completed.

561—17.16(458A) Well spacing. In the absence of an order by the department setting spacing units for a pool, the following shall apply.

17.16(1) Oil wells. No more than one well drilled for oil shall be drilled upon any tract of land other than a governmental quarter-quarter section or governmental lot corresponding thereto, or, in areas not covered by U.S. public land surveys, an arbitrarily designated 40-acre tract. The well shall not be located closer than 330 feet to any boundary line of the governmental quarter-quarter section, governmental lot corresponding thereto, or arbitrarily designated 40-acre tract, nor closer than 660 feet to the nearest well drilling to or capable of producing from the same pool on the same lease or unit. Should the governmental quarter-quarter section, governmental lot, or arbitrarily designated tract contain less than 36 acres, no well shall be drilled thereon except by special order of the department.

17.16(2) Gas wells. Not more than one well shall be drilled for gas upon any tract of land other than a governmental section, or, in areas not covered by U.S. public land surveys, an arbitrarily designated 640-acre tract. The wells shall not be located closer than 1,320 feet to any boundary line of the governmental section or arbitrarily designated 640-acre tract, nor closer than 3,750 feet to the nearest well drilling to or capable of producing from the same pool on the same lease or unit. Should the governmental section or arbitrarily designated tract contain less than 600 acres, no well shall be drilled thereon except by special order of the department.

These rules are intended to implement Iowa Code chapter 458A.

[Filed 4/16/19, effective 6/12/19]

[Published 5/8/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4435C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

**Rule making related to endorsement applicants
and license reactivation for chiropractic physicians**

The Board of Chiropractic hereby amends Chapter 41, “Licensure of Chiropractic Physicians,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76 and 272C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 147 and 272C.

Purpose and Summary

These amendments reduce the required number of continuing education hours (CE) from 60 to 40 for endorsement and reactivation applicants in order to be consistent with the Board’s recent rule making amending Chapter 44.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 21, 2018, as **ARC 4129C**. An Amended Notice of Intended Action, which added amendments to reduce the number of CE hours for endorsement applicants, was published in the Iowa Administrative Bulletin on February 13, 2019, as **ARC 4275C**. No public comments were received. No changes from the Amended Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on April 10, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

Review by Administrative Rules Review Committee

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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Effective Date

This rule making will become effective on June 12, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **41.6(2)“f”(1)** as follows:

(1) Completion of ~~60~~ 40 hours of board-approved continuing education during the immediately preceding two-year period as long as the applicant had an active ~~practice~~ license within the last five years; or

ITEM 2. Amend subparagraph **41.6(2)“g”(1)** as follows:

(1) Evidence of satisfactory completion of ~~60~~ 40 hours of board-approved continuing education during the immediately preceding two-year period; and

ITEM 3. Amend subparagraph **41.14(3)“a”(2)** as follows:

(2) Verification of completion of ~~60~~ 40 hours of continuing education that comply with standards defined in rule 645—44.3(151,272C) within two years of ~~the~~ application for reactivation.

ITEM 4. Amend subparagraph **41.14(3)“b”(2)** as follows:

(2) Verification of completion of ~~60~~ 40 hours of continuing education that comply with standards defined in rule 645—44.3(151,272C) within two years of application for reactivation; and

[Filed 4/11/19, effective 6/12/19]

[Published 5/8/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4436C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to tourist-oriented directional signing

The Department of Transportation hereby amends Chapter 119, “Tourist-Oriented Directional Signing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 321.252.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321.252.

Purpose and Summary

This rule making amends Chapter 119, which provides rules for the establishment of tourist-oriented directional signing on Iowa’s primary highways. The amendments clarify the definition of “primary highway” in rule 761—119.1(321) by adding the language used for “primary road system” in Iowa Code section 306.3(6). Currently, the definition does not actually define the term; rather it excludes portions of the meaning found in Iowa Code section 306C.10.

The amendments also clarify that the Department is responsible for determining whether sufficient space exists in which to place the tourist-oriented directional signs. The amendments clarify the process for determining which businesses may participate when conditions limit the number of signs that can be placed near an intersection, and strike a provision for “advance signing,” which is not used in Iowa. Likely, the advance signing provision had been included because the Manual on Uniform Traffic Control Devices (MUTCD) provided for it. However, the provision is unnecessary; the Department installs the

TRANSPORTATION DEPARTMENT[761](cont'd)

signs at an appropriate distance from the intersection, allowing motorists sufficient time to identify, react to, and make the turn. If there is a safety question regarding existing sign placements, the Department can investigate whether the signs are appropriately distanced from the intersection.

This rule making also makes changes to the types of services that may qualify for the motorist service category of the signing program by replacing the word “gas” with “fueling stations,” which may include alternative fuels, and by replacing the word “passenger” with “motor” so that the phrase reads “motor vehicle service or repair.” The term “gas,” though undefined by this chapter, is generally thought to exclude other fuels that do not consist of refined petroleum or gasoline. There is an increasing demand from the motoring public and environmental and industry groups to identify facilities that offer alternative fuels. The amendment will allow facilities that offer diesel, biodiesel, electricity, hydrogen, compressed natural gas, and other alternative fuels to be eligible for the program. The phrase “motor vehicle service or repair” provides less specificity for qualification purposes and allows for the consideration of businesses which are service-oriented toward motorcycles, recreational vehicles and trucks.

This rule making also rescinds subrule 119.5(4) and moves to subrule 119.2(2) existing language which states that the Department will hold a lottery if the number of approved applicants exceeds the number of spaces available. Although the requests rarely exceed the spaces available, the provision fits more appropriately in subrule 119.2(2), concerning spacing and location. A clarification is added that existing participants in the program will not be at risk for losing their signs in a lottery drawing.

Furthermore, the amendments strike subrule 119.6(4) concerning the additional services the Department may perform regarding the modification of a tourist-oriented directional sign. After review of this subrule, the Department found a lack of applicability to any situation, and the \$50 service fee included is not levied by the Department. The message for the sign is fixed and not intended for modification.

In addition, the amendments clarify language concerning the fees relating to tourist-oriented directional signing. Current subrule 119.6(3) requires an unspecified amount for the cost of sign fabrication and installation. The amendment to subrule 119.6(3) specifies the actual total amount due, which includes the \$100 initial fee. These amendments do not increase the fees; the fees indicated reflect the amounts that have been charged since 1996.

Finally, the amendments strike existing language regarding not-for-profit organizations and add a new subrule concerning not-for-profit organizations to allow an organization to receive one set of signs at no charge. If the not-for-profit organization requests additional signs, the organization will be charged the fee as specified in subrule 119.6(3). This change retains the ability of these organizations to obtain free signing for the appropriate intersections while eliminating the incentive to “blanket” the region with signs paid for by public moneys. Businesses and not-for-profit organizations can certainly request more than one set of signs if the activity or site is located within a qualifying range of eligible intersections; however, the business or not-for-profit organization will need to pay the fee. The primary intent of the program is to provide tourist-related and motorist service information for the traveling public, and only secondarily to provide a means of advertising for the organization making the application.

The development and revision of Chapter 119 requires consultation and approval from a multiagency committee known as the Iowa Tourist Signing Committee established in Iowa Code section 321.252(3). The Committee approved these amendments.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 27, 2019, as **ARC 4317C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on April 9, 2019.

TRANSPORTATION DEPARTMENT[761](cont'd)

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The fees identified in the rule amendment have been in place since 1996 and are not being increased. The fiscal impact to not-for-profit organizations caused by limiting the number of free signs should be negligible. The vast majority of these organizations are only expecting to have one set of signs installed at the nearest and most appropriate intersection, and these signs will continue to be provided free of charge. For the few organizations that would have otherwise obtained multiple sets of signs (likely because they were free), the Department anticipates that the organizations will apply for the single set, rather than spending money on additional sets.

Jobs Impact

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

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 12, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule **761—119.1(321)**, definition of "Primary highway," as follows:

"Primary highway," for the purpose of this chapter, means those roads and streets both inside and outside the boundaries of municipalities which are under department jurisdiction but does not include an interstate highway or a freeway primary highway as defined in Iowa Code section 306C.10.

ITEM 2. Amend rule 761—119.2(321) as follows:

761—119.2(321) General.

119.2(1) No change.

119.2(2) *Spacing and location.*

a. Tourist-oriented directional signing shall be installed only when sufficient space is available. The determination of whether sufficient space is available is the responsibility of the department in accordance with the MUTCD and department policies. If the number of applications exceeds the capacity to accommodate all of the requests, a lottery drawing shall be held to determine which applications will be accepted. However, activities and sites which are already participating in the tourist-oriented directional signing program shall not be subject to the lottery drawing, provided that each applicant's participation remains in compliance with this chapter, including the timely payment of fees.

b. to e. No change.

~~**119.2(3)** *Advance signing.* Advance signing authorized by the MUTCD may be installed where the department determines that advance notification of an activity or site would reduce vehicle conflicts and improve highway safety.~~

~~**119.2(4)**~~ **119.2(3)** *Message.* The message on a tourist-oriented directional sign is limited to a descriptive name, a directional arrow, ~~and~~ the travel distance to the activity or site, and in some cases

TRANSPORTATION DEPARTMENT[761](cont'd)

for motorist services, an additional short word or acronym indicating an essential fuel type such as diesel, E-85, or EV (electric vehicle charging station). However, if an agricultural business activity offers tours, the message for the activity shall include the word “tours.”

ITEM 3. Amend paragraph **119.4(1)“a”** as follows:

a. A service of significant interest to motorists may qualify. The types of services which may qualify include, but are not limited to: gas, fueling stations, including those that offer alternative fuels; food; lodging, or passenger; and motor vehicle service or repair.

ITEM 4. Rescind subrule **119.5(4)**.

ITEM 5. Amend rule 761—119.6(321) as follows:

761—119.6(321) Installation, maintenance, replacement and removal.

119.6(1) *Installation and maintenance of tourist-oriented directional signs.* Except as provided in subrule ~~119.6(5)~~ 119.6(4), the department shall fabricate and perform all required installation, maintenance, removal and replacement of tourist-oriented directional signs that are located within the right-of-way.

a. No change.

b. A tourist-oriented directional sign ~~for a for-profit activity or site~~ shall not be installed until the applicant has paid the department the initial fee specified in subrule 119.6(3). ~~If the activity or site is not for profit, the department shall fabricate and install the sign and provide normal maintenance at no cost to the applicant.~~

119.6(2) *Installation and maintenance of trailblazing signs.* If the activity or site is not located adjacent to the secondary road or city street intersecting the primary route, trailblazing signs are required. Trailblazing signs shall conform to requirements in the MUTCD.

a. No change.

b. Trailblazing signs ~~for a for-profit activity or site~~ shall not be installed until the applicant has paid the department a fee for the cost of sign fabrication.

c. No change.

119.6(3) *Fees Initial and renewal fees.* The initial fee, payable once an application is approved, is ~~\$100 per sign plus \$350 for each 72" × 18" sign placed along the primary highway and \$26 for each trailblazing sign placed along a nonprimary highway.~~ These fees include the cost of sign fabrication and installation but do not include any additional fees which may be required by local jurisdictions for the placement of trailblazing signs along local road systems. The annual renewal fee, payable on or before June 30 of each year, is \$50 per sign, ~~which excluding trailblazing signs.~~ This fee covers the administrative costs and normal maintenance. These fees apply to for-profit activities or sites only.

119.6(4) *Additional services.* ~~The department may perform additional services requested for an activity or site in connection with the modification of a tourist-oriented directional sign. If the sign is for a for-profit activity or site, the activity or site shall prepay a \$50 service charge plus the cost of any required new or renovated sign.~~

119.6(5) ~~119.6(4)~~ *Seasonal activity or site.* A tourist-oriented directional sign for a seasonal activity or site must either be masked or have a “closed” panel installed over the sign’s directional information when the activity or site is closed or when the hours of operation decrease below the minimum requirements during the off-season period. Either the department or the activity or site with the department’s permission shall perform the work. If the department performs the work, the approved applicant must pay the actual cost to install and remove the “closed” panel or to mask the sign.

119.6(6) ~~119.6(5)~~ *Required replacement.*

a. The department shall determine when a tourist-oriented directional sign is no longer serviceable and needs to be replaced. ~~A for-profit~~ If such a determination is made, the activity or site must pay for the cost of a new sign and its installation prior to installation. ~~If the activity or site is not for profit, the department shall replace the sign at no cost to the activity or site.~~

b. The department is not responsible for theft of tourist-oriented directional signs or damage to them caused by vandalism, vehicle accidents, or natural causes. ~~If a sign for a for-profit activity or site~~

TRANSPORTATION DEPARTMENT[761](cont'd)

requires repair or replacement due to theft or damage, the activity or site must pay the cost of a new sign and its installation. At the activity's or site's request, this cost may be spread over a 12-month period. ~~If the activity or site is not for profit, the department shall repair or replace the sign at no cost to the activity or site.~~

119.6(6) Not-for-profit organizations. A not-for-profit organization operating an activity or site in accordance with the requirements of this chapter is exempted from all fees and costs associated with the installation and maintenance of a single set of signs at a location determined by the department to be the most reasonable approach to the destination. If additional locations are requested by the not-for-profit organization, all fees and costs described in this chapter shall apply to the additional locations.

119.6(7) Removal. The department shall remove a tourist-oriented directional sign if the activity or site no longer qualifies for tourist-oriented directional signing. As official signs, all tourist-oriented directional signs are the property of the department and shall not be given to applicants upon the signs' removal.

[Filed 4/9/19, effective 6/12/19]

[Published 5/8/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.

ARC 4437C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to nonoperator's identification

The Department of Transportation hereby amends Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 321.190.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321.190.

Purpose and Summary

This rule making makes technical changes to Chapter 630 by updating terminology from "driver's license examination station" to "driver's license service center" and by removing an outdated effective date.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 27, 2019, as **ARC 4313C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on April 9, 2019.

Fiscal Impact

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

TRANSPORTATION DEPARTMENT[761](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on June 12, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 630.1(2) as follows:

630.1(2) Information concerning the nonoperator's identification card is available at any driver's license ~~examination station~~, service center or at the address in 761—600.2(17A).

ITEM 2. Amend subrule 630.2(1) as follows:

630.2(1) An applicant for a nonoperator's identification card shall complete and sign an application form at a driver's license ~~examination station~~ service center. The signature shall be without qualification and shall contain only the applicant's usual signature without any other titles, characters or symbols.

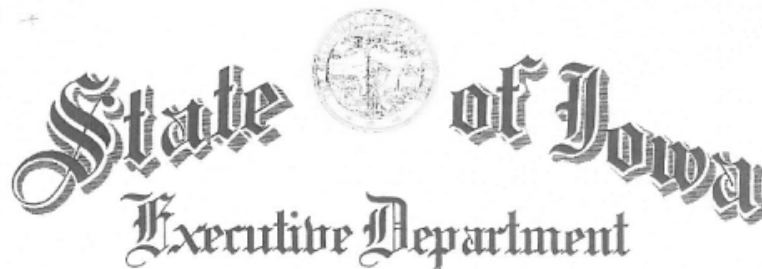
ITEM 3. Amend subrule 630.2(9) as follows:

630.2(9) ~~Beginning January 15, 2013, a~~ A nonoperator's identification card that is not issued as a REAL ID nonoperator's identification card as defined in subrule 630.2(7) may be marked as required by 6 CFR 37.71 and any subsequent guidance issued by the U.S. Department of Homeland Security.

[Filed 4/9/19, effective 6/12/19]

[Published 5/8/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/8/19.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER FOUR

WHEREAS, on March 13, 2019, and continuing thereafter, historic and catastrophic flooding and flash flooding events began to impact the State of Iowa due to record snowfall and rapid snow melt combined with heavy rains that caused dangerous flood conditions across much of the state; and

WHEREAS, this flooding natural disaster has caused severe damage across the state, and particularly along the Missouri River, where more than fifty levees were breached, nearly 250 miles of levees were impacted, nearly 25,000 homes were destroyed or had major damage, and more than 4,200 businesses were impacted; and

WHEREAS, the estimated devastation of this flooding natural disaster is over \$1.6 Billion, including over \$75 million in public assistance, \$480 million in individual assistance, \$300 million in damages to local businesses, over \$200 million in agriculture impacts to livestock, grain, and land, and over \$500 million to both federal and non-federal levees; and

WHEREAS, the damage caused by this natural disaster has resulted in the issuance of a Presidential Major Disaster Proclamation on March 23, 2019, in addition to numerous disaster proclamations by the Governor; and

WHEREAS, the people of Iowa shall benefit from a centralized coordination effort to guide the efforts to rebuild and recover from this flooding natural disaster.

NOW, THEREFORE, I, KIM REYNOLDS, GOVERNOR OF THE STATE OF IOWA, do hereby order the establishment of a Flood Recovery Advisory Board to serve as the central point of coordination of state activities for the recovery and rebuilding efforts following the severe and widespread flooding in Iowa.

SECTION ONE: Purpose and Duties.

- I. The Flood Recovery Advisory Board shall serve as the central point of coordination of state activities for the recovery and rebuilding efforts following the severe and widespread flooding in Iowa. The Advisory Board will strengthen partnerships across federal, state, and local governments and with private and nonprofit organizations to deliver an effective and efficient rebuilding of impacted communities as a result of the flooding natural disaster.
- II. The duties of the Flood Recovery Advisory Board shall include, but are not limited to, advising the Governor on:
 - A. Establishing and implementing short-term priorities for recovery and comprehensive long-term plans for redevelopment for the State of Iowa;
 - B. Identifying federal and state legislative policy needs for the recovery and rebuilding effort;

- C. Coordinating between levels and branches of government to implement the recovery and rebuilding effort;
 - D. Identifying funding sources and innovative funding alternatives for recovery and redevelopment;
 - E. Developing solutions to fill the gaps in existing recovery and redevelopment programs;
 - F. Establishing priorities for the use of funds made available to the State of Iowa as a result of this disaster event, including but not limited to federal funds administered under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended;
 - G. Establishing timelines and benchmarks to measure and report progress in disaster recovery and redevelopment;
 - H. Providing opportunities for the public, businesses, nonprofit organizations, communities, and other stakeholders to provide input into the recovery and rebuilding process; and
 - I. Developing a comprehensive plan for long-term rebuilding to provide guidance to state and local governments.
- III. The Flood Recovery Advisory Board shall also provide oversight and coordination of all working groups established by this Executive Order.

SECTION TWO: Organization and Operation.

- I. **Advisory Board Membership.** The Flood Recovery Advisory Board shall consist of up to fifteen members. The Governor shall serve as a member and the chair of the Advisory Board. The Governor shall appoint up to fourteen additional members, which shall include the chairs of the working groups established by this Executive Order. Each appointed member shall serve at the pleasure of the Governor and without compensation.
- II. **Working Groups.** The Governor shall appoint six working groups charged with assisting the Advisory Board in coordinating a comprehensive recovery and rebuilding effort. The Governor shall appoint a chair and any additional members she deems necessary for each working group. The working group chairs and members shall serve at the pleasure of the Governor and without compensation. The following working groups shall be established:
 - A. Finance
 - B. Economic Development
 - C. Agriculture
 - D. Workforce and Housing
 - E. Flood Management and Infrastructure
 - F. Public Health
- III. **Meetings.** The Flood Recovery Advisory Board shall hold public meetings as scheduled by the chair of the Advisory Board.

- IV. **Staffing and Support.** Staffing and administrative assistance for the Flood Recovery Advisory Board shall be provided by the Iowa Department of Homeland Security and Emergency Management, and by other agencies, persons, or organizations from time to time as deemed necessary or appropriate by the Advisory Board or the Office of the Governor.

SECTION THREE: Miscellaneous.

- I. All departments, agencies, boards, or other political subdivisions of any state and local governments shall cooperate fully with the Flood Recovery Advisory Board. The Advisory Board may seek the expertise and services of individuals and entities outside of its membership for research, advice, and other needs, as necessary or appropriate, to accomplish its mission.
- II. All work of the Flood Recovery Advisory Board shall be done in a manner consistent with the laws and regulations of the State of Iowa, and of the laws and regulations of the United States of America.
- III. This Executive Order shall be interpreted in accordance with all applicable laws and regulations. If any provision of this Executive Order is found to be invalid, unenforceable, or otherwise contrary to applicable law, then the remaining provisions of this Executive Order, as applied to any person or circumstance, shall continue in full force and effect and shall not be affected by such finding of invalidity or unenforceability. This Executive Order is not intended to supersede any laws, regulations, or collective bargaining agreements in place as of its effective date.
- IV. This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the State of Iowa, its departments, agencies, or political subdivisions, or its officers, employees, agents, or any other persons.
- V. The directive in this Executive Order shall apply prospectively only as of its effective date.



IN TESTIMONY WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND CAUSED THE GREAT SEAL OF IOWA TO BE AFFIXED TO THIS EXECUTIVE ORDER, DONE IN DES MOINES, IOWA THIS 15TH DAY OF APRIL IN THE YEAR OF OUR LORD TWO THOUSAND AND NINETEEN.

 KIM REYNOLDS
 GOVERNOR OF IOWA

ATTEST:

 PAUL D. PATE
 SECRETARY OF STATE