



IOWA ADMINISTRATIVE BULLETIN

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Pages 129 to 298

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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, paragraph, subparagraph, or numbered paragraph).

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

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)
441 IAC 79.1(1)“a”(1)“1”	(Numbered paragraph)

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

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

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

Schedule for Rule Making 2021

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
4	Friday, August 6, 2021	August 25, 2021
5	Wednesday, August 18, 2021	September 8, 2021
6	Friday, September 3, 2021	September 22, 2021

PLEASE NOTE:

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, August 17, 2021, at 9 a.m. in Room 103, State Capitol, Des Moines, Iowa. Instructions for participation by videoconference can be found here: www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=705. For more information, contact Jack Ewing at Jack.Ewing@legis.iowa.gov. The following rules will be reviewed:

AGING, DEPARTMENT ON[17]

Waivers, amendments to chs 1, 11 Notice **ARC 5791C** 7/28/21

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]"umbrella"

Waivers, amendments to ch 23 Filed **ARC 5784C**..... 7/28/21

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure; criminal convictions, amend chs 11, 20, 30, 52; adopt ch 50 Filed **ARC 5747C**..... 7/14/21

Expanded functions—placement of sealants by dental assistants, 23.6 Filed **ARC 5748C**..... 7/14/21

ECONOMIC DEVELOPMENT AUTHORITY[261]

Apprenticeship training program, 12.3, 12.4(1), 12.5 to 12.7 Notice **ARC 5787C**..... 7/28/21

Manufacturing 4.0 technology investment program, ch 119 Notice **ARC 5792C**..... 7/28/21

Empower rural Iowa program, ch 222 Notice **ARC 5789C**..... 7/28/21

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Licensure, amendments to chs 13, 15, 16, 18, 20, 22, 24, 27 Filed **ARC 5803C**..... 7/28/21

Deaf and hard-of-hearing persons—terminology, 13.28(25)"b," 14.2, 16.2(1), 27.3 Filed **ARC 5802C**..... 7/28/21

Statements of professional recognition—behavior analysts, mental health professionals,
16.1(1), 16.9, 16.10 Filed Emergency After Notice **ARC 5807C** 7/28/21

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Disciplinary action against a certified operator—criminal convictions, 87.17(1)"h"
Notice **ARC 5814C** 7/28/21

HUMAN SERVICES DEPARTMENT[441]

Food assistance—supplemental nutrition assistance program (SNAP), opportunity to waive
right to administrative disqualification hearing, 7.1, 7.2, 7.4(3), 7.19 Filed **ARC 5810C** 7/28/21

Financial provisions for mental health and disability services regions, 25.14(3) Notice **ARC 5779C** 7/14/21

Deaf and hard-of-hearing persons—terminology, amend chs 73, 78, 81, 82, 113 Filed **ARC 5808C**..... 7/28/21

Home- and community-based services—individual placement and support supported
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IOWA FINANCE AUTHORITY[265]

Local housing trust funds—allocation plan, local match; website address, ch 19 Notice **ARC 5793C** 7/28/21

IOWA PUBLIC INFORMATION BOARD[497]

Waivers, amendments to ch 9 Filed **ARC 5766C**..... 7/14/21

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Boilers and pressure vessels, amendments to chs 80 to 85, 90, 91, 94 Notice **ARC 5806C** 7/28/21

LOTTERY AUTHORITY, IOWA[531]

Waivers; "easy pick" tickets, amendments to ch 4, 20 Notice **ARC 5816C**..... 7/28/21

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure; criminal convictions, 9.3, 10.3, 10.4(2), 10.5(2), 17.4(1), 20.6, 20.20, 23.1, 25.25
Filed **ARC 5749C**..... 7/14/21

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Waterway speed zoning—East Okoboji, 40.31(2) Filed **ARC 5799C** 7/28/21

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Licensure; criminal convictions, 3.1, 3.4(1), 3.5(1), 3.11, 4.6(7), 11.3(2)“f,” 18.1, 18.3
Filed **ARC 5761C**..... 7/14/21

Licensed practical nurses—provision of care at opioid treatment facilities and medication
units, 6.3(11)“f” Notice **ARC 5778C**..... 7/14/21

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Licensure; criminal convictions, amend chs 2, 33, 36; adopt ch 31 Filed **ARC 5750C** 7/14/21

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Marital and family therapists, mental health counselors, behavior analysts,
assistant behavior analysts, and social workers—supervision, 31.5, 31.7, 280.6
Notice **ARC 5794C**, also Filed Emergency **ARC 5795C** 7/28/21

Duplicate wallet card; criminal convictions; licensure by verification, amend chs 4, 5, 20;
adopt chs 14, 19 Filed **ARC 5751C** 7/14/21

Barbers, barber instructors, barbershops, and barber schools—licensure, criminal
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Marital and family therapists, mental health counselors, behavior analysts, and assistant
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Massage therapists—licensure, criminal convictions, wallet cards, 131.3(3), 131.6, 131.8,
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Nursing home administrators—licensure, criminal convictions, wallet cards, 141.2, 141.7,
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Optometrists—licensure, criminal convictions, wallet cards, 180.2(1)“a,” 180.3, 180.5,
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Physical therapists, physical therapist assistants, occupational therapists, and occupational
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200.9, 202.2(11), 206.2(1), 206.9, 206.10, 209.2(11) Filed **ARC 5758C**..... 7/14/21

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and polysomnography practitioners—licensure, criminal convictions, wallet cards,
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280.14(2), 283.2(11) Filed **ARC 5771C**..... 7/14/21

Speech pathologists and audiologists—licensure, criminal convictions, wallet cards, 300.3,
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Physician assistants—licensure, criminal convictions, wallet cards, 326.4(7), 326.9,
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Athletic trainers—licensure, criminal convictions, wallet cards, 351.2(1), 351.3(3), 351.7,
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Sign language interpreters and transliterators—licensure, criminal convictions, wallet cards,
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PUBLIC HEALTH DEPARTMENT[641]

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Lead-based paint activities—licensure, criminal convictions, 70.2, 70.5(3) <u>Filed</u> ARC 5763C	7/14/21
Emergency medical services—licensure, criminal convictions, 131.2, 131.3, 131.7(4)“u” <u>Filed</u> ARC 5764C	7/14/21

PUBLIC SAFETY DEPARTMENT[661]

Human trafficking prevention training—lodging providers, ch 29 <u>Notice</u> ARC 5780C	7/14/21
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REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Professional Licensing and Regulation Bureau[193] COMMERCE DEPARTMENT[181]“umbrella”	
Five-year review of rules, amendments to chs 1, 3 to 12 <u>Filed</u> ARC 5785C	7/28/21
Real property appraisers; background checks; reciprocity, 5.7, 6.7, 6.8, 10.2 <u>Notice</u> ARC 5786C	7/28/21

REVENUE DEPARTMENT[701]

Protests—motions to redact certain information, 6.1(3)“b,” 6.2, 7.9, 7.17(5)“e”(4) <u>Notice</u> ARC 5781C	7/14/21
Appeals and hearings regarding the director’s intent to remove a member of the board of review, 7.38 <u>Notice</u> ARC 5797C	7/28/21
Filing tax returns, payment of tax—penalties, waivers, 10.5 to 10.9, 10.76, 10.79 <u>Notice</u> ARC 5796C	7/28/21
Sales tax administrative procedures, amendments to chs 12 to 15 <u>Notice</u> ARC 5790C	7/28/21
Sales tax exemption—computer peripherals; citations, amendments to chs 18, 230 <u>Filed</u> ARC 5798C	7/28/21
Vehicles subject to registration, ch 34 <u>Notice</u> ARC 5782C	7/14/21
Relief from joint and several liability for substantial understatement of tax attributable to nonrequesting spouse or former spouse, 38.15 <u>Filed</u> ARC 5801C	7/28/21
Tobacco tax—discounted tobacco products, 83.3 <u>Notice</u> ARC 5788C	7/28/21

SCHOOL BUDGET REVIEW COMMITTEE[289]

EDUCATION DEPARTMENT[281]“umbrella”	
Waivers, amendments to ch 8 <u>Notice</u> ARC 5772C	7/14/21

SECRETARY OF STATE[721]

Petitions for rule making; waivers, amendments to chs 8, 10 <u>Filed</u> ARC 5811C	7/28/21
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TRANSPORTATION DEPARTMENT[761]

Driver’s licenses—minors, chauffeurs, commercial drivers, 602.12, 602.26, 604.21, 605.7, 605.25, 607.16 <u>Notice</u> ARC 5804C	7/28/21
Registration—airports, aircraft, 720.4(1), 720.5, 720.10, 720.15, 750.1 to 750.3, 750.30, 750.31 <u>Notice</u> ARC 5805C	7/28/21

TREASURER OF STATE[781]

Waivers, amendments to ch 19 <u>Filed</u> ARC 5783C	7/14/21
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UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”	
Civil penalty for permit violation; tile repairs; assessments; definition of “competitive local exchange service provider,” 8.1(5), 9.5(4)“d”(6), 17.2(9), 38.1(2) <u>Notice</u> ARC 5813C	7/28/21

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Waivers, 4.15 <u>Filed</u> ARC 5815C	7/28/21
Iowa veterans home, amendments to ch 10 <u>Filed</u> ARC 5800C	7/28/21
Veterans trust fund, 14.2 to 14.4 <u>Filed</u> ARC 5812C	7/28/21

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Waylon Brown
2415 Highway 218
Osage, Iowa 50461

Senator Jesse Green
2344 360th Street
Harcourt, Iowa 50544

Senator Robert Hogg
P.O. Box 1361
Cedar Rapids, Iowa 52406

Senator Pam Jochum
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Dubuque, Iowa 52001

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Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

Representative Amy Nielsen
North Liberty, Iowa

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

Representative Mike Sexton
2202 Ogden Avenue
Rockwell City, Iowa 50579

Michael Boal
Administrative Rules Coordinator
Governor's Ex Officio Representative
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Des Moines, Iowa 50319
Telephone: (515)281-5211

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Secondary containment—exemption for soil conditioners consisting entirely of minimally manipulated manures, 44.51, 44.56 IAB 6/30/21 ARC 5743C	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 30, 2021 10 to 11 a.m.
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LABOR SERVICES DIVISION[875]

Boilers and pressure vessels, amendments to chs 80 to 85, 90, 91, 94 IAB 7/28/21 ARC 5806C	150 Des Moines St. Des Moines, Iowa	August 18, 2021 10 a.m. (If requested)
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NURSING BOARD[655]

Licensed practical nurses—opioid treatment, 6.3(11)“f” IAB 7/14/21 ARC 5778C	Board Office, Suite B 400 S.W. Eighth St. Des Moines, Iowa	August 3, 2021 10 to 11 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Marital and family therapists, mental health counselors, behavior analysts, assistant behavior analysts, and social workers—supervision, 31.5, 31.7, 280.6 IAB 7/28/21 ARC 5794C (See also ARC 5795C)	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	August 17, 2021 9 to 10 a.m.
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REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Real property appraisers; background checks; reciprocity, 5.7, 6.7, 6.8, 10.2 IAB 7/28/21 ARC 5786C	Small Conference Room, Third Floor 200 E. Grand Ave. Des Moines, Iowa	August 17, 2021 9 to 10 a.m.
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REVENUE DEPARTMENT[701]

Tobacco tax—discounted tobacco products, 83.3 IAB 7/28/21 ARC 5788C	Via video/conference call Contact Tim Reilly Email: tim.reilly@iowa.gov	August 17, 2021 2 to 3 p.m.
Filing tax returns, payment of tax—penalties, waivers, 10.5 to 10.9, 10.76, 10.79 IAB 7/28/21 ARC 5796C	Via video/conference call Contact Tim Reilly Email: tim.reilly@iowa.gov	August 17, 2021 1 to 2 p.m. (If requested)
Sales tax administrative procedures, amendments to chs 12 to 15 IAB 7/28/21 ARC 5790C	Via video/conference call Contact Tim Reilly Email: tim.reilly@iowa.gov	August 17, 2021 3 to 4 p.m. (If requested)

REVENUE DEPARTMENT[701](cont'd)

Vehicles subject to registration, ch 34 IAB 7/14/21 ARC 5782C	Via video/conference call Contact Tim Reilly Email: tim.reilly@iowa.gov	August 3, 2021 2 to 3 p.m. (If requested)
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TRANSPORTATION DEPARTMENT[761]

Driver's licenses—minors, chauffeurs, commercial drivers, 602.12, 602.26, 604.21, 605.7, 605.25, 607.16 IAB 7/28/21 ARC 5804C	Via conference call Contact Tracy George Email: tracy.george@iowadot.us	August 19, 2021 9 a.m. (If requested)
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Registration—airports, aircraft, 720.4(1), 720.5, 720.10, 720.15, 750.1 to 750.3, 750.30, 750.31 IAB 7/28/21 ARC 5805C	Via conference call Contact Tracy George Email: tracy.george@iowadot.us	August 19, 2021 1 p.m. (If requested)
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UTILITIES DIVISION[199]

Civil penalty for permit violation; tile repairs; assessments; definition of "competitive local exchange service provider," 8.1(5), 9.5(4)"d"(6), 17.2(9), 38.1(2) IAB 7/28/21 ARC 5813C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 14, 2021 11:30 a.m. to 1:30 p.m.
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Natural gas standards, 10.1(3), 10.2(2), 10.12(1), 19.1(3), 19.2, 19.5(2), 19.11, 19.14(3)"a" IAB 6/30/21 ARC 5744C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	August 19, 2021 10 a.m. to 12 noon
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The following list will be updated as changes occur.

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

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

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

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ARC 5791C

AGING, DEPARTMENT ON[17]

Notice of Intended Action

Proposing rule making related to waivers and providing an opportunity for public comment

The Department on Aging hereby proposes to amend Chapter 1, “Introduction, Abbreviations and Definitions,” and Chapter 11, “Waivers or Variances from Administrative Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 231.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A as amended by 2020 Iowa Acts, House File 2389, section 10.

Purpose and Summary

2020 Iowa Acts, House File 2389, made several changes to agency rule making requirements. Section 10 of the legislation modified the requirements for waiver or variance of rules by agencies by striking references to variances. This proposed rule making brings the Department into compliance with the changes to Iowa Code section 17A.9A.

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 17—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 17, 2021. Comments should be directed to:

Dax Oberreuter
Iowa Department on Aging
Jessie Parker Building
510 East 12th Street, Suite 2
Des Moines, Iowa 50319
Phone: 515.725.3333
Email: dax.oberreuter@iowa.gov

AGING, DEPARTMENT ON[17](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 17—1.1(231) as follows:

17—1.1(231) Authority and purpose. The rules of the Iowa department on aging are based on the authority of Iowa Code chapters 231, 231E, 235B and 249H. These rules prescribe requirements:

1. to 3. No change.
4. To request waivers ~~or variances~~ from administrative rules;
5. and 6. No change.

ITEM 2. Amend **17—Chapter 11**, title, as follows:

WAIVERS ~~OR VARIANCES~~ FROM ADMINISTRATIVE RULES

ITEM 3. Amend rule **17—11.1(17A,231,ExecOrd11)**, definition of “Waiver or variance,” as follows:

“~~Waiver or variance~~” means action by the department which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person or program on the basis of the particular circumstances of that person or program. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 4. Amend rule **17—11.4(17A,231,ExecOrd11)**, catchwords, as follows:

17—11.4(17A,231,ExecOrd11) Criteria for waiver ~~or variance~~.

ARC 5787C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

**Proposing rule making related to apprenticeship training program
and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to amend Chapter 12, “Apprenticeship Training Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 15.106A and 15B.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 15B as amended by 2021 Iowa Acts, House File 559.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Purpose and Summary

2021 Iowa Acts, House File 559, amends Iowa Code chapter 15B relating to the Apprenticeship Training Program. The amended statute defines “contact hours” as the number of hours of in-person instruction received by an apprentice and provides that an apprenticeship program is eligible for assistance under the Apprenticeship Training Program only if its training includes at least 100 contact hours. The legislation also amends the calculation used to determine the amount of assistance provided to each eligible apprenticeship sponsor or lead apprenticeship sponsor.

The proposed rule making amends Chapter 12 to reflect the changes made to the Iowa Code as well as remove outdated references to legislation and contact information for the Authority.

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 Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on August 17, 2021. Comments should be directed to:

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

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this 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:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

ITEM 1. Adopt the following **new** definition of “Contact hours” in rule **261—12.3(15,15B)**:

“*Contact hours*” means the number of hours of in-person instruction received by an apprentice participating in an apprenticeship program.

ITEM 2. Amend subrule 12.4(1) as follows:

12.4(1) The authority will provide financial assistance under the program from moneys appropriated for purposes of the program pursuant to Iowa Code section 15.342A and 2014 Iowa Acts, House File 2460, section 3.

ITEM 3. Amend subrule 12.5(1) as follows:

12.5(1) The applicant is an apprenticeship sponsor, or a lead apprenticeship sponsor, that is ~~conducting~~ conducts an apprenticeship program that is registered with the U.S. Department of Labor, Office of Apprenticeship, through Iowa, for apprentices who will be employed at Iowa worksites in Iowa.

ITEM 4. Renumber subrules **12.5(2)** to **12.5(4)** as **12.5(3)** to **12.5(5)**.

ITEM 5. Adopt the following **new** subrule 12.5(2):

12.5(2) The applicant conducts an apprenticeship program that includes a minimum of 100 contact hours per apprentice for each training year of the apprenticeship program.

ITEM 6. Amend rule 261—12.6(15,15B) as follows:

261—12.6(15,15B) Determination of financial assistance grants. The authority will provide financial assistance in the form of training grants to eligible apprenticeship sponsors or lead apprenticeship sponsors. The maximum amount of financial assistance provided to an eligible apprenticeship sponsor or lead apprenticeship sponsor will be calculated in the following manner:

12.6(1) By determining the total amount of funding allocated for purposes of training grants for apprenticeship programs as described in rule 261—12.4(15,15B).

12.6(2) By ~~adding together all of the following:~~

~~*a.* The determining the total number of apprentices trained during the most recent training year, as calculated on the last day of the training year, in all apprenticeship programs conducted by all applying apprenticeship sponsors or lead apprenticeship sponsors during the most recent training year as calculated on the last day of the training year eligible to apply for financial assistance under rule 261—12.5(15,15B).~~

~~*b.* The total number of contact hours that apprenticeship instructors for all applying apprenticeship sponsors or lead apprenticeship sponsors spent in contact with apprentices during the most recent training year. For purposes of this paragraph, “contact hours” includes the time spent instructing apprentices in person or, in the case of a lead apprenticeship sponsor with programs totaling 100 or more total instructional hours, “contact hours” includes the time spent in online training if the total amount of online instruction does not account for more than 30 percent of the total instructional hours.~~

12.6(3) By ~~adding together all of the following:~~

~~*a.* The determining the total number of apprentices trained during the training year, as calculated on the last day of the training year, in each apprenticeship program conducted by a single each applying apprenticeship sponsor or lead apprenticeship sponsor during the most recent training year as calculated on the last day of the training year eligible to apply and that applied for financial assistance under rule 261—12.5(15,15B).~~

~~*b.* The total number of contact hours that apprenticeship instructors for a single applying apprenticeship sponsor or lead apprenticeship sponsor spent in contact with apprentices during the most recent training year. For purposes of this paragraph, “contact hours” includes the time spent instructing apprentices in person or, in the case of a lead apprenticeship sponsor with programs totaling 100 or more total instructional hours, “contact hours” includes the time spent in online training if the total amount of online instruction does not account for more than 30 percent of the total instructional hours.~~

12.6(4) By determining the proportion, stated as a percentage, that a ~~single each~~ applying apprenticeship sponsor’s or lead apprenticeship sponsor’s total calculated pursuant to subrule 12.6(3)

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

bears to all applying apprenticeship sponsors' or lead apprenticeship sponsors' total calculated pursuant to subrule 12.6(2).

12.6(5) By multiplying the percentage calculated in subrule 12.6(4) by the amount determined in subrule 12.6(1).

ITEM 7. Amend rule 261—12.7(15,15B) as follows:

261—12.7(15,15B) Application submittal and review process.

12.7(1) The authority will develop a standardized application and make the application available to applicants. To apply for assistance under the program, an applicant shall submit an application to the authority. ~~Applications may be sent to the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309.~~ Required forms and instructions are available by contacting the authority at that address or from the authority's Internet site at www.iowaeconomicdevelopment.com ~~www.iowaeda.com~~.

12.7(2) No change.

ARC 5792C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rule making related to the manufacturing 4.0 technology investment program and providing an opportunity for public comment

The Economic Development Authority (IEDA) hereby proposes to adopt a new Chapter 119, "Manufacturing 4.0 Technology Investment Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 15.106A and section 15.371 as enacted by 2021 Iowa Acts, Senate File 619.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 15.371 as enacted by 2021 Iowa Acts, Senate File 619.

Purpose and Summary

Pursuant to 2021 Iowa Acts, Senate File 619, the IEDA proposes to establish and administer a Manufacturing 4.0 Technology Investment Program. The purpose of the program is to assist with projects intended to lead to the adoption of, and integration of, smart technologies into existing manufacturing operations located in the state.

Eligible applicants are Iowa manufacturers that derive at least 51 percent of their revenue from the sale of manufactured goods, that have been operational for at least three years, and that have between 3 and 75 employees across all locations. The maximum amount of assistance that may be awarded to an eligible manufacturer is \$75,000. Applications for the program will be scored on a competitive basis by IEDA staff and/or a technical review panel. The IEDA Board will approve, defer, or deny applications after reviewing staff and/or review panel recommendations. The program and proposed rules were developed with feedback from the advanced manufacturing workgroup of the Iowa Innovation Council and the Center for Industrial Research and Service (CIRAS) at Iowa State University.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The IEDA is currently evaluating potential sources of state and federal funds for the program.

ECONOMIC DEVELOPMENT AUTHORITY[261](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 application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the IEDA no later than 4:30 p.m. on August 17, 2021. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** 261—Chapter 119:

CHAPTER 119

MANUFACTURING 4.0 TECHNOLOGY INVESTMENT PROGRAM

261—119.1(15) Authority. The authority for adopting rules establishing the manufacturing 4.0 technology investment program is provided in Iowa Code section 15.371 as enacted by 2021 Iowa Acts, Senate File 619.

261—119.2(15) Purpose. The purpose of the manufacturing 4.0 technology investment program is to provide financial assistance to projects intended to lead to the adoption of, and integration of, smart technologies into existing manufacturing operations located in the state.

261—119.3(15) Definitions.

“*Applicant*” means a business applying for assistance under the program.

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

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“*Authority’s website*” means the information and related content found at www.iowaeda.com and may include integrated content at affiliate sites.

“*Board*” means the members of the economic development authority board appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Eligible business*” means a business meeting the requirements of rule 261—119.4(15).

“*Employee*” means an individual filling a full-time equivalent job that is part of the payroll of the business receiving financial assistance under this program. “Employee” does not include a business’s part-time, leased, or contract employees.

“*Financial assistance*” means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty payments.

“*Full-time equivalent job*” or “*full-time*” means the employment of one person:

1. For 8 hours per day for a five-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or

2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year including paid holidays, vacations, and other paid leave.

For purposes of this definition, “employment of one person” means the employment of one natural person and does not include “job sharing” or any other means of aggregation or combination of hours worked by more than one natural person.

“*Manufacturing 4.0 technology investments*” or “*investments*” means projects that are intended to lead to the adoption of, and integration of, smart technologies into existing manufacturing operations located in the state by mitigating the risk to the manufacturer of significant technology investments. Projects may include investments in specialized hardware, software, or other equipment intended to assist a manufacturer in increasing the manufacturer’s productivity, efficiency, and competitiveness.

“*Program*” means the manufacturing 4.0 technology investment program established in this chapter.

261—119.4(15) Program eligibility. To be eligible for financial assistance under the program, an applicant shall meet all of the following requirements:

119.4(1) The applicant must propose a manufacturing 4.0 technology investment that has not been made prior to the date of application.

119.4(2) The applicant must manufacture goods at a facility located in Iowa.

119.4(3) The applicant must have a North American industry classification system code within the manufacturing sector range 31-33.

119.4(4) The applicant must have been an established business for a minimum of three years prior to the date of application to the program. The authority will presume a business was established as of the date of incorporation or organization of the applicant entity unless an applicant demonstrates to the authority’s satisfaction that the business was established earlier.

119.4(5) The applicant must derive a minimum of 51 percent of the applicant’s overall revenue from the sale of manufactured goods.

119.4(6) The applicant must employ a minimum of 3 employees and no more than 75 employees across all of the applicant’s locations.

119.4(7) The applicant must have an assessment of the applicant’s proposed manufacturing 4.0 technology investment completed by the center for industrial research and service at Iowa state university of science and technology prior to submission of an application.

119.4(8) The applicant shall demonstrate the ability to provide matching financial support for the applicant’s manufacturing 4.0 technology investment on a one-to-one basis in the form of cash. The matching financial support must be obtained from private sources.

261—119.5(15) Application submittal and review process.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

119.5(1) The authority will develop a standardized application process and make information on applying available on the authority's website. To apply for assistance under the program, an applicant shall submit an application to the authority in the manner prescribed by the authority. The authority will identify specific types of investments for which it intends to provide financial assistance on the application form or forms.

119.5(2) Applications will be accepted and processed by authority staff on a continuing basis, or the authority may establish application periods as announced on the authority's website. The authority may engage an outside technical review panel to complete technical reviews of applications. Applications will be reviewed in the order received by the authority.

119.5(3) The authority may refuse to accept incomplete applications or may refuse to accept applications because of insufficient funds.

119.5(4) The board, after considering the recommendations made by authority staff or a technical review panel, will determine the financial assistance award if the board determines that financial assistance should be awarded. The board has final decision-making authority on requests for financial assistance for the program. The board will take final action on all applications for financial assistance, except those rejected pursuant to subrule 119.5(3). The board may approve an award, decline to award, or refer an application back to staff or a technical review panel for further review and recommendation. The board will consider applications on a continuing basis.

119.5(5) An applicant may submit multiple applications. The maximum amount of financial assistance awarded to any eligible business under the program for all its applications shall not exceed \$75,000.

119.5(6) Applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the award, or of a denial of an award of financial assistance.

261—119.6(15) Application scoring criteria.

119.6(1) When applications for financial assistance under the program are reviewed by authority staff or a technical review panel, the criteria below will be considered and the application scored as described. There is no minimum score required for funding under the program. However, a lower score indicates that the authority views the application less favorably than an application with a higher score.

119.6(2) The criteria under which each application will be scored are:

a. The percentage of the applicant business's revenue derived from the sale of manufactured goods: 20 points. Applicants who derive a higher percentage of revenue from the sale of manufactured goods will receive higher scores in this category.

b. The extent to which the manufacturer's proposed manufacturing 4.0 technology investment is consistent with the opportunities identified in the assessment completed by the center for industrial research and service at Iowa state university of science and technology pursuant to subrule 119.4(7): 20 points.

c. The extent to which the investment integrates smart technologies into existing manufacturing operations: 15 points.

d. The sufficiency of the proposed investment's financing structure, the feasibility of the sources of funds, and the appropriateness of the proposed uses of the funds: 15 points.

e. The extent to which the investment will enhance an applicant's workforce: 10 points.

f. The extent to which the applicant has planned for long-term use of the manufacturing 4.0 technology investment and an overall transition to smart technologies: 10 points.

g. The extent to which the investment corresponds to the specific type of investment identified by the authority on the application form or forms: 10 points.

261—119.7(15) Contract administration.

119.7(1) The authority will prepare a contract for each award approved by the board. The contract will reflect the terms of the award and may include other terms and conditions reasonably necessary for implementation of the program pursuant to this chapter.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

119.7(2) Any substantive change to a proposed investment shall require an amendment to the contract. Amendments shall be requested in writing. No amendment shall be valid until approved by the board. The authority may execute nonsubstantive or corrective changes to the contract without board approval.

261—119.8(15) Disbursement of funds. The authority will disburse funds for an investment only after a complete application has been received, an award has been approved by the board, a contract has been executed between the applicant and the authority, and all applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the contract will be on a reimbursement basis for expenses incurred by the applicant after the date of application and as provided under the contract.

261—119.9(15) Reporting. An applicant receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

These rules are intended to implement Iowa Code section 15.371 as enacted by 2021 Iowa Acts, Senate File 619.

ARC 5789C**ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action****Proposing rule making related to funds for the empower rural Iowa program and providing an opportunity for public comment**

The Economic Development Authority (IEDA) hereby proposes to adopt a new Chapter 222, "Empower Rural Iowa Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in 2021 Iowa Acts, House File 871.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, House File 871, section 3.

Purpose and Summary

The Empower Rural Iowa Initiative was created by Executive Order Number 3 dated July 18, 2018, which directs the IEDA to provide staffing and administrative assistance for the initiative and its associated task forces. Pursuant to 2021 Iowa Acts, House File 871, \$700,000 is appropriated to the IEDA for the Empower Rural Iowa Program and the IEDA is directed to adopt rules to establish criteria for the distribution of the appropriated funds.

The proposed new Chapter 222 outlines uses of the funds appropriated by 2021 Iowa Acts, House File 871, including the Rural Housing Needs Assessment Grant Program administered pursuant to Chapter 220 and the Rural Innovation Grant Program administered pursuant to Chapter 221. The new chapter would also allow funds to be used for other priorities identified and published by the task forces associated with the Empower Rural Iowa Initiative.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation it is intended to implement.

ECONOMIC DEVELOPMENT AUTHORITY[261](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 application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the IEDA no later than 4:30 p.m. on August 17, 2021. Comments should be directed to:

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

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** 261—Chapter 222:

CHAPTER 222
EMPOWER RURAL IOWA PROGRAM

261—222.1(89GA,HF871) Purpose. The empower rural Iowa initiative was created by Executive Order Number 3 dated July 18, 2018, which directs the authority to provide staffing and administrative assistance for the initiative and its associated task forces. Pursuant to 2021 Iowa Acts, House File 871, the authority is directed to adopt rules to establish criteria for the distribution of funds appropriated in section 3, subsection 11, of the legislation to the empower rural Iowa program.

261—222.2(89GA,HF871) Definitions. As used in this chapter, unless the context otherwise requires:

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

“*Director*” means the director of the authority.

“*Empower rural Iowa initiative*” or “*initiative*” means the initiative created by Executive Order Number 3 dated July 18, 2018.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“*Rural community*” means either an Iowa city with a population of 20,000 or less and that is not contiguous to a city with a population of 40,000 or greater, or an Iowa county that is one of the 88 least populous counties in the state.

261—222.3(89GA, HF871) Eligible uses of funds.

222.3(1) Funds appropriated to the authority for the empower rural Iowa program shall be used to address the challenges and opportunities of rural communities. Uses of funds shall be approved by the director.

222.3(2) Eligible uses of funds include the following:

- a. The rural housing needs assessment grant program administered pursuant to 261—Chapter 220;
- b. The rural innovation grant program administered pursuant to 261—Chapter 221;
- c. Support for entrepreneurship and cooperative business models for businesses in rural communities;
- d. Leadership development training for representatives of rural communities;
- e. Education and training opportunities relating to succession planning for businesses in rural communities;
- f. Promotion of e-commerce opportunities for businesses in rural communities; and
- g. Implementation of additional recommendations published by the investing in rural Iowa task force, the growing rural Iowa task force, and the connecting rural Iowa task force created by the empower rural Iowa initiative and administered by the authority.

These rules are intended to implement 2021 Iowa Acts, House File 871.

ARC 5814C**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action****Proposing rule making related to criminal convictions
and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 81, “Operator Certification: Public Water Supply Systems and Wastewater Treatment Systems,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 272C.10 and 455B.212.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 272C.1(6)“x,” 272C.10(5) and 455B.213.

Purpose and Summary

This proposed rule making seeks to align Chapter 81 with Iowa Code chapter 272C as amended by 2020 Iowa Acts, House File 2627, division I (effective January 1, 2021). Iowa Code chapter 272C regulates certain licensed or certified professions, including water treatment operators in Iowa Code section 272C.1(6)“x.” Previously, Iowa Code section 272C.10(5) held that a felony conviction was grounds for the revocation or suspension of a certification so long as the felony was directly related to the profession. Chapter 81 was consistent with this standard.

House File 2627 expanded the law. Now, a directly related lesser criminal conviction which is from a different state, territory, or country which if committed in Iowa would be a felony is also grounds for

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

revocation or suspension. The Commission is proposing to amend Chapter 81 to reflect this change. No other amendments are proposed.

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 (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 making adopts statutory provisions. Pursuant to Iowa Code section 17A.9, no waiver of these rules is allowed.

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 August 17, 2021. Comments should be directed to:

Noah Poppelreiter
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: noah.poppelreiter@dnr.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend paragraph **81.17(1)“h”** as follows:

h. ~~Conviction of a felony related to the profession or occupation of the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.~~ criminal offenses directly related to the profession or occupation of the operator, consistent with Iowa Code sections 272C.1(8) and 272C.10(5).

ARC 5793C**IOWA FINANCE AUTHORITY[265]****Notice of Intended Action****Proposing rule making related to local housing trust fund allocation plan and providing an opportunity for public comment**

The Iowa Finance Authority hereby proposes to amend Chapter 19, “State Housing Trust Fund,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 16.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 16.181 and 2021 Iowa Acts, Senate File 619.

Purpose and Summary

This proposed rule making updates Chapter 19 to incorporate by reference amendments to the trust fund allocation plan (the “allocation plan”) for the Local Housing Trust Fund Program. 2021 Iowa Acts, Senate File 619, increases the amount of real estate transfer taxes that may be transferred into the State Housing Trust Fund (the “Fund”) from \$3 million to \$7 million. Iowa Code section 16.181 requires that a Local Housing Trust Fund provide a local match that is approved by the Authority, but does not specify the amount of match. The allocation plan currently requires that Local Housing Trust Funds provide a match of 25 percent of the amount requested from the Fund. Awards are made to eligible Local Housing Trust Funds based upon a formula. If the local match requirement is left unchanged, several Local Housing Trust Funds, particularly those serving rural areas, may find it extremely difficult to meet the local match requirement. The Authority proposes reducing the local match requirement in FY 2022 and gradually stepping it back up to 25 percent by FY 2025.

The Authority is also proposing amendments to update the Authority’s website address and strike an outdated requirement to deposit program applications and related documents with the Administrative Rules Coordinator and at the State Law Library. The Authority proposes to strike this last requirement because it is not required by statute and does not conform with current program practice.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. 2021 Iowa Acts, Senate File 619, increases by up to \$4 million the amount of real estate transfer taxes transferred into the State Housing Trust Fund.

Jobs Impact

After analysis and review of this rule making, this rule making may have a positive impact on employment in Iowa, creating jobs in the construction industry.

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 Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

IOWA FINANCE AUTHORITY[265](cont'd)

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 Authority no later than 4:30 p.m. on August 17, 2021. Comments should be directed to:

Kristin Hanks-Bents
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.452.0404
Email: kristin.hanks-bents@iowafinance.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend **265—Chapter 19** as follows:

CHAPTER 19
STATE HOUSING TRUST FUND

265—19.1(16) Trust fund allocation plans. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Local Housing Trust Fund Program dated ~~March 2019~~ July 2021 shall be the allocation plan for the award, pursuant to the local housing trust fund program, of funds held within the state housing trust fund established in Iowa Code section 16.181. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Project-Based Housing Program dated June 2009 shall be the allocation plan for the distribution, pursuant to the project-based housing program, of funds held within the state housing trust fund. The trust fund allocation plans for the local housing trust fund program and the project-based housing program include the plans, applications, and application instructions. The trust fund allocation plans for the local housing trust fund program and the project-based housing program are incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

265—19.2(16) Location of copies of the plans. The trust fund allocation plans for the local housing trust fund program and the project-based housing program may be reviewed and copied in their entirety on the authority’s ~~Web site~~ website at www.iowafinanceauthority.gov www.iowafinance.com. Copies of the trust fund allocation plans for the local housing trust fund program and the project-based housing program, ~~the applications, and all related attachments and exhibits, if any,~~ shall be deposited with the

IOWA FINANCE AUTHORITY[265](cont'd)

administrative rules coordinator and at the state law library. The plans incorporate by reference Iowa Code section 16.181.

These rules are intended to implement Iowa Code Supplement sections 16.5(1)“r” and 16.181.

ARC 5806C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Proposing rule making related to boilers and pressure vessels and providing an opportunity for public comment

The Boiler and Pressure Vessel Board hereby proposes to amend Chapter 80, “Boiler and Pressure Vessel Board Administrative and Regulatory Authority,” Chapter 81, “Waivers or Variances from Administrative Rules by the Boiler and Pressure Vessel Board,” Chapter 82, “Boiler and Pressure Vessel Board Petitions for Rule Making,” Chapter 83, “Declaratory Orders by the Boiler and Pressure Vessel Board,” Chapter 84, “Contested Cases Before the Boiler and Pressure Vessel Board,” Chapter 85, “Public Records and Fair Information Practices of the Boiler and Pressure Vessel Board,” Chapter 90, “Administration of the Boiler and Pressure Vessel Program,” Chapter 91, “General Requirements for All Objects,” and Chapter 94, “Steam Heating Boilers, Hot Water Heating Boilers and Hot Water Supply Boilers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 89.14(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 89 and 2020 Iowa Acts, House File 2389.

Purpose and Summary

The Board is required by Iowa Code section 89.14(7) to review all boiler and pressure vessel rules every three years. Many of the amendments proposed in this Notice are the result of that systematic review. Additional amendments were prompted by the passage of 2020 Iowa Acts, House File 2389, which amended the Administrative Procedure Act.

These proposed amendments update the office address and code references; set forth the requirement to submit petitions for rule making and their disposition to the Administrative Rules Review Committee; set forth the requirement to enter information about waiver petitions and their disposition in the Legislative Services Agency’s website; strike references to “variance” and “reinstallation”; align fall protection language with current occupational safety and health standards; facilitate email communications between the Board and a petitioner for rule making; strike redundant language; eliminate inconsistencies in the use of the phrase “hot water supply boiler”; reduce the time for filing an inspection report from 30 days to 14 days; make extensive changes to the definitions; elaborate on procedures in the event of an imminent danger, on the types of conditions to be included on inspection reports, and on requirements for discharge piping; require that control and safety device reports, which must already be prepared and kept available for inspectors, also be sent to the Division of Labor; require a hydrostatic test and an internal inspection to be performed before a temporary object is put into operation; and adopt new rules concerning repairs, plugging leaky tubes, and the condition and maintenance of equipment rooms. Carbon monoxide detectors are already required in boiler rooms, and Item 34 sets forth specific requirements for carbon monoxide detectors. In order to make the requirements more accessible to users, some of the amendments would place directly into rules requirements that are currently adopted by reference.

LABOR SERVICES DIVISION[875](cont'd)

Fiscal Impact

A limited amount of maintenance in state buildings may be required.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 81.

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 August 18, 2021. Comments should be directed to:

Kathleen Uehling
Division of Labor Services
150 Des Moines Street
Des Moines, Iowa 50309
Email: kathleen.uehling@iwd.iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

August 18, 2021
10 a.m.

150 Des Moines Street
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 875—80.5(89) as follows:

875—80.5(89) Official communications. All official communications, including submissions and requests, shall be addressed to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, ~~4000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309.

ITEM 2. Amend **875—Chapter 81**, title, as follows:

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

LABOR SERVICES DIVISION[875](cont'd)

BY THE BOILER AND PRESSURE VESSEL BOARD

ITEM 3. Amend rule 875—81.3(17A,89), introductory paragraph, as follows:

875—81.3(17A,89) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

ITEM 4. Amend subrule 81.4(3) as follows:

81.4(3) Filing petition. A petition is deemed filed when it is received in the board's office. A petition and related materials for consideration should be sent to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa 50319 50309.

ITEM 5. Amend rule 875—81.5(17A,89), introductory paragraph, as follows:

875—81.5(17A,89) Content of petition. The required form for a petition for waiver ~~or variance~~ is available on the board's website at iowaboilers.gov. A petition for waiver shall include the following information where applicable and known to the petitioner:

ITEM 6. Rescind rule 875—81.12(17A,89) and adopt the following new rule in lieu thereof:

875—81.12(17A,89) Submission of waiver information. Information about all orders granting or denying a waiver petition shall be submitted by the board staff to the legislative services agency through the designated Internet site within 60 days of granting or denying the petition. The information submitted is available to the public via the website.

ITEM 7. Amend subrules 82.1(6) and 82.1(7) as follows:

82.1(6) The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed. If desired, the petition should also provide an email address and a statement that email is an acceptable method for communication.

82.1(7) The board may deny a petition because it does not provide the required information. ~~The petitioner may file a new petition on the same subject that seeks to eliminate the grounds for the board's rejection.~~

ITEM 8. Amend rule 875—82.3(17A,89) as follows:

875—82.3(17A,89) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa 50319 50309.

ITEM 9. Amend subrule 82.4(3) as follows:

82.4(3) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall deny the petition in writing and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that the board will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the board office to the petitioner by regular mail or email if appropriate. Petitioner shall be deemed notified of the denial or granting of the petition on the date the board office mails the required notification to the petitioner. Copies of the petition and the document granting or denying the petition shall be sent to the administrative rules review committee.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 10. Amend rule 875—83.5(17A,89) as follows:

875—83.5(17A,89) Inquiries. Inquiries concerning the status of a declaratory order may be made ~~at the board office~~ to the Boiler and Pressure Vessel Board, Division of Labor Services, 150 Des Moines Street, Des Moines, Iowa 50309.

ITEM 11. Amend paragraph **84.10(5)“d”** as follows:

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa 50319 50309, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

(Date)

(Signature)

ITEM 12. Amend subrule 85.3(1) as follows:

85.3(1) Address. The board's ~~mailing~~ address is Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa 50319 50309. ~~The board's staff is located at 150 Des Moines Street, Des Moines, Iowa.~~

ITEM 13. Amend subrule 85.3(3) as follows:

85.3(3) Request for access. Requests for access to open records may be made in writing, in person, by facsimile, ~~E-mail~~ email, or other electronic means, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the board's response. A person shall not be required to give a reason for requesting an open record. ~~While agencies are not required by Iowa Code chapter 22 to respond to requests for public records that are not made in person, the board will respond to such requests as reasonable under the circumstances.~~

ITEM 14. Amend paragraph **85.3(7)“b”** as follows:

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board shall be ~~prominently posted~~ available in board offices. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and posted in board offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

ITEM 15. Amend rule 875—85.6(22,89) as follows:

875—85.6(22,89) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the ~~board at the~~ Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa 50319 50309. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

ITEM 16. Amend paragraph **85.12(2)“b”** as follows:

b. Minutes and tapes of closed meetings of the board. (Iowa Code section ~~21.5(4)~~ 21.5(5))

LABOR SERVICES DIVISION[875](cont'd)

ITEM 17. Amend subrule 85.15(2) as follows:

85.15(2) Board records. Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the board office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section ~~21.5(4)~~ 21.5(5). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored on paper and electronically.

ITEM 18. Rescind the definitions of “Alteration,” “Hot water supply boiler” and “Reinstallation” in rule **875—90.2(89,252J,272D)**.

ITEM 19. Amend rule **875—90.2(89,252J,272D)**, definitions of “Electric boilers,” “External inspection,” “Internal inspection,” “National Board,” “National Board Inspection Code” and “Unfired steam pressure vessel,” as follows:

“~~Electric boilers~~ boiler” means a power boiler, heating boiler, high or low temperature water boiler in which the source of heat is electricity.

“~~External inspection~~” means ~~as a complete an examination as can be reasonably~~ made of the external surfaces and safety devices while the ~~boiler or pressure vessel~~ object is in operation, unless the object is required to be shut down pursuant to ~~875—subrule 89.3(4)~~.

“~~Internal inspection~~” means ~~as complete an examination as can be reasonably~~ made of the internal ~~and external~~ surfaces of a ~~boiler or pressure vessel~~ object while it is shut down and ~~while access for examination is attained through the removal of any~~ manhole plates, handhole plates ~~or other inspection opening closures are removed as required by the inspector~~, blind flanges, piping spools or fittings attached to the object. A determination that an examination cannot be reasonably made shall not be based on a failure of the owner or user to provide clearance pursuant to rule ~~875—91.10(89)~~ or on failure of the owner or user to provide for the inspector’s safety and health as described in ~~875—Chapters 90 and 91~~.

“~~National Board~~” means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of jurisdictions who are charged with the enforcement of the provisions of boiler codes. The National Board’s website is nationalboard.org.

“~~National Board Inspection Code~~” or “~~NBIC~~” means the Manual for Boiler and Pressure Vessel Inspectors (ANSI/NB 23) published by the National Board. Copies of the code may be obtained from the National Board.

“~~Unfired steam pressure vessel~~” means a vessel or container used for the containment of steam pressure either internal or external in which the pressure is obtained from an external source. “Unfired steam pressure vessel” may include items such as expansion tanks, flash tanks, and condensate return tanks.

ITEM 20. Adopt the following new definitions in rule **875—90.2(89,252J,272D)**:

“~~Alteration~~” means a change in the object described on the original manufacturer’s data report that affects the pressure-retaining capability of the pressure-retaining object. A nonphysical change such as an increase in the maximum allowable working pressure (internal or external), an increase in design temperature, or a reduction in minimum temperature of a pressure-retaining item shall be considered an alteration.

“~~CSD-1 report~~” means Manufacturer’s/Installing Contractor’s Report for ASME CSD-1.

“~~Exit~~” means a doorway, hallway, or similar passage that will allow free, normally upright unencumbered egress from an area.

“~~Hot water supply boiler~~” means a boiler that:

1. Operates at a pressure not exceeding 160 psig;
2. Furnishes hot water to be used externally to itself; and, either:
 - Bears a National Board “H” stamp and has a temperature less than or equal to 250°F at or near the boiler outlet, or,
 - Bears a National Board “HLW” stamp and has a temperature less than or equal to 210°F at or near the boiler outlet.

LABOR SERVICES DIVISION[875](cont'd)

“*Installation*” means the process by which an object is connected to a system for operation. This applies to all objects whether they are new, used, or being brought back to service after being removed.

“*Miniature boiler*” means a boiler that does not exceed a 16-inch inside shell diameter, 20 square feet of heating surface (not applicable to electric boilers), 5 cubic feet of gross volume (exclusive of casing and insulation), and 100 psig maximum allowable working pressure.

“*OEM*” means original equipment manufacturer.

“*Owner or user*” means any person, firm, or corporation legally responsible for the installation, operation, and maintenance of any object within the jurisdiction.

“*Safe point of discharge*” means the same as in the National Board Inspection Code: a location that will not cause property damage, cause equipment damage, or create a health or safety threat to personnel in the event of discharge.

“*Temporary object*” means a boiler, unfired steam pressure vessel, or combination thereof that is not a permanent fixture or part of normal operation of the facility.

ITEM 21. Amend paragraph **90.6(2)“c”** as follows:

c. Special inspections may be conducted ~~at any time mutually agreed to~~ when deemed necessary by the division and the object’s owner or user.

ITEM 22. Amend subrule 90.6(3) as follows:

90.6(3) *Inspections conducted by special inspectors.* Special inspectors shall provide copies of the completed report to the insured and to the division within ~~30~~ 14 days of completing the inspection. The reports shall list all ~~adverse~~ noteworthy conditions that are within the scope of Iowa Code chapter 89, all recommendations, and all requirements, ~~if any~~. If the special inspector has not ~~notified the division of provided the inspection results of the inspection~~ within 30 days of the expiration of an operating certificate the time frame identified, the division may conduct the inspection.

ITEM 23. Amend subrule 90.6(7) as follows:

90.6(7) *Imminent danger.*

a. If the labor commissioner determines that continued operation of an object constitutes an imminent danger that could seriously injure or cause death to any person, notice to immediately cease operation of that object shall be ~~posted by the labor commissioner~~ made to the owner or user through contact information available in the division’s records or by posting a notice at the location of the object.

b. Upon such notice, the owner or user shall immediately ~~begin~~ take the necessary steps to cease operation of the object. All forms of energy to and from the object must be isolated and physically locked in the closed position.

c. A division inspector will verify that the object is no longer in operation and all forms of energy to and from the object have been isolated and are locked in the closed position.

d. The object shall not be used until ~~the~~ all necessary repairs have been completed, ~~and~~ the object has passed inspection, all repair documentation is complete, and the division reviews and approves the documentation.

e. Operation of an object in violation of this subrule may result in further legal action pursuant to Iowa Code sections 89.11 and 89.13.

ITEM 24. Amend subrule 90.11(1), introductory paragraph, as follows:

90.11(1) *Control and safety device reports.* Documentation required by this subrule shall be kept on site and shall be available for inspection by the division or special inspectors. The owner or user shall mail a copy of the documentation required by this subrule to the division.

ITEM 25. Amend paragraph **90.11(1)“b”** as follows:

b. The installer shall complete a ~~Manufacturer’s/Installing Contractor’s Report for ASME CSD-1 (CSD-1 report)~~ CSD-1 report for each ~~newly installed or reinstalled~~ object.

ITEM 26. Amend rule 875—90.12(89) as follows:

875—90.12(89) Publications available for review. Pursuant to Iowa Code section ~~89.5, subsection 3~~ 89.5(3), the standards, codes, and publications adopted by reference in these rules are available for review

LABOR SERVICES DIVISION[875](cont'd)

in the office of the Division of Labor Services, ~~4000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa.

ITEM 27. Rescind rule 875—90.14(89) and adopt the following **new** rule in lieu thereof:

875—90.14(89) Temporary objects.

90.14(1) Certificate to operate. A certificate to operate a temporary object shall expire one year from the date of issuance or when the temporary object is disconnected.

90.14(2) Inspections.

a. An internal inspection and hydrostatic test pursuant to the National Board Inspection Code shall be performed on site at a new location before a temporary object is started up. Once a temporary object has been placed into normal operation, an external operating inspection shall be performed.

b. An inspection on a temporary object that remains at the same location and is in continuous service longer than one year shall be performed according to the inspection schedule of Iowa Code section 89.3.

ITEM 28. Adopt the following **new** rule 875—90.16(89):

875—90.16(89) Definitions regarding objects. The following definitions shall govern classification and status of objects in Iowa. To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, the definitions in this rule shall be applicable to the rules contained in 875—Chapters 90 to 96.

“Active status” means an object is physically attached to the system and any forms of potential energy. The object may or may not be in operation.

“Exempt status” means an object that is not required to be inspected pursuant to Iowa Code chapter 89.

“Inactive status” means the object is no longer in operation and all forms of potential energy have been disconnected in a manner that creates an air gap.

“Modular boiler” means a steam or hot water heating assembly consisting of a group of individual boilers called modules intended to be installed as a unit with no intervening stop valves. Modules may be under one jacket or individually jacketed. The individual modules shall be limited to a maximum input of 400,000 Btu/hour (117kW) (gas), 3 gph (11.4 L/h) (oil), or 115kW (electric).

“Scrapped status” means the object has been permanently destroyed and is no longer physically at the location.

ITEM 29. Amend subrules 91.1(3) to 91.1(11) as follows:

91.1(3) Inspection code adopted by reference. The National Board Inspection Code (2019) is adopted by reference, and ~~reinstallations~~, installations, alterations, and repairs after April 15, 2020, shall comply with it.

91.1(4) Electric code adopted by reference. The National Electrical Code (2020) is adopted by reference, and ~~reinstallations~~ and installations after April 15, 2020, shall comply with it.

91.1(5) Piping codes adopted by reference. The Power Piping Code, ASME B31.1 (2018), and the Building Services Piping Code, ASME B31.9 (2017), are adopted by reference, and ~~reinstallations~~ and installations after April 15, 2020, shall comply with them up to and including the first valve.

91.1(6) Control and safety device code adopted by reference. Controls and Safety Devices for Automatically Fired Boilers (CSD-1) (2018) is adopted by reference, and ~~reinstallations~~ and installations after April 15, 2020, shall comply with it. Reporting requirements concerning CSD-1 are set forth at rule 875—90.11(89).

91.1(7) Mechanical code adopted by reference. Excluding Section 701.1, Chapters 2 and 7 of the International Mechanical Code (IMC) (2018) are adopted by reference, and installations and ~~reinstallations~~ after September 1, 2018, shall comply with them.

91.1(8) Oil burning equipment code adopted by reference. National Fire Protection Association Standard for the Installation of Oil Burning Equipment, NFPA 31 (2016), is adopted by reference, and installations and ~~reinstallations~~ after September 1, 2018, shall comply with it.

LABOR SERVICES DIVISION[875](cont'd)

91.1(9) *Fuel gas code adopted by reference.* National Fire Protection Association National Fuel Gas Code, NFPA 54 (2018), is adopted by reference, and installations ~~and re-installations~~ after September 1, 2018, shall comply with it.

91.1(10) *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (2020), is adopted by reference, and installations ~~and re-installations~~ after April 15, 2020, shall comply with it.

91.1(11) *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (2019), is adopted by reference, and installations ~~and re-installations~~ after April 15, 2020, shall comply with it.

ITEM 30. Amend rule 875—91.2(89) as follows:

875—91.2(89) Safety appliance.

91.2(1) No person shall remove, disable or tamper with a required safety appliance except for the purpose of repair or inspection.

91.2(2) An object shall not be operated unless all applicable required and installed safety appliances are properly functional and operational.

ITEM 31. Amend rule 875—91.5(89) as follows:

875—91.5(89) Location of discharge piping outlets. The discharge from safety valves, safety relief valves, blowoff pipes and other outlets shall ~~be so arranged that there will be no danger of scalding personnel.~~ comply with the following:

91.5(1) The discharge piping shall terminate at a safe point of discharge.

91.5(2) When the safety valve or temperature and pressure relief valve discharge is piped away from the object to ~~the~~ a safe point of discharge, provision shall be made for properly draining the piping.

91.5(3) The size of the discharge piping shall not be reduced from the size of the relief valve.

91.5(4) All discharge piping shall be comprised of appropriate metallic material identified in ASME Section II.

ITEM 32. Adopt the following new rules 875—91.7(89) and 875—91.8(89):

875—91.7(89) Repairs and alterations to unfired steam pressure vessels. No single repair of an unfired steam pressure vessel shall involve replacement of more than 50 percent of the OEM's pressure-retaining boundary.

875—91.8(89) Plugging boiler tubes. This rule does not apply to tubes in headers of economizers, evaporators, superheaters, or reheaters.

91.8(1) *General requirements.*

- a. Leaky tubes shall be replaced or plugged.
- b. Tube plugs shall be made of a material which is compatible with the material of the boiler tube being plugged and shall be welded into place or manufactured to be expanded into the tube sheet or drum.
- c. All plugged boiler tubes shall be replaced prior to the next required certificate inspection.
- d. The maximum number of tubes that shall be plugged is the lesser of the number specified by the OEM or the number specified by an engineer experienced in boiler design. Documentation of the maximum number of tubes that may be plugged as determined by the OEM or engineer shall be kept on site, and a copy shall be mailed to the division of labor.

91.8(2) *Fire tube boilers.* In a fire tube boiler, a tube that is adjacent to a plugged tube shall not be plugged.

91.8(3) *Water tube boilers, unfired boilers, or process steam generators.* To determine the maximum number of tubes that may be plugged in a water tube boiler, unfired boiler, or process steam generator, an engineer experienced in boiler design shall consider the operational effect on the water side pressure boundary or membrane and the effect on the combustion process throughout the boiler. Water wall tubes

LABOR SERVICES DIVISION[875](cont'd)

may not be plugged if the tubes form a separation wall between products of combustion and the outside atmosphere or a separation of the gas passes in a multiple gas pass boiler.

ITEM 33. Rescind rule 875—91.10(89) and adopt the following **new** rule in lieu thereof:

875—91.10(89) Equipment room. This rule applies to existing and new installations except as noted in subrule 91.10(1).

91.10(1) Clearances.

a. All objects installed after December 1, 2021, shall be installed with the clearances identified in NBIC Part 1.

b. This paragraph applies to objects installed after September 20, 2006, and before December 1, 2021. Minimum clearance on all sides of objects shall be 24 inches, or the manufacturer's recommended service clearances if they allow sufficient room for inspection. Where a manufacturer identifies in the installation manual or other document that the unit requires more than 24 inches of service clearance, those dimensions shall be followed. Manholes shall have five feet of clearance between the manhole opening and any wall, ceiling or piping that would hinder entrance or egress from the object.

c. All objects installed prior to September 20, 2006, shall be so located that adequate space is provided for the proper operation, inspection, and necessary maintenance and repair of the object and its appurtenances.

91.10(2) Condition of the equipment room.

a. The roof, walls and floor of the equipment room shall be free from leaks and structurally sound.

b. The equipment room shall have drainage adequate to remove standing water from the floor.

c. The equipment room shall be free from materials that obstruct access to the objects, their setting, or operation.

d. Storage of flammable material or gasoline-powered equipment in the equipment room is prohibited.

91.10(3) Exit from equipment room. This subrule shall apply to an equipment room exceeding 500 square feet of floor area, containing at least one object, and containing fuel-burning equipment with at least a combined capacity of 1,000,000 Btu per hour or the equivalent electrical heat input. Two means of exit located remotely from one another shall be provided on each elevation for covered equipment rooms. A platform at the top of a single object or other equipment is not considered an elevation.

91.10(4) Carbon monoxide detector or alarm. The owner or user shall install a carbon monoxide detector or alarm in an equipment room where one or more fuel-fired objects are located.

a. The carbon monoxide detector or alarm shall have a visible display showing the parts per million value of the carbon monoxide that is detected.

b. The carbon monoxide detector or alarm shall be hardwired to the building power and shall have a battery backup with visible and audible alarms that identify when the battery backup power supply is low.

c. The carbon monoxide detector or alarm shall be tested daily and shall be calibrated in accordance with the manufacturer's recommendations, or every 18 months after installation of the detector. The testing and calibration shall be recorded in a log book that is readily accessible to the inspectors and owner's staff.

d. The carbon monoxide detector or alarm shall have visible and audible alarms capable of being heard and seen both inside and outside of the equipment room.

ITEM 34. Rescind rule 875—91.11(89) and adopt the following **new** rule in lieu thereof:

875—91.11(89) Fall protection. The owner or user shall provide safe access to object parts over four feet high consistent with 29 CFR Subpart D, Walking-Working Surfaces, and 29 CFR 1910.140, Personal Fall Protection Systems.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 35. Rescind and reserve rule **875—91.12(89)**.

ITEM 36. Amend paragraph **91.13(3)“a”** as follows:

a. Installations and re-installations. Installations ~~and re-installations~~ shall comply with the edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC currently adopted at rule 875—91.1(89) or with the Iowa combustion air standard in subrule 91.13(4). However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA.

ITEM 37. Rescind subrule 94.1(3) and adopt the following **new** subrule in lieu thereof:
94.1(3) Hot water supply boilers.

ARC 5816C

LOTTERY AUTHORITY, IOWA[531]

Notice of Intended Action

Proposing rule making related to waivers and “easy pick” tickets and providing an opportunity for public comment

The Board of Directors of the Iowa Lottery Authority hereby proposes to amend Chapter 4, “Waiver and Variance Rules,” and Chapter 20, “Computerized Games—General Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 99G.9(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 17A.9A and 99G.21.

Purpose and Summary

The proposed amendments to Chapter 4 are primarily technical in nature and strike the word “variance” in the provisions that allow for waiver and variance of rules. The amendments also update how the Authority submits summary reports of waivers. The proposed amendment to Chapter 20 updates the Authority’s methods of play for computerized games. The amendment clarifies there is more than one way to purchase an “easy pick” ticket for computerized games.

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 Authority is updating how people can purchase an “easy pick” ticket. A waiver is not applicable in this situation.

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 Authority no later than 4:30 p.m. on August 17, 2021. Comments should be directed to:

LOTTERY AUTHORITY, IOWA[531](cont'd)

Megan Tooker
Iowa Lottery Authority
13001 University Avenue
Clive, Iowa 50325
Phone: 515.725.7851
Email: mtookер@ialottery.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this 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 **531—Chapter 4**, title, as follows:

WAIVER AND VARIANCE RULES

ITEM 2. Amend rule 531—4.1(99G) as follows:

531—4.1(99G) Waiver or variance of rules. These rules outline a uniform process for the granting of waivers or variances from rules adopted by the Iowa lottery authority.

ITEM 3. Amend rule 531—4.2(99G) as follows:

531—4.2(99G) Definition. For purposes of this chapter, “a waiver or variance” means action by the lottery authority board that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 4. Amend rule 531—4.5(99G), catchwords, as follows:

531—4.5(99G) Criteria for waiver or variance.

ITEM 5. Amend rule 531—4.13(99G) as follows:

531—4.13(99G) Summary reports Submission of waiver information. ~~Semiannually, Within 60 days of granting or denying a waiver, the board shall prepare a summary report~~ make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board’s actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

LOTTERY AUTHORITY, IOWA[531](cont'd)

ITEM 6. Amend rule 531—20.3(99G) as follows:

531—20.3(99G) Method of play. If required by the specific game rules, a player must select an appropriate number of the available game variables. A player may select each game variable by marking a play slip and submitting the play slip to a retailer, by asking a retailer to manually enter the game variables, or by ~~verbally requesting~~ purchasing an “easy pick” ticket from a retailer. Players may also purchase game plays from player-activated terminals by use of a touch screen if player-activated terminals are available. A drawing is held in which an appropriate number of the game variables are drawn on a random basis.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

ARC 5794C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Proposing rule making related to supervision and providing an opportunity for public comment

The Board of Social Work and Board of Behavioral Science hereby propose to amend Chapter 31, “Licensure of Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, and Assistant Behavior Analysts,” and Chapter 280, “Licensure of Social Workers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 154C.4 and 154D.3 and 2021 Iowa Acts, House File 891.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 154C.4 and 154D.3 and 2021 Iowa Acts, House File 891.

Purpose and Summary

This proposed rule making amends supervision requirements for social workers, mental health counselors, and marriage and family therapists to remove in-person supervision requirements and allow supervision to occur electronically. This rule making also updates language to clarify that independent-level social workers may provide supervision to mental health counselors and marriage and family therapists who are completing their postgraduate supervision requirements and vice versa, and independent-level licensed mental health counselors and marriage and family therapists can supervise social workers completing their postgraduate supervision requirements.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board of Social Work or Board of Behavioral Science for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board of Social Work or Board of Behavioral Science no later than 4:30 p.m. on August 17, 2021. Comments should be directed to:

Tony Alden
Professional Licensure Division
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.4401
Fax: 515.281.3121
Email: tony.alden@idph.iowa.gov

Public Hearing

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

August 17, 2021
9 to 10 a.m.

Fifth Floor Board Conference Room 526
Lucas State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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 Board of Social Work or Board of Behavioral Science 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).

Emergency Rule Making Adopted by Reference

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 5795C**, IAB 7/28/21). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.

ARC 5786C**REAL ESTATE APPRAISER EXAMINING BOARD[193F]****Notice of Intended Action****Proposing rule making related to real property appraisers and reciprocity and providing an opportunity for public comment**

The Real Estate Appraiser Examining Board hereby proposes to amend Chapter 5, “Certified Residential Real Property Appraiser,” Chapter 6, “Certified General Real Property Appraiser,” and Chapter 10, “Reciprocity,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 543D.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 543D.

Purpose and Summary

The proposed amendments implement changes recommended and required by 2021 Iowa Acts, House File 682.

Fiscal Impact

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

Jobs Impact

Licensees who have had a background check completed within 24 months of their associate registration application will be positively impacted by not having to provide, and submit, for a second background check. References in the rule to Iowa Code section 543D.22 should be understood to include the amendments to that section in 2021 Iowa Acts, House File 682.

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.

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 August 17, 2021. Comments should be directed to:

Brandy March
Real Estate Appraiser Examining Board
East Grand Office Park
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Phone: 515.725.9025
Email: brandy.march@iowa.gov

Public Hearing

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

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

August 17, 2021
9 to 10 a.m.

Small Conference Room, Third Floor
200 East Grand Avenue
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind rule 193F—5.7(543D) and adopt the following **new** rule in lieu thereof:

193F—5.7(543D) Background check. A state and national criminal history check shall be performed on any appraiser upgrading to a new credential consistent with Iowa Code section 543D.22.

ITEM 2. Amend rule 193F—6.7(543D) as follows:

193F—6.7(543D) Background check. A state and national criminal history check shall be performed on any appraiser upgrading to a new credential consistent with Iowa Code section 543D.22. ~~The applicant shall authorize release of the results of the criminal history check to the board. If the criminal history check was not completed within 180 calendar days prior to the date the license application is received by the board, the board may perform a new state and national criminal history check or may reject and return the application to the applicant.~~

ITEM 3. Adopt the following **new** rule 193F—6.8(543D):

193F—6.8(543D) Upgrade from a certified residential real property appraiser to a certified general real property appraiser. To upgrade from a certified residential real property appraiser to a certified general real property appraiser, an applicant must complete the following additional education, examination, supervision, and experience requirements and a state and national criminal history check as provided in Iowa Code section 543D.22. For all intents and purposes, a certified residential real property appraiser seeking to upgrade to a certified general status will be considered an associate appraiser as it relates to differences between the scope of practice of the two licensure categories, and the upgrade process will generally follow the same registration requirements, supervisory identification and maintenance requirements, and processes and procedures generally applicable to associate appraisers set forth in 193F—Chapter 4.

6.8(1) Education.

a. Collegiate education. Certified residential real property appraisers must satisfy the college-level education requirements as specified in rule 193F—6.2(543D).

b. Core criteria. In addition to the formal education and core criteria educational requirements originally required to obtain a certified residential credential, an applicant must complete the following additional 100 creditable core criteria class hours before taking the AQB-approved examination. All courses must be AQB-approved under current core criteria to be considered creditable. The required courses and 100 hours consist of the following:

- | | |
|--|----------|
| (1) General appraiser market analysis and highest and best use | 15 hours |
| (2) General appraiser sales comparison approach | 15 hours |

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

- | | |
|--|----------|
| (3) General appraiser site valuation and cost approach | 15 hours |
| (4) General appraiser income approach | 45 hours |
| (5) General appraiser report writing and case studies | 10 hours |

6.8(2) Examination. An applicant must satisfy the examination requirements as specified in rule 193F—6.3(543D).

6.8(3) Supervision and experience.

a. Experience. An applicant must satisfy all of the experience requirements as specified in rules 193F—6.4(543D) and 193F—6.5(543D). In obtaining and documenting the 3,000 total experience hours required by subrule 6.5(2), as is the case for initial licensure, such hours must be accumulated in no fewer than 18 months while in active status as, in effect, a registered associate appraiser pursuing an upgrade pursuant to this rule and subject to the supervision of an Iowa-certified appraiser. Notwithstanding the foregoing:

(1) To the extent residential appraisal experience may be counted toward licensure in accordance with subrule 6.5(2), residential appraisal experience obtained as a certified residential appraiser prior to initiating the upgrade process may be included on the appraisal log and, subject to the work product review process, counted toward the experience-hours requirement for purposes of upgrading from a certified real property appraiser to a certified general real property appraiser; provided that such residential appraisal experience obtained prior to initiating the upgrade process shall not apply toward the 18-month requirement.

(2) Applicants may request that the board approve experience hours performed in the absence of registration as an associate real property appraiser by filing an application for approval on a form provided by the board, which application will be subject to and governed by the same processes and standards set forth in rule 193F—6.4(543D).

b. Supervision. Subject to applicable exceptions, all nonresidential experience obtained and applied toward obtaining a certified general credential as part of the upgrade process shall be performed under the direct supervision of a certified general real property appraiser pursuant to the provisions of 193F—Chapter 15 and shall be subject to the identification, notification, maintenance, approval, scope-of-practice, log, and monitoring requirements set forth in 193F—Chapter 4. Both the applicant and the applicant's supervisor(s) must complete a supervisor/trainee course within the five years prior to the board's receipt of the associate registration application identifying a supervisor with the board or prior to the applicant's obtaining or claiming any experience hours under the supervision of that supervisor.

6.8(4) Work product review. An applicant must satisfy the work product review requirements as specified in rules 193F—6.5(543D) and 193F—6.6(543D).

6.8(5) Background check. A state and national criminal history check shall be performed on any appraiser upgrading to a new credential consistent with Iowa Code section 543D.22.

ITEM 4. Amend subrule 10.2(7) as follows:

10.2(7) An appraiser holding a license to practice as a real estate appraiser in another jurisdiction may practice in Iowa without applying for a temporary practice permit or paying any fees as long as the appraiser does not perform appraisal services in Iowa for federally regulated transactions or for which certification is required by state or federal law, rule or policy.

ITEM 5. Amend subrule 10.2(8) as follows:

10.2(8) The board must receive and approve an application for a temporary practice permit before the applicant is eligible to practice in Iowa under a temporary practice permit. ~~Applicants are encouraged to submit applications by email or facsimile to avoid the possible delays of mail service, because the board will not approve an application with a retroactive start date.~~ The board shall grant or deny all applications for temporary practice permits as quickly as reasonably feasible and no later than five days of receipt of a completed application. Applicants shall use the form prescribed by the board. Applicants disclosing discipline or criminal convictions shall attach documentation from which the board can determine if the discipline or criminal history would be a ground to deny the application. Falsification of information or

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

failure to disclose material information shall be a ground to deny the application and may form the basis to deny any subsequent application or an application to reinstate a lapsed or inactive Iowa certificate.

ARC 5797C

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rule making related to board of review removal hearing procedures
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 7, “Practice and Procedure Before the Department of Revenue,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14 and section 441.32(2)“e” as enacted by 2021 Iowa Acts, House File 871, section 29.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A and section 441.32(2) as amended by 2021 Iowa Acts, House File 871, section 29.

Purpose and Summary

This proposed rule making is intended to implement a hearing procedure when the Director of Revenue intends to remove a member of the local board of review under Iowa Code section 441.32(2) as amended by 2021 Iowa Acts, House File 871, section 29, and the board member requests a hearing. This rule making describes the process for requesting a hearing, the governing procedures of the hearing, the contents of the request for hearing, and the burden of proof at such a hearing.

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 701—7.28(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 August 17, 2021. Comments should be directed to:

REVENUE DEPARTMENT[701](cont'd)

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** rule 701—7.38(441):

701—7.38(441) Appeals and hearings regarding the director’s intent to remove a member of the board of review.

7.38(1) *Written request for hearing.* A member of the board of review who has received a notice of intent to remove from the director and who wishes to contest the removal shall file a written request for a hearing within 30 days after the receipt of the notice of the director’s intent to remove the member. Any person who does not seek a hearing within 30 days of receipt of the notice of the director’s intent to remove shall be precluded from challenging the removal.

7.38(2) *Procedures.* Hearings will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

- a. The introductory paragraph of rule 701—7.8(17A), excluding the first sentence of the introductory paragraph of 701—7.8(17A); and subrules 7.8(8) and 7.8(9);
- b. Subrules 7.9(1) and 7.9(2);
- c. Rule 701—7.10(17A);
- d. Paragraphs 7.11(2)“d” and “e”;
- e. Subrules 7.12(2) to 7.12(4);
- f. Rule 701—7.13(17A);
- g. Rule 701—7.14(17A);
- h. Rule 701—7.15(17A);
- i. Rule 701—7.16(17A);
- j. Subrule 7.17(1); subrules 7.17(3) through 7.17(7); subrule 7.17(8), except paragraph 7.17(8)“b” related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.17(9), 7.17(10), and 7.17(14);
- k. Rule 701—7.18(17A);
- l. Rule 701—7.19(17A);
- m. Rule 701—7.20(17A);
- n. Rule 701—7.21(17A); and
- o. Rule 701—7.22(17A).

REVENUE DEPARTMENT[701](cont'd)

7.38(3) Presiding officer. The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.38(4) Contents of the appeal. The appeal shall contain the following in separate numbered paragraphs:

- a. A statement of the department action giving rise to the appeal.
- b. The date of the department action giving rise to the appeal.
- c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
- d. Reference to the particular statutes, rules, or agreement terms, if known.
- e. References to and copies of any documents or other evidence relevant to the appeal.
- f. Any other matters deemed relevant to the appeal.
- g. A statement setting forth the relief sought.
- h. The signature, mailing address, and telephone number of the person or that person's representative.

7.38(5) Burden of proof. The burden of proof is on the party challenging the director's intent to remove a board member.

This rule is intended to implement Iowa Code section 441.32(2)“e” as enacted by 2021 Iowa Acts, House File 871, section 29, and Iowa Code chapter 17A.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rule making related to penalties and waivers
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 421.27; 2020 Iowa Acts, House File 2641; 2021 Iowa Acts, Senate File 608; and 2021 Iowa Acts, Senate File 366.

Purpose and Summary

During the 2021 Legislative Session, the Department requested that the Legislature modify Iowa Code section 421.27, which sets forth penalties and penalty waivers related to the filing of tax returns and payment of tax. The changes were enacted and signed into law as 2021 Iowa Acts, Senate File 608, and became effective July 1, 2021.

Through the process of designing the Department's new tax administration system, the Department reviewed how and when certain penalties are imposed or waivers apply to those penalties in both the current system and what the Department desires in the new system. During this review, the Department identified legal requirements that, due to system constraints, legacy systems could not support without substantial manual intervention. The goal of the changes made by Senate File 608 is to make penalties and waivers easier to understand and implement. The changes are either taxpayer-neutral or taxpayer-friendly. These penalties and waivers generally apply to all taxpayers for all tax types.

REVENUE DEPARTMENT[701](cont'd)

The Department now proposes these amendments to its rules implementing Iowa Code section 421.27 to reflect the changes made by Senate File 608. The Department has also revised and published its Penalty Waiver Request Form to reflect the changes to the law.

This proposed rule making also implements the penalty for failure to timely file an income return by a specified business (C corporations, S corporations, partnerships, and financial institutions) with no tax due that was enacted in 2020 Iowa Acts, House File 2641, division I, and amended by 2021 Iowa Acts, Senate File 366, division V. Under Iowa law, this new penalty will apply to tax years beginning on or after January 1, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The fiscal estimate for 2021 Iowa Acts, Senate File 608, did not indicate any impact.

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 701—7.28(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 August 17, 2021. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.782.0535
Email: tim.reilly@iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

August 17, 2021
1 to 2 p.m.

Via video/conference call

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

Any persons who intend to attend 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

REVENUE DEPARTMENT[701](cont'd)

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 701—10.5(421) as follows:

701—10.5(421) Improper receipt of credit, ~~or refund,~~ exemption, reimbursement, rebate, or other payment or benefit.

10.5(1) Erroneous application. A person who makes an erroneous application for refund, ~~or credit,~~ exemption, reimbursement, rebate, or other payment or benefit shall be liable for any overpayment received plus interest at the rate in effect under Iowa Code section 421.7, ~~subsection 2~~ 421.7(2). ~~In addition, a~~

10.5(2) Willfully false or frivolous application. A person who willfully makes a false or frivolous application ~~or willfully submits any false information, document, or document containing false information in support of an application~~ for refund, ~~or credit,~~ exemption, reimbursement, rebate, or other payment or benefit with the intent to evade tax or with the intent to receive a refund, ~~or credit,~~ exemption, reimbursement, rebate, or other payment or benefit to which the person is not entitled is guilty of a fraudulent practice and is liable for a penalty equal to 75 percent of the refund, ~~or credit,~~ exemption, reimbursement, rebate, or other payment or benefit claimed. This penalty is not subject to waiver.

This rule is intended to implement Iowa Code section 421.27 as amended by 2010 Iowa Acts, House File 2531, ~~section 124~~ 2021 Iowa Acts, Senate File 608.

ITEM 2. Rescind the division heading before rule **701—10.6(421)**.

ITEM 3. Amend rule 701—10.6(421) as follows:

701—10.6(421) Penalties.

10.6(1) Penalties applicable to all taxpayers. A penalty shall be assessed upon all tax and deposits due under the ~~following~~ circumstances: described in this subrule. The rates for penalties described in this rule are uniform for all tax types. Unless otherwise specified in this subrule, see rule 701—10.7(421) for waivers that may apply to these penalties.

~~1. a.~~ For failure to timely file a return, ~~or deposit form~~ there is a 10 5 percent penalty on the unpaid tax. This penalty, once imposed, will be assessed on all subsequent amounts found by the taxpayer or the department to be due ~~or required to be shown due on the return or deposit form~~ for the tax period. This penalty is in addition to any other penalty provided by law.

EXAMPLE: ~~The taxpayer fails to timely file a return and fails to timely pay the tax due. The department will assess a 10 percent penalty for failure to timely file the return but will not assess a 5 percent penalty for failure to timely pay. The department subsequently audits the untimely filed return and determines additional tax is due. The department shall assess a 10 percent penalty on the additional tax found due by an audit.~~

~~2. b.~~ For failure to timely pay the tax due on a return ~~or deposit form~~, there is a 5 percent penalty on the unpaid tax. This penalty is in addition to any other penalty provided by law.

~~3. c.~~ For a deficiency of tax due ~~on a return or deposit form~~ found during an audit or examination, there is a 5 percent penalty on the unpaid tax. ~~For purposes of this penalty, the audit deficiency shall be assessed only when there is a timely filed return or deposit form.~~ This penalty is in lieu of the penalty for failure to timely pay but is in addition to any other penalty provided by law.

~~Audit deficiency occurs when the department determines additional tax is due.~~

~~4. d.~~ For willful failure to file a return ~~or deposit form~~ with the intent to evade tax ~~or a filing requirement~~, or in the case of willfully filing a false return ~~or deposit form~~ with the intent to evade tax, there is a 75 percent penalty. This penalty is in lieu of other penalties applicable under this rule. This penalty is not subject to waiver.

~~The penalty rates are uniform for all taxes and deposits due under this chapter.~~

REVENUE DEPARTMENT[701](cont'd)

~~The penalty for failure to timely file will take precedence over the penalty for failure to timely pay or an audit deficiency when more than one penalty is applicable.~~

~~5. Examples to illustrate the computation of penalty for tax periods beginning on or after January 1, 1991.~~

~~e. For failure to remit at least 90 percent of the tax due by the time an extension for further time to file a return is made, there is a 10 percent penalty on the unpaid tax.~~

~~f. For failure to remit payment of taxes in the form or manner required by the rules of the director, there is a 5 percent penalty on the amount of the payment remitted in the incorrect form or manner, not to exceed \$500 per instance. This penalty shall be waived if the taxpayer was not notified of the requirement to remit tax payments electronically or if the incorrect electronic transmission of the payment was made before the taxpayer was notified of the requirement to remit tax payments electronically.~~

~~**10.6(2)** Penalties applicable to specified businesses for tax years beginning on or after January 1, 2022, in which no tax is due.~~

~~a. Definitions. For purposes of this subrule, the following definitions apply:~~

~~“Imputed Iowa liability” means the specified business’s Iowa net income after the application of the Iowa business activity ratio, if applicable, multiplied by the applicable tax rate for the tax year, less any Iowa tax credits available to be claimed by the specified business in the current year. The applicable tax rate is:~~

~~1. In the case of an entity taxed as a C corporation, the top corporation income tax rate under Iowa Code section 422.33,~~

~~2. In the case of a financial institution as defined in Iowa Code section 422.61, the franchise tax rate under Iowa Code section 422.63, or~~

~~3. In the case of an entity taxed as an S corporation or partnership, the top individual income tax rate under Iowa Code section 422.5A.~~

~~“Income return” includes an Iowa corporation income tax return (IA 1120), an Iowa franchise tax return (IA 1120F), an Iowa S corporation income tax return (IA 1120S), and an Iowa partnership income tax return (IA 1065).~~

~~“Specified business” means any of the following:~~

~~1. An entity taxed as a C corporation that is required to file an Iowa corporation income tax return (IA 1120). This includes a consolidated group of corporations electing or required to file an Iowa consolidated return under Iowa Code section 422.37.~~

~~2. An entity taxed as an S corporation that is required to file an Iowa S corporation income tax return (IA 1120S).~~

~~3. A financial institution that is required to file an Iowa franchise tax return (IA 1120F).~~

~~4. An entity taxed as a partnership that is required to file an Iowa partnership income tax return (IA 1065).~~

~~b. For a failure by a specified business to timely file an income return when no tax is due, a penalty shall be assessed equal to the greater of \$200 or 5 percent of the imputed Iowa liability of the specified business, not to exceed \$25,000. A specified business that has Iowa tax due for a tax year (such as an S corporation subject to Iowa income tax on built-in gains or passive investment income) is not subject to this penalty for that tax year but may be subject to other penalties provided in this rule.~~

~~c. For willful failure by a specified business to file an income return with no tax shown due with the intent to evade a filing requirement, or in the case of willfully filing a false income return with no tax shown due with the intent to evade reporting of Iowa-source income, a penalty shall be assessed equal to the greater of \$1,500 or 75 percent of the imputed Iowa liability of the specified business. This penalty is not subject to waiver. A specified business that has Iowa tax due for a tax year (such as an S corporation subject to Iowa income tax on built-in gains or passive investment income) is not subject to this penalty for that tax year but may be subject to other penalties provided in this rule.~~

~~**10.6(3)** Examples. The following are examples to illustrate the computation of penalties imposed under this rule 701—10.7(421). For purposes of these examples, interest has been computed at the rate of 12 percent per year or 1 percent per month. The tax due amounts are assumed to be the total amounts~~

REVENUE DEPARTMENT[701](cont'd)

~~required to be shown~~ due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax due was paid.

Example (a) — Failure to Timely File and Failure to Timely Pay

- a. Tax due is \$100.
- b. Return filed ~~3~~ 2 months and 10 days after the due date.
- c. ~~\$100~~ \$0 paid ~~with the return~~ prior to filing.

The calculation for ~~additional tax~~ the total amount due ~~3~~ 2 months after the due date is shown below:

Tax	\$100	
Penalty	10	(10% <u>5%</u> for failure to timely file, <u>5%</u> for failure to timely pay)
Interest	<u>4</u> <u>3</u>	(4 <u>3</u> months interest)
Total <u>amount due</u>	<u>\$114</u>	
	<u>\$113</u>	
Less payment	<u>100</u>	
Additional tax due	<u>\$ 14</u>	

Example (b) — Failure to Timely Pay

- a. Tax due is \$100.
- b. Return is timely filed.
- c. \$0 paid with the return.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	\$100	
Penalty	5	(<u>5%</u> for failure to timely pay)
Interest	<u>5</u>	(5 months interest)
Total <u>amount due</u>	<u>\$110</u>	

Example (c) — Failure to File and Failure to Pay

- a. ~~Tax due is \$100.~~
- b. ~~Return is filed 2 months and 10 days after the due date.~~
- c. ~~\$0 paid.~~

The calculation for the total amount due ~~3~~ months after the due date is shown below:

Tax	\$100	
Penalty	10	(10% for failure to file)
Interest	<u>3</u>	(3 months interest)
Total <u>due in 3rd month</u>	<u>\$113</u>	

Example (d) (c) — Audit Deficiency on Timely Filed Return

- a. ~~\$100 in additional tax found due.~~ Timely filed return reported \$100 tax due.
- b. ~~Timely filed return.~~ \$100 paid with return.
- c. Audit completed 8 months after the due date of the return.
- d. ~~Return showed \$100 as the computed tax, which was paid with the return.~~ \$100 in additional tax found due during audit.

The calculation for the total amount due is shown below:

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Computed tax after audit	\$200
Less tax paid with return	100
Additional tax due	<u>\$100</u>
Penalty	5 (5% for audit deficiency)
Interest	<u>8</u> (8 months interest)
Total <u>amount due</u>	\$113

Example (e) (d) — Audit Deficiency on Late Return Granted an Exception From Failure to File

- Tax due reported on return is \$100.
- Return filed 3 months and 10 days after the due date.
- \$100 paid with the return.
- Taxpayer is granted an exception from penalty for failure to timely file and failure to timely pay.
(Return is then considered timely filed.)
- Audit completed 8 months after the due date of the return. ~~\$100 additional tax found due.~~
- ~~Return showed \$100 as the computed tax which was paid with the return.~~ \$100 additional tax found due during audit.

The computation for the total amount due is shown below:

Computed tax <u>Tax due</u> after audit	\$200
Less tax paid with return	100
Additional tax due	<u>\$100</u>
Penalty	5 (5% for audit deficiency. No penalty for failure to file.)
Interest	<u>8</u> (8 months interest)
Total <u>amount due</u>	\$113

Example (f) (e) — Audit Deficiency on Late Filed Return No Pay Return

- ~~\$100 claimed as tax~~ Tax due reported on the return is \$100.
- ~~\$100 in additional tax found due.~~ Return filed 3 months and 10 days after the due date.
- ~~Return filed 3 months and 10 days after the due date.~~ \$114 in tax, penalty, and interest paid with the return.
- Audit completed 8 months after the due date.
- \$100 additional tax found due during audit.

The computation for the total amount due is shown below:

<u>Tax due reported on original return</u>	<u>\$100</u>
<u>Penalty</u>	<u>10</u> (5% for failure to timely file, 5% for failure to timely pay)
<u>Interest</u>	<u>4</u> (4 months interest)
<u>Total amount due on original return</u>	<u>\$114</u>
Computed <u>Additional tax due</u> after audit	<u>\$200</u>
Penalty	20 <u>10</u> (40% 5% for failure to file, <u>5%</u> for audit deficiency)
Interest	4 <u>8</u> (8 months interest)
<u>Amount due after audit</u>	<u>\$118</u>
<u>Total amount due for tax period</u>	<u>\$236</u>
	<u>\$232</u>

Example (f) — Failure to Timely File by a Specified Business

REVENUE DEPARTMENT[701](cont'd)

- a. Tax due for tax year 2023 is \$0 because the entity is a partnership (IA 1065).
 - b. Return is filed 7 months and 10 days after the due date.
 - c. Partnership net income after calculation of the Iowa business activity ratio is \$30,000.
 - d. Net income multiplied by the top individual tax rate in 2023 of 6.5 percent is \$1,950.
 - e. Iowa tax credits available are \$1,000.
 - f. Imputed Iowa liability is \$950.
 - g. The penalty is the greater of 5 percent of the imputed Iowa liability (\$48) or \$200.
- The calculation for the total amount due is shown below:

<u>Tax</u>	<u>\$0</u>
<u>Penalty</u>	<u>200</u>
<u>Interest</u>	<u>0</u>
<u>Total amount due</u>	<u>\$200</u>

ITEM 4. Amend rule 701—10.7(421) as follows:

701—10.7(421) Waiver of penalty—definitions. ~~A penalty, if assessed, shall be waived by the department upon a showing of the circumstances stated below. Under certain circumstances, the penalty for failure to timely file a return, failure to timely pay the tax due with the filing of a return, or failure to pay following an audit by the department is waived. The taxpayer has the burden to prove the necessary conditions to waive a penalty.~~

10.7(1) Definitions. For purposes of ~~these rules~~ this rule, the following definitions apply:

“Act of God” means an unusual and extraordinary manifestation of nature which could not reasonably be anticipated or foreseen and cannot be prevented by human care, skill, or foresight. ~~There is a rebuttable presumption that an “act of God” that precedes the due date of the return or form by 30 days is not an act of God for purposes of an exception to penalty.~~

“Immediate family” includes the spouse, children, or parents of the taxpayer. There is a rebuttable presumption that relatives of the taxpayer beyond the relation of spouse, children, or parents of the taxpayer are not within the taxpayer’s immediate family for purposes of the waiver exceptions.

“Sanctioned self-audit program” means an audit performed by the taxpayer with forms provided by the department as a result of contact by the department to the taxpayer prior to voluntary filing or payment of the tax. Filing voluntarily without contact by the department does not constitute a sanctioned self-audit.

“Serious, long-term illness or hospitalization” means an illness or hospitalization, documented by written evidence, which precedes the due date of the return or form by no later than 30 days and continues through the due date of the return or form and interferes with the timely filing of the return or form. ~~There is a rebuttable presumption that an illness or hospitalization that precedes the due date of the return or form by more than 30 days is not an illness or hospitalization for purposes of an exception to penalty. The taxpayer will be provided an automatic extension of 30 days from the date the return or form is originally due or the termination of the serious, long-term illness or hospitalization whichever is later without incurring penalty. The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred.~~

“Substantial authority” means the weight of authorities for the tax treatment of an item is substantial in relation to the weight of authorities supporting contrary positions.

In determining whether there is substantial authority, only the following will be considered authority: applicable provisions of Iowa statutes; the Internal Revenue Code; Iowa administrative rules construing those statutes; court cases; administrative rulings; legal periodicals; department newsletters and tax return ~~and deposit form~~ instruction booklets; tax treaties and regulations; and legislative intent as reflected in committee reports.

Conclusions reached in treaties, legal opinions rendered by other tax professionals, descriptions of statutes prepared by legislative staff, legal counsel memoranda, and proposed rules and regulations are not authority.

REVENUE DEPARTMENT[701](cont'd)

There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is due to be filed or there was substantial authority on the last day of the taxable year to which the return relates.

The taxpayer must notify the department at the time the return, ~~deposit form~~, or payment is originally due of the substantial authority the taxpayer is relying upon for not filing the return ~~or deposit form~~ or paying the tax due.

10.7(2) Reserved. Documentation. Unless otherwise indicated, written documentation is required to support the waiver of a penalty.

10.7(3) For failure to timely file a return or failure to timely pay tax due, the 5 percent penalties shall be waived upon a showing of the following exceptions.

a. An amount of tax greater than \$0 is due and at least 90 percent of the tax required to be shown due has been paid by the due date of the tax return. This exception does not apply to the penalty for failure to timely file by a specified business under subrule 10.6(2).

b. A taxpayer required to file a monthly or quarterly return is allowed one late return or one late payment within a three-year period.

(1) The use by the taxpayer of any other penalty exception under this subrule will not count as a late return or payment for purposes of this subrule.

(2) If the taxpayer receives this waiver, the taxpayer must make timely filings and payments for three years prior to being eligible for another waiver under this paragraph.

(3) This exception does not apply to an income return, a franchise return, or a moneys and credits return.

(4) This exception will automatically be applied to a return or payment by the department if the taxpayer is eligible for the exception.

(5) This exception is determined on the basis of the tax period for which the return or payment is due and not the date on which the return is filed or payment is made.

EXAMPLE: Taxpayer A, a retail business with multiple employees, has not been late in filing returns or making payments for five years. Taxpayer A files its withholding return for the fourth quarter of 2020, due January 20, 2021, on the due date but does not make the payment until the next day. Taxpayer A incurs the penalty for failing to timely pay, but the penalty will be waived under this exception. Taxpayer A is not eligible for a waiver for a late return filing or late payment again until the due date for the fourth quarter of 2023.

c. Death of a taxpayer, a member of the immediate family of the taxpayer, or the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing of a return or timely payment of tax. The taxpayer will be provided an extension of 30 days from the date the return or payment is originally due without incurring penalty. There is a rebuttable presumption that a death that occurs more than 30 days before the original date the return or payment is due does not interfere with timely filing or payment. The taxpayer, or taxpayer's legal representative, has the burden of supplying proof of when the death occurred.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return and paying the tax when such illness or hospitalization interferes with the timely filing of a return or timely payment of tax.

(1) There is a rebuttable presumption that the onset of an illness or hospitalization that precedes the due date of the return or payment form by more than 30 days does not interfere with the timely filing or timely payment of tax.

(2) The taxpayer will be provided an extension of at least 30 days from the date the return or payment form is originally due or until the illness or hospitalization no longer reasonably interferes with the taxpayer's ability to file the return without incurring penalty.

(3) The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred, when it occurred, and how the illness or hospitalization interfered with the taxpayer's ability to timely file a return or timely pay.

e. Destruction of records by fire, flood, or act of God when the destruction interferes with the timely filing of a return or timely payment of tax. There is a rebuttable presumption that an "act of God"

REVENUE DEPARTMENT[701](cont'd)

that precedes the due date of the return or payment by 30 days or more did not interfere with the timely filing or payment.

f. The taxpayer presents proof that the taxpayer at the due date of the return or payment relied upon applicable, documented, written advice made specifically to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or Internal Revenue Service. The advice should be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The reliance must be the direct cause of the failure to file or failure to pay, and the advice must be current and not superseded by a court decision, ruling of a quasi-judicial body such as an administrative law judge or the director, or by the adoption, amendment, or repeal of a rule or law.

g. Reliance upon the results of a previous audit was a direct cause for failure to file or pay where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or by adoption, amendment, or repeal of a rule or law.

h. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return. These types of errors will not be considered as penalty exceptions.

i. The return or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

l. The availability of funds in payment of tax required to be made through electronic funds transfer is delayed and the delay of availability is due to reasons beyond the control of the taxpayer.

m. For estates with disclaimers, a penalty will not be imposed for failure to pay or a late-filed Iowa inheritance tax return if the sole reason for the failure to pay or late-filed inheritance tax return is due to a beneficiary's decision to disclaim property or disclaim an interest in property from the estate. However, for the penalty to be waived, the Iowa inheritance tax return must be filed and all tax must be paid to the department within the later of nine months from the date of death or 60 days from the delivery or filing date of the disclaimer pursuant to Iowa Code section 633E.12.

10.7(4) In addition to any applicable waivers for failure to timely pay the tax due on a return in subrule 10.7(3), the 5 percent penalty for failure to timely pay the tax due shall be waived upon a showing of any of the following exceptions:

a. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

b. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within 60 days of the final disposition of the federal government's audit.

10.7(5) For a deficiency of tax due on a return found during an audit or examination, the 5 percent penalty is waived under the following exceptions:

a. At least 90 percent of the tax due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that the reliance was the direct cause for the failure to pay and the advice has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

REVENUE DEPARTMENT[701](cont'd)

c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or the adoption, amendment, or repeal of a rule or law.

d. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return. These types of errors will not be considered as penalty exceptions.

ITEM 5. Rescind and reserve rules **701—10.8(421)** and **701—10.9(421)**.

ITEM 6. Amend rule 701—10.76(453A) as follows:

701—10.76(453A) Penalties.

10.76(1) Cigarettes. The following is a list of offenses which subject the violator to a penalty:

1. to 4. No change.

5. A violation of any provision of Iowa Code chapter 453A or these rules.

Penalties for these offenses are as follows:

- A \$200 penalty for the first violation.
- A \$500 penalty for a second violation within three years of the first violation.
- A \$1,000 penalty for a third or subsequent violation within three years of the first violation.

Penalties for possession of unstamped cigarettes are as follows:

- A \$200 penalty for the first violation if a person is in possession of more than 40 but not more than 400 unstamped cigarettes.

- A \$500 penalty for the first violation if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes.

- A \$1,000 penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A \$25 per pack penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

- For a second violation within three years of the first violation, the penalty is \$400 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; \$1,000 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and \$2,000 if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A \$35 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

- For a third or subsequent violation within three years of the first violation, the penalty is \$600 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; \$1,500 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and \$3,000 if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A \$45 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax. If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 5 percent of the tax deficiency shall be imposed. This penalty is not subject to waiver for reasonable cause.

See rule 701—10.8(421) 701—10.7(421) for statutory exceptions to penalty.

10.76(2) Tobacco.

See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax.

REVENUE DEPARTMENT[701](cont'd)

See rule ~~701—10.8(421)~~ 701—10.7(421) for statutory exceptions to penalty.

This rule is intended to implement Iowa Code sections 453A.28, 453A.31 and 453A.46 ~~as amended by 2004 Iowa Acts, Senate File 2296.~~

ITEM 7. Amend rule 701—10.79(453A) as follows:

701—10.79(453A) Request for statutory exception to penalty. Any taxpayer who believes there is a good reason to object to any penalty imposed by the department for failure to timely file returns or pay the tax may submit a request for exception seeking that the penalty be waived. The request must be in the form of a letter or affidavit and must contain all facts alleged by the taxpayer and a reason for why the taxpayer qualifies for the exceptions. See rule ~~701—10.8(421)~~ 701—10.7(421).

This rule is intended to implement Iowa Code sections 453A.31 and 453A.46.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to sales tax administrative procedures and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 12, “Filing Returns, Payment of Tax, Penalty and Interest,” Chapter 13, “Permits,” Chapter 14, “Computation of Tax,” Chapter 15, “Determination of a Sale and Sale Price,” Chapter 17, “Exempt Sales,” Chapter 30, “Filing Returns, Payment of Tax, Penalty and Interest,” Chapter 40, “Determination of Net Income,” Chapter 53, “Determination of Net Income,” Chapter 108, “Local Option School Infrastructure Sales and Service Tax,” Chapter 213, “Miscellaneous Taxable Services,” and Chapter 231, “Exemptions Primarily of Benefit to Consumers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 423.

Purpose and Summary

The Department has several chapters of rules that implement a variety of sales tax administrative procedures set forth in Iowa Code chapter 423. This proposed rule making updates those chapters to make a variety of nonsubstantive changes. Implementation sentences and other Iowa Code references are updated from Iowa Code sections no longer in effect or related to sales tax. Headings and subheadings are added to long rules that currently do not have them to provide additional clarity for readers. Rules describing the law for specifically identified time periods in the past are stricken, since they are no longer needed. Tax rates are updated to reflect the current law. Some rules are rescinded because they are entirely out of date or have been replaced by newer, more recently adopted rules in other chapters. The term “specified digital products” is added to references of taxable sales because those products became taxable several years ago. The proposed rule making also amends rules in other chapters to update affected cross-references.

Fiscal Impact

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

REVENUE DEPARTMENT[701](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 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 701—7.28(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 August 17, 2021. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.782.0535
Email: tim.reilly@iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

August 17, 2021
3 to 4 p.m.

Via video/conference call

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

Any persons who intend to attend 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 rule 701—12.1(422), parenthetical implementation statute, as follows:

701—12.1(~~422~~ 423) Returns and payment of tax.

ITEM 2. Amend rule **701—12.1(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~421.14, 422.43, 422.47, 422.51, 422.52, and 423.2~~ **423.31** and **423.32**.

ITEM 3. Amend rule 701—12.2(~~422,423~~) as follows:

701—12.2(~~422,423~~) Remittances.

REVENUE DEPARTMENT[701](cont'd)

12.2(1) *Submission of remittances.* The correct amount of tax collected and due shall accompany the forms prescribed by the department unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. The name, address, and permit number of the sender and amount of tax for the quarterly remittance or a semimonthly or monthly deposit shall be stated unless requirements for electronic transmission of remittances or deposits and related information specify otherwise. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the taxpayer unless electronic transmission requirements apply; ~~and, when.~~ When feasible, the taxpayer shall use them the items provided by the department when completing and mailing a return and remittance. All remittances shall be made payable to the Iowa Department of Revenue.

12.2(2) *Electronic payments required for semimonthly remitters.* Semimonthly deposits and quarterly remittances of taxpayers required to make semimonthly deposits shall be made electronically in a format and by means specified by the department. Deposit forms are not required to be filed when electronic transmission of deposits is done in the prescribed format by specified means. Quarterly returns shall be filed separately from the electronic transfer of remittances for taxpayers required to make semimonthly deposits. Deposits and remittances transmitted electronically are considered to have been made on the date that the deposit or remittance is ~~added to the bank account designated by the treasurer of the state of Iowa~~ submitted in the electronic submission system. The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

This rule is intended to implement Iowa Code sections ~~422.16, 422.51, 422.52, 423.6, 423.13 and 423.14~~ 423.31 and 423.32.

ITEM 4. Amend rule 701—12.3(422), parenthetical implementation statute, as follows:

701—12.3(422 423) Permits and negotiated rate agreements.

ITEM 5. Amend subrule 12.3(2) as follows:

12.3(2) *Direct pay permits.* Effective January 1, 1998, qualified purchasers, users, and consumers of tangible personal property, specified digital products, or enumerated taxable services pursuant to Iowa Code ~~chapters 422, 422B, and chapter~~ chapter 423 may remit tax owed directly to the department of revenue instead of the tax being collected and remitted by the seller. A qualified purchaser, user, or consumer may not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department of revenue.

a. Qualifications for a direct pay permit. To qualify for a direct pay permit, all of the following criteria must be met:

(1) The applicant must be a purchaser, user, or consumer of tangible personal property, specified digital products, or enumerated taxable services.

(2) and (3) No change.

b. to f. No change.

ITEM 6. Amend rule **701—12.3(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections 422.45(20) and 422.53 as amended by 1997 Iowa Acts, House File 266~~ section 423.36.

ITEM 7. Amend rule 701—12.4(422) as follows:

701—12.4(422 423) Nonpermit holders. Persons not regularly engaged in selling at retail and who do not have a permanent place of business but are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district, or local fairs, carnivals and the like shall collect and remit tax on a nonpermit basis. In such cases, a nonpermit identification certificate will be issued by the department for record-keeping purposes and may be displayed in the same manner as a sales tax permit. If the department deems it necessary and advisable in order to secure the collection of tax, transient or itinerant sellers shall be required to post a bond or certificate of deposit. A cash bond or a surety bond issued by a solvent surety company authorized to do business in Iowa shall be

REVENUE DEPARTMENT[701](cont'd)

acceptable, provided the bonding company is approved by the insurance commissioner as to solvency and responsibility. The amount and type of bond shall be determined according to the rules promulgated by the director.

The department shall determine the due date of returns and payment of tax for temporary permit holders, giving due consideration to the type of business and frequency of sales. Persons holding nonpermit identification certificates may be required to remit tax upon demand or at the end of the event.

Persons regularly engaged in selling tangible personal property or a specified digital product which is exempt from tax, making nontaxable transactions, or engaged in performing a service which is not enumerated in Iowa Code section ~~422.43~~ 423.2 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this rule.

This rule is intended to implement Iowa Code section ~~422.53~~ 423.36.

ITEM 8. Amend rule 701—12.5(422,423) as follows:

701—12.5(422,423) Regular permit holders responsible for collection of tax. A regular permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the regular permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the regular permit holder shall be required to have a form, either in possession or in the vehicle, which authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections ~~422.53 and 423.9~~ 423.14 and 423.36.

ITEM 9. Amend rule 701—12.6(422,423) as follows:

701—12.6(422,423) Sale of business.

12.6(1) Final return due. A retailer selling the business shall file a return within the succeeding month thereafter and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser and the tax becomes delinquent one month after the sale.

12.6(2) Record retention. A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. See 701—subrule 18.28(2) regarding possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code sections ~~422.51(2) and 422.52~~ section 423.33.

ITEM 10. Amend rule 701—12.7(422) as follows:

701—12.7(422 423) Bankruptcy, insolvency or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section ~~422.51(2)~~ 423.31.

ITEM 11. Amend rule 701—12.8(422) as follows:

701—12.8(422 423) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return which includes ~~gross receipts~~ the sales price from sales from all machines or devices operated by the retailer in Iowa during the period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the ~~gross receipts~~ sales price.

This rule is intended to implement Iowa Code sections ~~422.42(16), 422.43, 422.51, and Iowa Code chapter 455C~~ 423.1 and 423.2.

REVENUE DEPARTMENT[701](cont'd)

ITEM 12. Amend rule 701—12.9(422) as follows:

701—12.9(422 423) Claim for refund of tax.

12.9(1) *Eligibility for refund; filing claims.* Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare the claim on the prescribed form furnished by the department. A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based.

~~A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based. See 1968 O.A.G. 879.~~

12.9(2) *Denial of refund claim—protest.* If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 60 days following the date of denial. See rule 701—7.8(17A).

12.9(3) *Request for abeyance.* When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section ~~422.73(1)~~ 422.73(2). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax, penalty or interest involved. Nonexclusive examples of such action would be: court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE A: X, an Iowa sales tax permit holder, is audited by the department for the period July 1, 1972, to June 30, 1977. A \$10,000 tax, penalty and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position, but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 1983.

X, on October 1, 1983, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 1977. The claim will be totally denied as beyond the five-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 1977, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of ~~their~~ its audit liability if the decision in Y's case was also applicable to X.

EXAMPLE B: X, a utility company, filed a request for a rate increase with the commerce commission on June 30, 1967. The rate increase became effective January 1, 1968. However, a final decision of whether X was allowed this rate increase is not made until September 30, 1974. The rate increase was disallowed. X then had to refund to its customers all disallowed, but collected, rate increases plus sales tax. X files a claim for refund of the involved sales tax on December 30, 1974. Only the tax for the years 1970 to 1974 will be refunded. The tax for the years 1968 and 1969 will be denied as being beyond the five-year statute set forth in Iowa Code section ~~422.73(1)~~ 422.73(2). However, if X had filed a claim covering the rate increase any time before January 31, 1973, requesting it be held in abeyance pending the outcome of the commerce commission ruling, then X would have been allowed a full refund of all the sales tax that is refunded from the effective date of the rate increase, January 1, 1968, through September 30, 1974.

EXAMPLE C: X is audited by the department for the period July 1, 1973, to June 30, 1978, and assessed July 31, 1978. X pays the assessment on December 31, 1978. No protest was filed and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 1980, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision which makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 1975, through June 30, 1978, will be allowed as this is the only portion within the five-year statute of limitations set forth in ~~section~~ Iowa Code ~~422.73(1)~~ section 422.73(2). If the claim had been filed on or before December 31,

REVENUE DEPARTMENT[701](cont'd)

1979, then the entire audit period July 1, 1973, to June 30, 1978, could have been considered for refund as the claim would have been filed within one year of payment.

This rule is intended to implement Iowa Code section ~~422.73~~ 423.45.

ITEM 13. Rescind and reserve rule **701—12.10(423)**.

ITEM 14. Amend rule 701—12.12(422) as follows:

701—12.12(~~422~~ 423) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code section ~~422.51~~ 423.31.

ITEM 15. Amend rule 701—12.13(422) as follows:

701—12.13(~~422~~ 423) Determination of filing status.

12.13(1) and **12.13(2)** No change.

This rule is intended to implement Iowa Code sections ~~421.14, 422.51, and 422.52, and sections 422.54 as amended by 2002 Iowa Acts, House File 2622, section 11, and 423.13 as amended by 2002 Iowa Acts, House File 2622, section 14~~ section 423.31.

ITEM 16. Amend rule 701—12.14(~~422,423~~) as follows:

701—12.14(~~422,423~~) Immediate successor liability for unpaid tax. A retailer ceasing to do business is obligated to prepare a final return and pay all tax due within the time required by law. If a retailer ceasing to do business fails to do this, any immediate successor to the retailer who purchases the business or stock of goods is obligated to withhold from the purchase price enough of the purchase price to pay the tax, interest, or penalty which the retailer owes. Any immediate successor who intentionally fails to withhold sufficient of the purchase price to pay the delinquent tax, interest, and penalty is personally liable for the payment of the tax. However, if the immediate successor's purchase of the business or stock of goods was made in good faith that the retailer owed no tax, interest, or penalty, then the department may waive the immediate successor's liability.

12.14(1) and **12.14(2)** No change.

12.14(3) "*Sale of a retailer's business*" *characterized*. Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. *People v. Gabriel*, 135 P.2d 378 (Cal. App. 1943). The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty for the sale of any type of tangible personal property or specified digital products constitutes the selling of the retailer's business, and the person to whom the business is sold is an "immediate successor" and liable for tax.

EXAMPLE: A is a furniture dealer. The furniture business falls on hard times. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property and specified digital products used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department \$7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

12.14(4) No change.

This rule is intended to implement Iowa Code section ~~421.28~~ 423.33.

ITEM 17. Amend rule 701—12.15(~~422,423~~), parenthetical implementation statute, as follows:

701—12.15(~~422,423~~) Officers and partners—personal liability for unpaid tax.

REVENUE DEPARTMENT[701](cont'd)

ITEM 18. Amend rule 701—12.16(422), parenthetical implementation statute, as follows:

701—12.16(422 423) Show sponsor liability.

ITEM 19. Amend rule 701—12.16(422), implementation sentence, as follows:

This rule is intended to implement the requirements of Iowa Code section ~~422.52~~ 423.33.

ITEM 20. Rescind and reserve rules 701—12.18(423) and 701—12.20(423).

ITEM 21. Amend rule 701—13.1(422) as follows:

701—13.1(422 423) Retail sales tax permit required. When used in this chapter or any other chapter relating to retail sales, the word “permit” shall mean “a retail sales tax permit.”

A person shall not ~~engage in any Iowa business~~ make taxable sales of taxable tangible personal property, specified digital products, or services subject to tax until the person has procured a permit except as provided in ~~13.5(422)~~ rule 701—13.5(423). There is no charge for a retail sales tax permit. If a person makes retail sales from more than one location, each location from which taxable sales of tangible personal property, specified digital products, or services will occur shall be required to hold a permit. Retail sales tax permits are issued to retailers for the purpose of making retail sales of tangible personal property, specified digital products, or taxable services. Persons shall not ~~make application~~ apply for a permit for any other purpose. For details regarding direct pay permits, see rule 701—12.3(~~422~~ 423).

This rule is intended to implement Iowa Code section ~~422.53 as amended by 1999 Iowa Acts, chapter 152~~ 423.36.

ITEM 22. Amend rule 701—13.2(422) as follows:

701—13.2(422 423) Application for permit.

13.2(1) Permit application. An application for a permanent permit shall be made upon a form provided by the department, and the applicant shall furnish all information requested on such form. An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner’s name, in the case of a sole ownership by an individual, or the trade name and the name of all partners, in the case of a partnership.

~~An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner’s name, in the case of a sole ownership by an individual, or the trade name and the name of all partners, in the case of a partnership.~~

13.2(2) Signatures required.

a. Paper applications. The application shall be signed by the owner, in the case of an individual business; by a partner, in the case of a partnership, although all partners’ names shall appear on the application; and by the president, vice president, treasurer or other principal officer of a corporation or association, unless written authorization is given by the officers for another person to sign the application.

b. Electronic applications. For electronically transmitted applications, the application form shall state that in lieu of a person’s handwritten signature, the ~~E-mail~~ email address will constitute a valid signature.

13.2(3) Date when sales begin. The application shall state the date when the applicant will begin selling tangible personal property, specified digital products, or taxable services at retail in Iowa from the location for which the application is made.

This rule is intended to implement Iowa Code sections ~~421.17(15) and 422.53~~ section 423.36.

ITEM 23. Amend rule 701—13.3(422) as follows:

701—13.3(422 423) Permit not transferable—sale of business. Permits shall not be transferable. A permit holder selling the business shall cancel the permit, and the purchaser of the business shall apply for a new permit in the purchaser’s own name.

This rule is intended to implement Iowa Code section ~~422.53~~ 423.36.

REVENUE DEPARTMENT[701](cont'd)

ITEM 24. Amend rule 701—13.4(422) as follows:

701—13.4(422 423) Permit—consolidated return optional. Two types of permit holders have the option of filing a consolidated return. The first is a permit holder with multiple locations from which taxable sales are made and the second is certain affiliated corporations.

13.4(1) Permit holders with multiple locations.

a. Permit holder option. A permit holder procuring more than one permit may file a separate return for each permit; or, if arrangements have been made with the department, the permit holder may file one consolidated return reporting sales made at all locations for which a permit is held.

b. Filing a consolidated return. ~~Effective July 1, 2002, in~~ In order to file a complete consolidated sales tax return, the taxpayer must file a form entitled Schedule of Consolidated Business Locations with its quarterly sales tax return, and the schedule must include all of the following items: (1) the taxpayer's consolidated permit number; (2) the permit number for each Iowa location; (3) the amount of state sales tax by business location; and (4) the amount of state sales tax due on goods consumed that are not assigned to a specific business location. Failure by the taxpayer to file a Schedule of Consolidated Business Locations form with a quarterly sales tax return will result in the ~~consideration of the quarterly return's being considered~~ return as incomplete, and the taxpayer will be subject to the penalty provisions set forth in Iowa Code section 421.27.

13.4(2) Affiliated corporations.

a. Application by affiliate group. Any group consisting of a parent and its affiliates, which is entitled to file a consolidated return for federal income tax purposes and which makes retail sales of tangible personal property, specified digital products, or taxable ~~enumerated~~ services, may make application to the director for permission to make deposits and file a consolidated Iowa sales tax return. ~~An application for consolidation can be made for any tax period beginning on or after January 1, 2000. The application shall be in writing and shall be signed by an officer of the parent corporation. It shall contain the business name, address, federal identification number, and Iowa sales tax identification number of every corporation seeking the right to file a consolidated return. The application shall state the initial tax period for which the right to file a consolidated return is sought and shall be filed no later than 90 days prior to the beginning of that period. The application shall also contain any additional relevant information which the director may, in individual instances, require.~~

~~The application shall be in writing and shall be signed by an officer of the parent corporation. It shall contain the business name, address, federal identification number, and Iowa sales tax identification number of every corporation seeking the right to file a consolidated return. The application shall state the initial tax period for which the right to file a consolidated return is sought and shall be filed no later than 90 days prior to the beginning of that period. The application shall also contain any additional relevant information which the director may, in individual instances, require.~~

b. Joint and several liability. A parent corporation and each affiliate corporation that file a consolidated return are jointly and severally liable for all tax, penalty, and interest found due for the tax period for which a consolidated return is filed or required to be filed.

13.4(3) No change.

This rule is intended to implement Iowa Code section 422.51 as amended by 2002 Iowa Acts, Senate File 2305, section 8, and Iowa Code section 422.53 ~~423.31~~.

ITEM 25. Strike “422” wherever it appears in rules **701—13.5(422)**, **701—13.6(422)**, **701—13.8(422)**, **701—13.10(422)**, **701—13.11(422)**, **701—13.14(422)** and **701—13.15(422)** and insert “423” in lieu thereof.

ITEM 26. Amend rule **701—13.5(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.53(6) ~~423.36~~.

ITEM 27. Amend rule **701—13.6(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.53 ~~423.36~~.

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ITEM 28. Amend rule 701—13.7(422) as follows:

701—13.7(422 423) Reinstatement of revoked permit. A revoked permit shall be reinstated only on such terms and conditions as the case may warrant. Terms and conditions include payment of any tax liability which may be due to the department. See rule ~~13.17(422)~~ 701—13.17(423) for a description of the circumstances under which nonpayment of taxes may lead to revocation of a permit.

Pursuant to the director's statutory authority in Iowa Code section ~~422.53(5)~~ 423.36(6) to restore licenses after a revocation, the director has determined that upon the revocation of a sales tax permit the initial time, the permit holder will be required to pay all delinquent sales tax liabilities, to file returns, and to post a bond and to refrain from taxable occurrences under Iowa Code section ~~422.43~~ 423.2 as required by the director prior to the reinstatement or issuance of a new sales tax permit.

As set forth above, the director may impose a waiting period during which the permit holder must refrain from taxable occurrences pursuant to the penalties of Iowa Code section ~~422.58(2)~~ 423.40, not to exceed 90 days to restore a permit or issue a new permit after a revocation. The department may require a sworn affidavit, subject to the penalties of perjury, stating that the permit holder has fulfilled all requirements of said order of revocation, and stating the dates on which the permit holder refrained from taxable occurrences.

Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a revoked permit or issue a new permit after a revocation unless otherwise noted.

Failure to post a bond as required.

Failure to file a quarterly return or monthly deposit timely.

Failure to pay tax timely (including unhonored checks, failure to pay, and late payments).

Failure to file a quarterly return or a monthly deposit and pay tax shown on the return or deposit timely (counts as two offenses).

The administrative law judge or director of revenue may order a waiting period after the revocation not to exceed:

Five days for one through five offenses.

Seven days for six through seven offenses.

Ten days for eight through nine offenses.

Thirty days for ten offenses or more.

The administrative law judge or director of revenue may order a waiting period not to exceed:

Forty-five days if the second revocation occurs within 24 months of the first revocation.

Sixty days if the second revocation occurs within 18 months of the first revocation.

Ninety days if the second revocation occurs within 12 months of the first revocation.

Ninety days if the third revocation occurs within 36 months of the second revocation.

A revoked permit will not be reinstated if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder, who is an individual requesting reinstatement, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code sections ~~422.53 and 422.58(2) and 1995 Iowa Acts, chapter 115~~ 423.2, 423.36, and 423.40.

ITEM 29. Rescind and reserve rule **701—13.9(422)**.

ITEM 30. Amend rule **701—13.10(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~422.53 as amended by 2001 Iowa Acts, House File 715~~ 423.36.

ITEM 31. Amend rule **701—13.11(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~422.53~~ 423.36.

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ITEM 32. Rescind and reserve rule **701—13.12(422)**.

ITEM 33. Amend rule 701—13.13(422) as follows:

701—13.13(422 423) Trustees, receivers, executors and administrators. By virtue of their appointment, trustees, receivers, executors and administrators who continue to operate, manage or control a business involving the sale of tangible personal property, specified digital products, or taxable services or engage in liquidating the assets of a business by means of sales made in the usual course of trade shall collect and remit tax on inventory and noninventory items. ~~In Re Hubs Repair Shop, Inc. 28 B.R. 858 (Bkrcty 1983).~~ A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust.

~~A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust.~~

This rule is intended to implement Iowa Code sections ~~422.42(1) and 422.53~~ section 423.36.

ITEM 34. Amend rule **701—13.14(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~422.43 and 422.53~~ as amended by 1986 Iowa Acts, House File 2471, and Iowa Code section ~~422.42~~ section 423.36.

ITEM 35. Amend rule **701—13.15(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~chapter 422~~ section 423.36.

ITEM 36. Amend rule 701—13.16(422) as follows:

701—13.16(422 423) Substantially delinquent tax—denial of permit.

13.16(1) Substantial delinquency of tax.

a. Applicant identity. The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership.

b. Tax administered by the department. The local option sales and service tax is a tax administered by the department. Local vehicle, property, whether imposed on centrally assessed property or not, beer and liquor, and insurance premium taxes are nonexclusive examples of taxes which are not administered by the department.

13.16(2) Substantial delinquency factors. The amount of tax delinquent, the number of filing periods for which a tax remains due and unpaid, and the length of time a tax has been unpaid are the principal, but nonexclusive circumstances, which the department will use to determine whether an applicant is “substantially” or insubstantially delinquent in paying a tax. The department may deny a permit for substantial delinquency. Nonexclusive factors which the department will consider in determining whether substantial delinquency will or will not result in the denial of an application for a permit are the following: whether the delinquency was inadvertent, negligent, or intentional; the amount of tax, interest, or penalty owed in relation to the applicant’s total financial resources; and whether the applicant’s business is likely to survive over the long term if a license or permit is granted. ~~This rule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.~~

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13.16(3) *Child support noncompliance.* The department will deny a permit to any applicant, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code ~~subsection 422.53(2) and 1995 Iowa Acts, chapter 445~~ section 423.36.

ITEM 37. Amend rule 701—13.17(422) as follows:

701—13.17(422 423) Substantially delinquent tax—revocation of permit. The department may revoke a permit if the permit holder has become substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the person holding a permit is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the permit-holding corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner's failure to pay a tax which is not a liability of the partnership. This is in contrast to the situation regarding an application for a permit. See rule ~~13.16(422)~~ 701—13.16(423). Also, see rule ~~13.16(422)~~ 701—13.16(423) for characterizations of the terms “tax administered by the department” and “substantially delinquent” and for a description of some of the factors which the department will use in determining whether substantial delinquency will or will not result in the revocation of a permit. This rule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

A revoked permit will not be reinstated if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder who is an individual requesting reinstatement, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code ~~subsection 422.53(5) and 1995 Iowa Acts, chapter 445~~ section 423.36.

ITEM 38. Rescind and reserve rules **701—14.1(422)** and **701—14.2(422,423,77GA,ch1130)**.

ITEM 39. Amend rule 701—14.3(422,423) as follows:

701—14.3(422,423) Taxation of transactions due to rate change. The following provisions shall apply in determining whether or not a transaction is subject to an existing rate of sales or use tax or to a new rate of sales or use tax. In the examples contained in the rest of this rule, assume that a bill has been enacted into law which increases the sales and use tax rate from 4 6 to 5 7 percent and that the effective date of this bill is July 1.

14.3(1) *General principles.* A change in the sales tax rate applies to a sale of tangible personal property and specified digital products if delivery of the property or product under a contract of sale occurs on or after the effective date of the legislation which changes the rate of taxation. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). See also *Crown Iron Works v. Commissioner of Taxation*, 214 N.W.2d 462 (Minn. 1974). The intent of the parties to the contract for sale determines when delivery occurs. However, in the event the intent is not readily established from the contract, the rules set out in the Uniform Commercial Code (Iowa Code chapter 554) shall apply in order to determine the place of delivery.

In the examples below, so long as delivery under a contract for sale occurs on or after July 1, the 5 7 percent sales tax rate applies. It is not necessary that any other aspects of the sale, such as payment for the delivered property, occur on or after that date.

In the three examples immediately below, “delivery” is physical transfer of possession of the tangible personal property directly from the seller to the purchaser. However, see subrule 14.3(2) for examples of delivery which do not involve transfer of possession directly from the buyer to the seller, and subrule

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14.3(3) which explains a type of delivery which does not involve any physical transfer of possession of property.

EXAMPLE A: A enters into a sales contract to purchase a riding lawn mower from B. This contract (offer and acceptance) is entered into on June 20. B delivers the lawn mower to A on June 28, and A pays B for the lawn mower on July 3. Since delivery, under the contract for sale, occurred prior to July 1, the sales tax in this example is computed at the rate of 4 6 percent.

EXAMPLE B: A wants to purchase a home computer from B. On June 28, A orders the computer from B and the parties agree that the contract of sale is made if and when B makes delivery of the home computer to A. B delivers the computer on July 10. In this example, the sales tax is at the rate of 5 7 percent because delivery was not made until July 10. It is the delivery after July 1, rather than the lack of the valid contract of sale prior to that date, which determines that the rate of tax shall be 5 7 rather than 4 6 percent.

EXAMPLE C: On May 1, A enters into a conditional sales contract with B to purchase a television set. The contract requires A to make monthly installment payments for 36 months, beginning June 1. The contract also requires B to deliver the television to A on or before July 15. B retains title to the television set solely for the purpose of securing payment from A. A makes the first monthly payment to B on June 1. B delivers the television to A on the last day allowable, July 15. The 5 7 percent rate will apply. See subrule 14.3(4) for more material regarding discussion of conditional sales.

14.3(2) *Shipment by carrier.* The following principles shall be used to determine the conditions under which delivery is made pursuant to a contract for sale when the retailer utilizes a carrier to ship tangible personal property to a purchaser. If the contract for sale makes no reference of an F.O.B. (free on board) or F.A.S. (free along side) point or of any other point at which title and risk of loss with regard to the tangible personal property are transferred from the retailer to the purchaser and contains no other indication of a delivery point, it shall be presumed that delivery of the property occurs when the seller transfers possession of the property to the carrier. If property is sold under a C.I.F. (cost, insurance and freight) or a C. & F. (cost and freight) contract it shall also be presumed that delivery occurs when the retailer transfers possession of the property to the carrier. If a contract for sale makes mention of an F.O.B. or F.A.S. point, it shall be presumed that the parties intended delivery of the property at the time the property reaches that point.

14.3(3) *Constructive delivery.* “Constructive delivery” has occurred if the retailer and the purchaser agree that title, risk of loss, and right of possession to tangible personal property have passed from the retailer to the purchaser; that is, the parties agree that a sale has occurred, but actual physical possession of the property remains with the retailer or someone other than the buyer after the sale. If parties to a contract of sale have agreed upon constructive delivery, the sale occurs at the time of constructive delivery and not at the time of transfer of physical possession of the property from buyer to seller or at an F.O.B., F.A.S., or similar type of point.

EXAMPLE: A owns an art gallery in Des Moines. Art collector B from Cedar Rapids visits the gallery. Collector B wishes to purchase a painting that is very large. However, collector B cannot immediately transport the painting back to Cedar Rapids. On June 1, A and B sign a contract for the sale of the painting. Title to the painting, risk of loss, and the right to take possession of the painting immediately pass to B. However, the parties also agree that B can store the painting with A in return for a small monthly charge. B inquires of various parties whether or not they would be willing to transport the painting from Des Moines to Cedar Rapids. B finds no one satisfactory to do this and eventually signs a separate contract for transport with A in which A agrees to do the transporting. The transport of the painting is accomplished on September 1. The painting was delivered from A to B in Des Moines on June 1. Thus, its sale occurred on that date rather than September 1. Delivery was accomplished with the “constructive” delivery which occurred on June 1 rather than by the physical transfer of possession from A to B which occurred on September 1. Because of this, the rate of tax is 4 6 and not 5 7 percent.

14.3(4) *Conditional sales.* A “conditional sale” is no different from an absolute sale, except in the matter of payment. *Hansen v. Kuhn*, 284 N.W. 249, 226 Iowa 794 (1939). A conditional sale has not occurred until delivery under a contract of conditional sale has occurred. *Greenlease-Lied Motors v. Sadler*, 249 N.W. 383, 216 Iowa 302 (1933); *Universal Credit Co. v. Mamminga*, 243 N.W. 513, 214

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Iowa 1135 (1932); and *Firestone Tire & Rubber Co. v. Anderson*, 180 N.W. 273, 190 Iowa 439 (1920). See Example C in subrule 14.3(1) for an example of a conditional sales contract in which delivery of the property under the contract occurred long after the making of the contract and after the buyer had made several payments under the contract. As soon as delivery has occurred, tax on ~~all gross receipts~~ the sales price of the sale is due to the department. See ~~rules 701—15.1(422) and rule 701—16.47(422 423)~~ for additional ~~material on~~ discussion of conditional sales.

14.3(5) Use tax—changed rate of taxation on the use of tangible personal property and specified digital products. A changed use tax rate applies to the use of tangible personal property and specified digital products in Iowa when the first taxable use occurs on or after the effective date of the legislation which changes the rate of tax. In the following example, assume that the change in the use tax rate is from 4 6 to 5 7 percent and that the legislation which enacts this change is effective as of July 1.

EXAMPLE: On May 24, A and B enter into a contract for A's purchase of a machine from B. Under the contract, delivery of the machine to A is to occur outside the state of Iowa, F.O.B., Minneapolis, Minnesota. On June 27, A takes delivery of the machine in Minneapolis. A then transports the machine into Iowa on July 2. A's transport of the machine into Iowa constitutes a use of the machine by A in Iowa for the first time. Under these circumstances, the machine is subject to the 5 7 percent rate since the tax rate in effect at the time of first use, July 2, governs if property is purchased outside of Iowa. *City of Ames v. State Tax Commission*, 246 Iowa 1016, 71 N.W.2d 15 (1955).

14.3(6) Changed rate for the sales tax on enumerated services. A changed sales tax rate on enumerated services applies if services are rendered, furnished, or performed in Iowa on or after the effective date of the legislation which changes the rate. The date upon which the parties enter into a service contract is not of importance in determining whether the old rate or new rate is applicable. Nor, for the purpose of computing the sales tax, is it important to know when the product or result of the service is used by the ultimate user. This situation must be distinguished from the application of use tax to services. For use tax purposes, the date when the product or result of the service is used may be important. See subrule 14.3(7). For the purposes of this subrule and subrules 14.3(7), 14.3(8), and 14.3(9) ~~and 14.3(10)~~, assume that the rate of tax is being raised from 4 6 to 5 7 percent and that the effective date of the legislation which increases the rate is July 1.

EXAMPLE A: On June 1, A and B enter into a service contract in which B agrees to provide testing laboratory services to A. B performs these services in Iowa on June 26. The results of these services are forwarded to A on July 8, and A observes those results and makes use of them on that latter day. Under these circumstances, the testing laboratory services were subject to service tax at the rate of 4 6 percent because B rendered, furnished, or performed the services on June 26, which is prior to July 1.

EXAMPLE B: On June 1, B offers to perform testing laboratory services for A. A and B agree that the offer is not accepted until B actually performs the test laboratory services. The services are performed on July 5, and the results forwarded to A on July 8. Under these circumstances, the testing laboratory services are subject to tax at the 5 7 percent rate. The services are subject to that rate because the services were rendered on July 5, and not because the parties entered into the contract for services on July 5. As in Example A above, if a contract had been entered into before July 1, and the services performed after that date, service tax at the 5 7 percent rate would still have been applicable.

EXAMPLE C: On June 7, A enters into a service contract with B for the repair of A's automobile. The contract provides that A shall make installment payments for 12 months. The automotive repairs are extensive. B begins repair of the automobile on June 9 and completes repair on June 27. Since sales tax is due when the service is rendered, furnished, or performed, the tax is 4 6 percent of the contract price. Installment payments made on and after July 1 do not accrue any greater rate of tax. This situation is different from a service contract entered into prior to July 1, which requires periodic payments for continuous services, as set forth under subrule 14.3(8).

EXAMPLE D: A, a civic center, contracts with B, an orchestra, to perform on July 10. The contract is made on May 26. A sells tickets of admission for B's July 10 concert. The tickets are sold in the month of June and from July 1 to and including July 9. All ticket sales in June are subject to tax at the 4 6 percent rate, and all ticket sales in July are subject to tax at the 5 7 percent rate. In this example, the contract between A and B is not a taxable service contract. The taxable events are the sales of admission

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tickets between A and the purchasers of the tickets. The date when a ticket is delivered to a purchaser controls whether the tax rate is 4 6 or 5 7 percent.

14.3(7) *Changed rate of use tax on services.* If the product or result of a taxable service rendered, furnished, or performed outside of this state is first used in this state on or after July 1, the 5 7 percent use tax rate applies.

EXAMPLE: On June 14, A and B enter into a contract for repair of A's machine, the repair to be done outside of Iowa. On June 28, the machine is delivered to B who performs the taxable service of machine repair and returns the machine to A in Iowa on July 1. Under these circumstances, the product or result of the taxable machine repair service is first used by A on July 1; therefore, the 5 7 percent tax rate applies.

14.3(8) *Service contracts requiring periodic payments.* If parties enter into a service contract prior to July 1, and the contract requires periodic payments, payments made on or after July 1 under the contract are subject to the 5 7 percent sales or use tax rate.

EXAMPLE A: A and B enter into an agreement for the lease of equipment on April 1. The lease is for a term of five years and requires monthly payments. A is the lessee and B is the lessor. For all rental payments made on or after July 1, the tax rate is 5 7 percent.

EXAMPLE B: On May 1, A joined a private club and paid membership fees for the privilege of participating in athletic sports provided to club members. A must make periodic payments every three months. These payments are made in January, April, July, and October. Under these circumstances, A's July payment and payments made subsequently are subject to tax at the rate of 5 7 percent.

14.3(9) *Gas, electricity, water, heat, solid waste collection, sewer, pay television, and communication services.* ~~Gross receipts~~ The sales price from the sales, furnishing, or service of gas, electricity, water, heat, and communication service are subject to the sales, services, and use tax at the 5 7 percent rate when the date of billing the customer falls on or after July 1. ~~The gross receipts sales price~~ from the services of solid waste collection and disposal, sewer, and pay television are also treated in this manner.

EXAMPLE A: A is the customer of the B water utility. A receives a bill from B on July 5. The billing date is July 1, and the bill is for water provided during the month of June. Under these circumstances, sales tax should be billed at the rate of 5 7 percent, because the date of billing is July 1.

EXAMPLE B: A is the customer of the B electric utility company. A receives a bill from the B company on July 2. There is no billing date set forth on the bill. The bill was mailed by the B company to A on June 28. Under these circumstances, the billing date is June 28, and the sales tax should be billed at the rate of 4 6 percent. Had B listed a billing date in its books and records as a receivable different than the mailing date, i.e., June 26, this latter date (June 26) would be considered the billing date.

EXAMPLE C: A is the customer of the B rural electric cooperative (REC). A is responsible for reading its meter and remitting the proper amount for electricity and sales tax to B. B, in its tariff filed with the Interstate Commerce Commission (ICC), has set forth the first date of each month as the last day for its customers to read their meters. B does not send a bill to A. Under these circumstances of customer self-billing where no bill is sent by B to A, the first date of each month is the billing date and where that date falls on July 1 and the first date of each month thereafter, the sales tax should be paid at the rate of 5 7 percent.

If the date set forth in the tariff had been the last day of the month, then a self-billing attributable to June 30 would require payment of sales tax at the 4 6 percent rate.

EXAMPLE D: A is the customer of B telephone company. A receives a bill from B company on July 3, covering intrastate long distance telephone calls in June and local service in July. The billing date on the face of the bill is June 28. Under these circumstances, all telephone services, local and intrastate long distance, should be billed sales tax at the rate of 4 6 percent.

If, in this example, the billing date on the bill had been July 1, the sales tax should be billed at the rate of 5 7 percent for all telephone services, local and intrastate long distance.

14.3(10) *Vehicles subject to registration.* ~~The 5 percent use tax rate applies to motor vehicles subject to registration when the purchaser of the vehicle registers the vehicle on or after July 1.~~

~~EXAMPLE A: A purchases a motor vehicle from B and takes possession of the vehicle in Iowa on June 28. On July 1, A drives to the office of the county treasurer, applies for registration of the vehicle,~~

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and tenders the amount of Iowa use tax. Under these circumstances, because A registered the vehicle in Iowa on July 1, the use tax rate is 5 percent.

~~EXAMPLE B: A and B enter into a binding contract for A to purchase from B a motor vehicle on June 26. The vehicle cannot be delivered to A until July 3, and A applies to the county treasurer for registration of the vehicle on July 5. Under these circumstances, A first registered the vehicle on July 5 and Iowa use tax is imposed at the 5 percent rate.~~

This rule is intended to implement Iowa Code ~~sections 422.43 and~~ section 423.2.

ITEM 40. Rescind and reserve rules **701—15.1(422)** and **701—15.2(422,423)**.

ITEM 41. Amend rule 701—15.3(422,423), parenthetical implementation statute, as follows:

701—15.3(422,423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.

ITEM 42. Amend subrules 15.3(1) and 15.3(2) as follows:

15.3(1) General provision. ~~The gross receipts sales price~~ from the sale of tangible personal property or specified digital products to a purchaser for any exempt purpose are not subject to tax as provided by the Iowa sales and use tax statutes. In addition, a seller of tangible personal property or specified digital products need not collect Iowa sales or use tax from a purchaser that possesses a valid direct pay permit issued by the department of revenue. However, the following are requirements for the exemption and noncollection of tax by a seller when a direct pay permit is involved:

~~a.—Prior to July 1, 2004, the sales tax liability for all sales of tangible personal property was upon the seller unless the seller took in good faith from the purchaser a valid exemption certificate stating that the purchase was for an exempt purpose or the tax would be remitted directly to the department by the purchaser under a valid direct pay permit issued by the department. In addition to the provisions and requirements set forth in subrule 15.3(2), to be valid an exemption certificate issued by a purchaser to a seller in good faith under a direct pay permit must have included the purchaser's name, direct pay permit number, and date the direct pay permit was issued by the department. A seller who has taken a valid exemption certificate under a direct pay permit must keep records of sales made in accordance with rule 701—11.4(422,423). For more information regarding direct pay permits, see rule 701—12.3(422). Where tangible personal property or services have been purchased tax-free pursuant to a valid exemption certificate which was taken in good faith by the seller, and the tangible personal property or services were used or disposed of by the purchaser in a nonexempt manner, or the purchaser failed to pay tax to the department under a direct pay permit issued by the department, the purchaser was solely liable for the taxes and must remit the taxes directly to the department.~~

~~When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for its own taxable use or consumption, the tax shall be reported in the period when the tangible personal property was withdrawn from inventory.~~

~~b. a. As of July 1, 2004, the requirement of “good faith” on the part of a seller is replaced by a different standard. For sales occurring on and after that date, the~~ The sales tax liability for all sales of tangible personal property and all sales of, specified digital products, and taxable services is upon the seller and the purchaser unless the seller takes from the purchaser a valid exemption certificate stating under penalty of perjury that the purchase is for a nontaxable purpose and is not a retail sale, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate. If the tangible personal property, specified digital products, or services are purchased tax-free pursuant to a valid exemption certificate and the tangible personal property, specified digital products, or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department. The protection afforded a seller by this paragraph does not apply to a seller who fraudulently fails to collect tax or to a seller who solicits purchasers to participate in the unlawful claiming of an exemption.

~~e. b.~~ The director is required to provide exemption certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property, specified digital products, or services

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to buyers for exempt purposes. These exemption certificates must be completed as to the information required on the form in order to be valid.

15.3(2) Retailer-provided exemption certificates. Retailers may provide their own exemption certificates. Those exemption certificates must contain information required by the department, including, but not limited to: the seller's name, the buyer's name and address, the buyer's nature of business (wholesaler, retailer, manufacturer, lessor, other), the reason for purchasing tax-exempt (e.g., resale or processing), the general description of the products purchased, and state sales tax or I.D. registration number. The certificate must be signed and dated by the buyer.

a. An exemption certificate or blanket exemption certificate as referred to in paragraph "b" cannot be used to make a tax-free purchase of any tangible personal property, specified digital products, or service not covered by the certificate. For example, the certificate used to purchase a chemical consumed in processing cannot be used to purchase a generator which is going to become an integral part of other tangible personal property which will be ultimately sold at retail.

b. to e. No change.

f. The failure of a permit holder to act in good faith while giving or receiving exemption certificates may result in the revocation of the sales tax permit. Revocation is authorized under the provisions of Iowa Code section ~~422.53(5)~~ 423.36.

g. The purchase of tangible personal property, specified digital products, or services which are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support these transactions, they do not relieve the seller of the responsibility for tax if at some later time the transaction is determined to be taxable.

h. A person who is selling tangible personal property, specified digital products, or services, but who is not making taxable sales at retail, shall not be required to hold a permit. When this person purchases tangible personal property, specified digital products, or services for resale, the person shall furnish a certificate in accordance with these rules to the supplier stating that the property or services was purchased for the purpose of resale.

i. For information regarding the use of exemption certificates for contractors, see 701—Chapter 19.

ITEM 43. Amend paragraph **15.3(3)"a,"** definition of "Fuel consumed in processing," as follows:

"*Fuel consumed in processing*" includes fuel used in grain drying or providing heat or cooling for livestock buildings, fuel used for generating electric current, fuel consumed in implements of husbandry engaged in agricultural production, as well as fuel used in "processing" as defined in rules 701—18.29(422,423), 701—18.58(422,423), and 701—230.15(423). See rule 701—17.2(422 423) for a detailed description of "fuel used in processing." See rule 701—17.3(422,423) for extensive discussion regarding electricity and steam used in processing.

ITEM 44. Amend rule **701—15.3(422,423)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~422.42(3), 422.42(13), 422.42(16), 422.47, 422.53 as amended by 1997 Iowa Acts, House File 266, and 423.1(1)~~ 423.3, 423.36 and 423.45.

ITEM 45. Rescind and reserve rules **701—15.4(422,423)** to **701—15.6(422,423)**.

ITEM 46. Amend rule 701—15.8(422,423) as follows:

701—15.8(422,423) Returned merchandise. When merchandise is sold and returned by a customer who secures an allowance or a return of the full purchase price, the seller may deduct the amount allowed as full credit or refund, provided the merchandise is taxable merchandise and tax has been previously paid on the ~~gross receipts~~ sales price.

An allowance shall not be made for the return of any merchandise which (1) is exempt from either sales or use tax; or (2) has not been reported in the taxpayer's ~~gross receipts and~~ tax previously paid.

This rule is intended to implement Iowa Code sections ~~422.42(6) and 423.1(3)~~ section 423.31.

REVENUE DEPARTMENT[701](cont'd)

ITEM 47. Rescind and reserve rules **701—15.9(422)** and **701—15.10(422)**.

ITEM 48. Amend rule 701—15.11(422,423), parenthetical implementation statute, as follows:

701—15.11(422,423) Leased departments.

ITEM 49. Amend rule **701—15.11(422,423)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~422.68(1) and 423.23~~ section 423.25.

ITEM 50. Amend rule 701—15.12(422,423), parenthetical implementation statute, as follows:

701—15.12(422,423) Excise tax included in and excluded from gross receipts.

ITEM 51. Amend rule **701—15.12(422,423)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~422.42(6), 422.43, 423.1,~~ 423.1 and 423.2.

ITEM 52. Amend rule 701—15.13(422,423) as follows:

701—15.13(422,423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges shall be subject to sales or use tax is dependent upon the terms of the sale agreement.

15.13(1) Charges separately stated. When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the ~~gross receipts derived from sales price of the freight or transportation charges~~ shall not be subject to tax. ~~As of May 20, 1999, this~~ This exemption does not apply to the service of transporting electrical energy. ~~As of April 1, 2000, this exemption does not apply to or~~ the service of transporting natural gas.

15.13(2) Charges not separately stated. When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the ~~gross receipts from sales price of the freight or transportation charges~~ become a part of the ~~gross receipts from sales price of the sale of~~ tangible personal property or a taxable service and are subject to tax. Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such charge, tax is due on the full contract price with no deduction for transportation charge, regardless of whether or not such transportation charges are itemized separately on the invoice. *Clarion Ready Mixed Concrete Company v. Iowa State Tax Commission*, 252 Iowa 500, 107 N.W.2d 553(1961); *Schemmer v. Iowa State Tax Commission*, 254 Iowa 315, 117 N.W.2d 420(1962); *City of Ames v. Iowa State Tax Commission*, 246 Iowa 1016, 71 N.W.2d 15(1959); *Dain Mfg. Company v. Iowa State Tax Commission*, 237 Iowa 531, 22 N.W.2d 786(1946).

15.13(3) Exemption. Effective July 1, 2001, gross receipts ~~The sales price~~ from charges for delivery of electricity or natural gas are exempt from tax to the extent that the ~~gross receipts~~ sales price from the sale, furnishing, or service of electricity or natural gas or its use are exempt from sales or use tax under Iowa Code ~~chapters 422 and chapter~~ 423. The exclusions from this exemption relating to the transportation of natural gas and electricity are applicable to all contracts for the performance of these transportation services. Below are examples which explain some of the principal circumstances in which the transport of natural gas or electricity is a service subject to tax.

~~The exclusions from this exemption relating to the transportation of natural gas and electricity are applicable to all contracts for the performance of these transportation services. Below are examples which explain some of the principal circumstances in which the transport of natural gas or electricity is a service subject to tax.~~

Freight and transportation charges include, but are not limited to, the following charges or fees: freight; transportation; shipping; delivery; or trip charges.

EXAMPLE 1. Consumer ABC, located in Des Moines, contracts with supplier DEF, located in Waterloo, for DEF to sell gas and electricity to ABC. ABC then contracts with utility GHI to transport the energy over GHI's network (of pipes or wires) from Waterloo to ABC's facility in Des Moines.

REVENUE DEPARTMENT[701](cont'd)

GHI's transport of ABC's energy is a taxable service. The transportation of natural gas and electricity by a utility is a taxable service of furnishing natural gas or electricity whether or not that utility or some other utility produces the natural gas or generates the electricity furnished. A utility's transportation of gas or electricity is a "transportation service" specifically excluded from the exemption set out in this rule Iowa Code section 423.3(70).

EXAMPLE 2. Consumer ABC contracts with utility DEF for DEF to provide electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for transport of electricity as well and constitutes separate sales of electricity and transportation services. In these circumstances, amounts which ABC pays DEF for transport of the electricity are taxable gross receipts. ~~This transportation service would ordinarily then be excluded from tax under the exemption set out in this rule; however, separate transportation charges for transportation of electricity are excluded from the exemption (as of May 20, 1999, and are thereafter taxable).~~

EXAMPLE 3. As in Example 2, consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids, ownership of the electricity to pass to ABC in Cedar Rapids. Also, as in Example 2, the contract between ABC and DEF states varying prices to be paid for the purchase and transportation of varying amounts of electricity and constitutes separate sales of electricity and transportation services. Transport of the electricity will be by way of GHI's transmission lines. DEF contracts with GHI for the transport of the electricity to ABC's plant in Cedar Rapids. At the time the contract is signed, GHI asks DEF for an exemption certificate stating that DEF will resell GHI's transportation service to ABC. GHI must either secure the certificate or collect Iowa sales tax from DEF. GHI is furnishing a taxable electricity transportation service to DEF which DEF will in turn furnish to ABC. DEF must collect tax from ABC.

EXAMPLE 4. In this example, the same contract exists between ABC and DEF as exists in Example 3. However, in this example, a breakdown at DEF's plant in Mason City prevents DEF from generating the electricity which it is contractually obligated to provide to ABC. DEF is forced to purchase both electricity and its transport from JKL. The contract between DEF and JKL states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for the transport of this electricity as well and constitutes separate sales of electricity and transportation services. JKL asks DEF for an exemption certificate stating that DEF has purchased the electricity and its transport for resale to ABC. In this case, JKL must secure an exemption certificate from DEF to avoid collecting tax on its sale and transport of the electricity for DEF.

EXAMPLE 5. Again, ABC and DEF have contracted, as they did in Example 2, for DEF to sell and transport electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount which ABC pays to DEF is taxable as the entire amount paid is for the sale of tangible personal property. See Clarion Ready Mixed and Schemmer, generally, above.

EXAMPLE 6. Manufacturer EFG contracts with utility DEF for the purchase of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Osceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas which is transported to its plant in processing the goods tangible personal property manufactured there. The receipts which EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing. In addition, utility DEF charges manufacturer EFG \$9.95 as a delivery fee for the gas. Since the purchase of the gas has a 92 percent exemption from Iowa sales tax because of a 92 percent usage in processing, 92 percent of the delivery charge of \$9.95 is also exempt from tax.

This rule is intended to implement Iowa Code sections ~~422.43 and 423.2, and section 422.45 as amended by 2001 Iowa Acts, House File 705~~ and 423.3.

REVENUE DEPARTMENT[701](cont'd)

ITEM 53. Rescind and reserve rule **701—15.14(422,423)**.

ITEM 54. Amend rule 701—15.15(422) as follows:

701—15.15(422 423) Premiums and gifts. A person who gives away or donates tangible personal property, specified digital products, or taxable services shall be deemed to be a consumer of such property, products, or services for tax purposes. The gross receipts sales price from the sale of tangible personal property, specified digital products, or taxable services to such persons for such purposes shall be subject to tax.

When a retailer purchases tangible personal property, a specified digital product, or a taxable service, exclusive of tax, for the purpose of resale in the regular course of business and later gives it away or donates it, the retailer shall include in the return the value of the property, product, or service at the retailer's cost price.

When a retailer sells tangible personal property, specified digital products, or taxable services and furnishes a premium with the property, product, or service sold, the retailer is considered to be the ultimate consumer or user of the premium furnished.

This rule is intended to implement Iowa Code sections ~~422.42 and 422.43~~ 423.1 and 423.2.

ITEM 55. Rescind and reserve rules **701—15.15(422)** to **701—15.20(422,423)**.

ITEM 56. Rescind and reserve rule **701—17.21(422)**.

ITEM 57. Amend rule 701—30.6(423) as follows:

701—30.6(423) Bracket system to be used by registered vendors. A registered vendor who has occasion to sell tangible personal property or enumerated services rendered, furnished or performed in Iowa or products or results of enumerated taxable services rendered, furnished or performed may use the bracket system specified in 701—14.2(422) maintained by the department, which was adopted under the provisions of the Iowa retail sales tax law. The registered seller shall be required to remit tax to the department at the current rate applied to the purchase price of all taxable property or enumerated services rendered, furnished or performed in Iowa or the products or results of all enumerated taxable services sold.

~~The registered seller shall be required to remit tax to the department at the current rate applied to the purchase price of all taxable property or enumerated services rendered, furnished or performed in Iowa or the products or results of all enumerated taxable services sold.~~

This rule is intended to implement Iowa Code sections ~~422.68(1)~~, section 423.2 and ~~423.23~~.

ITEM 58. Amend rule 701—40.77(422) as follows:

701—40.77(422) Exclusion of biodiesel production refund. A taxpayer may exclude, to the extent included in federal adjusted gross income, the amount of the biodiesel production refund described in rule ~~701—12.18(423)~~ 701—250.1(423).

This rule is intended to implement Iowa Code section 422.7 ~~as amended by 2011 Iowa Acts, Senate File 531.~~

ITEM 59. Amend rule 701—53.26(422) as follows:

701—53.26(422) Exclusion of biodiesel production refund. A taxpayer may exclude, to the extent included in federal taxable income, the amount of the biodiesel production refund described in rule ~~701—12.18(423)~~ 701—250.1(423).

This rule is intended to implement Iowa Code section 422.35 ~~as amended by 2011 Iowa Acts, Senate File 531.~~

ITEM 60. Amend subrule 108.2(6) as follows:

108.2(6) Administration of the tax. The local option school infrastructure sales and service tax is to be imposed on the gross receipts of sales of tangible personal property sold within the local option jurisdiction and upon the gross receipts from services rendered, furnished, or performed within the local

REVENUE DEPARTMENT[701](cont'd)

option jurisdiction. This tax may only be imposed by a county in the manner set forth previously in this rule. The tax may not be imposed on any transaction not subject to state sales tax. Effective May 1, 1999, transactions involving the use of natural gas, natural gas services, electricity or electric service are subject to a local excise tax that is to be imposed on the same basis as the state use tax, unless the sale or use involved in such transactions is subject to a franchise fee or user fee during the period the franchise fee or user fee is imposed. Except as otherwise provided in this chapter, all references to local option school infrastructure tax also include local excise tax and all rules governing the administration and collection of local option school infrastructure tax are also applicable to local excise tax. For further details, see 701—108.5(422E). With the exception of the natural gas and electric related transactions previously mentioned, there is no local option use tax. ~~See rule 701—14.2(422,423) for a tax table setting forth the combined rate for a state sales tax of 5 percent and the local sales tax rate of 1 percent.~~ Frequency of deposits and quarterly reports of local option tax filed with the department of revenue are governed by the retail sales tax provisions found in Iowa Code section 422.52. Local option tax collections shall not be included in the computation of the total tax to determine the frequency of the filing under Iowa Code section 422.52.

Prior to April 1, 2000, a local option school infrastructure tax cannot be imposed until 40 days after there has been a favorable election to impose the tax. All local option school infrastructure tax must be imposed January 1, April 1, July 1, or October 1. The tax can be repealed only on March 31, June 30, September 30, or December 31. However, this tax must not be repealed before the tax has been in effect for one year. For imposition and repeal date restrictions on or after April 1, 2000, see subrule 108.2(3).

ITEM 61. Amend rule 701—213.16(423) as follows:

701—213.16(423) Repossessed goods.

213.16(1) *Sale subject to tax.* When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the sales price from those sales is subject to tax.

213.16(2) *Bad debts.* A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer that has paid tax to the department upon a sales price which ultimately constitutes a bad debt. ~~Reference rule 701—15.4(422,423) for a description of the circumstances under which bad debts are and are not allowed as a credit on tax paid.~~

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

ITEM 62. Amend rule 701—231.10(423) as follows:

701—231.10(423) Exempt sales of prizes.

231.10(1) *In general.* The sales price from sales of tangible personal property, specified digital products, or services which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B is exempt from tax. See department of inspections and appeals' 481—Chapters 100 through 106, ~~Iowa Administrative Code,~~ for a description of the games of skill, games of chance, raffles, and bingo games which are lawful. See rule 481—100.6(99B) for a description of the prizes which may be lawfully awarded.

231.10(2) *Gift certificates.* A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize and then redeems the gift certificate for merchandise, tax is payable at the time the gift certificate is redeemed. ~~Reference 701—15.16(422,423).~~

This rule is intended to implement 2005 Iowa Code ~~subsection~~ section 423.3(62).

ITEM 63. Amend subrule 231.15(5) as follows:

231.15(5) *Calculating taxable and exempt sales price—discounts, coupons, buying at a reduced price, and rebates.*

a. Discounts. A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to \$99.99 or less, the item may qualify for the exemption. For example, a customer buys a \$150 dress and a \$100 blouse from a retailer offering a 10 percent discount. After applying the 10 percent discount, the final sales price of the

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dress is \$135, and the blouse is \$90. The dress is taxable (it is over \$99.99), and the blouse is exempt (it is less than \$99.99). ~~Reference rule 701—15.6(422,423) for a definition of the word “discount” and a description of which retailers’ reductions in price are discounts which reduce the taxable sales price of items and which are not.~~

b. Coupons. When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount if the retailer is not reimbursed for the coupon amount by a third party. Therefore, a retailer’s coupon can be used to reduce the sales price of an item to \$99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at \$110 with a coupon worth \$20 off, the final sales price of the shoes is \$90, and the shoes qualify for the exemption. A manufacturer’s coupon cannot be used to reduce the sales price of an item. ~~Reference 701—subrule 15.6(3).~~

c. No change.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for \$110 and receives a \$12 rebate from the manufacturer. The retailer must collect tax on the \$110 sales price of the sweater. ~~Reference 701—subrule 15.6(2) 212.3(2)~~ for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for (reference rule 701—15.13(422,423) for explanation) are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

ITEM 64. Amend subrule 231.16(4) as follows:

231.16(4) Qualifying and nonqualifying usage.

a. Proration formula. Customers that have both qualifying and nonqualifying usage on the same meter or fuel tank are subject to a proration formula to obtain the qualifying portion eligible for the phase-out provisions. In these situations, the percentage of qualifying usage must be determined by the purchaser for the purposes of applying the phase-out tax. Nonqualifying usage would be subject to the full state tax rate. Consequently, a proration of the metered gas, electricity or fuel usage for the qualifying and the nonqualifying usage must be calculated by the purchaser. ~~Reference 701—subrules subrule 15.3(4) and 15.4(5)~~ for guidance on proration of electricity, natural gas and fuels. In addition, the purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas or electricity that is eligible for the phase-out provisions. Reference 701—subrule 15.3(2). The customer may provide a calculation which includes only the usage not subject to phase-out.

b. Percentage of usage. The customer must notify the utility provider of the percentage of qualifying and nonqualifying usage and the customer has the burden of proof regarding the percentage. The customer is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the utility provider in writing of the percentage of qualifying or nonqualifying usage.

c. Security lights. Security lights used by customers that are billed as a flat rate tariff will be subject to the phase-out if the customer is classified as a residential customer. However, if a customer uses security lights which are billed as a flat rate tariff and that customer is classified as a commercial customer, the sales price including the usage of the security lights is not subject to the phase-out of state sales tax and is subject to the full state sales tax rate, unless another exemption from state sales tax is applicable.

ARC 5788C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rule making related to discounted tobacco products
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 83, “Tobacco Tax,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 453A.49.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 453A.42.

Purpose and Summary

The Department regularly audits or examines returns filed and tax remitted for the tax imposed on tobacco products under Iowa Code chapter 453A, subchapter II. The Department recently noticed an inconsistency in the application of the price on which tax due should be calculated. To provide clarity going forward, the Department proposes new subrule 83.4(2) so all taxpayers know how the Department will calculate tax due for sales of tobacco products.

Iowa Code section 453A.42(18) defines “wholesale sales price” as “the established price for which a manufacturer sells a tobacco product to a distributor, *exclusive of any discount or other reduction*” (emphasis added). Thus, for a product sold by a manufacturer to a distributor at both a wholesale sales price and a lower price, often described as a “prepriced price” or “discounted price,” the tax should be calculated based on the wholesale sales price. This proposed rule making establishes how the Department will determine whether products are identical and priced at a discount and provides several examples to help taxpayers understand how the subrule will be applied.

Fiscal Impact

This proposed rule making will result in an increase in tobacco tax revenue of approximately \$325,000 in FY 2022 and about that much going forward. These revenues are deposited in the Health Care Trust Fund.

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 701—7.28(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 August 17, 2021. Comments should be directed to:

REVENUE DEPARTMENT[701](cont'd)

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.782.0535
Email: tim.reilly@iowa.gov

Public Hearing

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

August 17, 2021
2 to 3 p.m.

Via video/conference call

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

Any persons who intend to attend 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:

ITEM 1. Adopt the following **new** subrule 83.3(3):

83.3(3) Discounted tobacco products.

a. A tobacco product sold by manufacturers to distributors that is discounted shall be taxed at the highest wholesale sales price for that product. A tobacco product is discounted when, compared to an identical product on the price list, it has a lower wholesale sales price. For purposes of this rule, tobacco products are identical if they consist of the same ingredients and are sold as the same package size on the price list, irrespective of the price printed on the box, the manufacturer's suggested retail price provided to the retailer, the stock keeping unit or universal product code or similar codes used by the manufacturer, the type of packaging used, the name of the product as marketed, the geographic distribution, the target customer, or the length of the time of the promotion.

b. When analyzing whether a tobacco product is discounted for purposes of this rule, the department will consider the manufacturer's characterization of the tobacco product on the price list, but the manufacturer's characterization of the tobacco product will not be controlling in the department's determination. Examples of discounted tobacco products include, but are not limited to, prepriced cigars and reduced-price multipacks of tobacco products where the manufacturer sells an identical product on the price list at a higher wholesale sales price.

EXAMPLE 1: Manufacturer, Inc. sells XYZ Product cigars in 25-count packages as both a prepriced product and a regular-priced product. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for the prepriced product is listed as \$480 and the wholesale sales price for the regular-priced product is listed as \$605. The prepriced XYZ Product is a discounted cigar product and shall be taxed at the higher wholesale sales price of \$605.

EXAMPLE 2: Manufacturer, Inc. sells ABC Product cigars in 25-count packages. ABC Product is prepriced at \$.99 and \$1.19. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for ABC Product at \$.99 is listed as \$346 and the wholesale sales price for ABC

REVENUE DEPARTMENT[701](cont'd)

Product at \$1.19 is listed as \$360. ABC Product cigars, at both prepriced price points, shall be taxed at the higher wholesale sales price of \$360.

EXAMPLE 3: Manufacturer, Inc. sells H Product cigarillos in two 30-count packages as prepriced products and as “save on two” products. Prepriced H Product includes 2/\$.99 and 2/\$1.49. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for H Product at 2/\$.99 is listed as \$190, the wholesale sales price for H Product at 2/\$1.49 is listed as \$207, and the wholesale sales price for H Product as “save on two” is listed as \$350. H Product cigarillos shall be taxed at the highest wholesale sales price of \$350.

EXAMPLE 4: Manufacturer, Inc. sells multipacks of J Product cigarillos. The J Product multipacks are sold as five-packs, and some of the five-packs are labeled as “five for the price of three.” The wholesale sales price of the five-packs of J Product that are not labeled as discounted have a higher wholesale sales price than the five-packs of J Product that are labeled as “five for the price of three.” The five-packs labeled as “five for the price of three” shall be taxed at the higher wholesale sales price of J Product five-packs that are not labeled as discounted.

ITEM 2. Amend rule **701—83.3(453A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~section~~ sections 453A.42(18) and 453A.43.

ARC 5804C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to minor’s school licenses and chauffeur’s and commercial driver’s licenses and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 602, “Classes of Driver’s Licenses,” Chapter 604, “License Examination,” Chapter 605, “License Issuance,” and Chapter 607, “Commercial Driver Licensing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 321.182, 321.188 and 321.196.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.1 as amended by 2021 Iowa Acts, House File 389; 321.188 as amended by 2021 Iowa Acts, House File 280, section 1; 321.194 as amended by 2021 Iowa Acts, Senate File 231, sections 1 and 2; and 321.196 as amended by 2021 Iowa Acts, House File 280, section 2.

Purpose and Summary

This proposed rule making amends Chapters 602, 604, 605 and 607. The following paragraphs explain the proposed amendments.

Minor’s school license for farm work. The proposed amendments update Chapter 602 to conform the rules with 2021 Iowa Acts, Senate File 231, sections 1 and 2, which amend the permitted operations of a minor’s school license to include driving for farm-related purposes if the person resides on or is employed by a farm, provided that the driving distance between the point of origin and destination is no greater than 50 miles. Prior to the 2021 legislation, driving for farm-related purposes was not a permitted operation of a minor’s school license.

Chauffeur’s driver’s license. The proposed amendments update Chapters 602, 604, 605 and 607 to conform the rules with 2021 Iowa Acts, House File 389, which amends the definition of “chauffeur” within Iowa Code section 321.1(8). This legislation eliminates the need for a person to obtain a Class D-1 or D-2 chauffeur’s license. A noncommercial Class C license will now be sufficient to operate

TRANSPORTATION DEPARTMENT[761](cont'd)

commercial driver's license (CDL)-exempt truck-tractor semitrailer combination vehicles for farm work and large noncommercial straight trucks (26,000 pounds gross vehicle weight rating or less). A person still needs a Class D-3 chauffeur's license if that person operates a motor vehicle to transport 15 or fewer persons (including the driver) for wages, compensation, or hire and does not meet one of the exemptions in Iowa Code section 321.1(8).

Online commercial driver's license renewal. The proposed amendments update Chapter 605 to conform the rules with 2021 Iowa Acts, House File 280, sections 1 and 2. This legislation authorizes the Department to renew CDLs electronically. Prior to the 2021 legislation, holders of CDLs were prohibited from renewing their driver's licenses electronically even though online renewal has been an option for holders of noncommercial driver's licenses for several years. The proposed amendments align the online CDL renewal rules with the existing online renewal rule for noncommercial driver's licenses and add a few additional requirements that are specific to CDLs. Namely, a person who holds a CDL with a hazardous material or combination hazardous material and tank endorsement will not be permitted to renew the CDL online. This is because federal regulations require a person with a CDL hazardous material or combination hazardous material and tank endorsement to retake the hazardous materials knowledge test at each renewal. The proposed amendments also prevent a person holding a commercial learner's permit (CLP) from renewing a CLP online. This is because CLPs are already issued for the federally authorized maximum validity period of one year and therefore cannot be renewed. Rather, if a CLP holder needs the CLP beyond one year, a new CLP must be issued.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond any impact anticipated by the legislation.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found beyond any impact anticipated by the statutory change in 2021 Iowa Acts, Senate File 231.

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 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 17, 2021. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on August 19, 2021, at 9 a.m. via conference call. Persons who wish to participate in the conference call should contact Tracy George

TRANSPORTATION DEPARTMENT[761](cont'd)

before 4:30 p.m. on August 17, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **602.12(1)“b”** as follows:

b. The license shall have one endorsement authorizing a specific type of motor vehicle or type of operation, as listed in 761—subrule 605.7(3). ~~The gross vehicle weight rating shall be determined pursuant to rule 761—604.35(321).~~

ITEM 2. Amend rule **761—602.12(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1 as amended by 2021 Iowa Acts, House File 389, 321.177, 321.189, and 321.196.

ITEM 3. Amend rule 761—602.26(321) as follows:

761—602.26(321) Minor's school license.

602.26(1) Validity and issuance.

a. and *b.* No change.

c. The type of motor vehicle that may be operated is controlled by the class of driver's license issued, except that Iowa Code section 321.194 as amended by 2021 Iowa Acts, Senate File 231, section 1, prohibits a licensee from operating a motor vehicle with more than two axles or a motor vehicle towing another vehicle. A Class C minor's school license is valid for operating a motorcycle only if the license has a motorcycle endorsement. A minor's school license is valid for operating a motorized bicycle.

d. No change.

602.26(2) Requirements.

a. No change.

b. An applicant who attends a public school shall submit a statement of necessity signed by the chairperson of the school board, the superintendent of the school, or the principal of the school if authorized by the superintendent. An applicant who attends an accredited nonpublic school shall submit a statement of necessity signed by an authority in charge of the accredited nonpublic school or a duly authorized representative of the authority. The statement shall be on Form 430021. The requirements of this paragraph apply to any applicant seeking to use the license for the purposes set forth in Iowa Code section 321.194(2) “a” as amended by 2021 Iowa Acts, Senate File 231, section 2.

c. and *d.* No change.

602.26(3) No change.

602.26(4) Multiple residences.

a. and *b.* No change.

c. A minor's school license approved for travel to and from two residences for the purposes set forth in Iowa Code section 321.194 shall not be valid for travel directly between each residence unless the licensee is accompanied in accordance with Iowa Code section 321.180B(1) or unless the travel is for

TRANSPORTATION DEPARTMENT[761](cont'd)

the purposes set forth in and subject to the limitations of Iowa Code section 321.194(2) "a" as amended by 2021 Iowa Acts, Senate File 231, section 2.

d. No change.

This rule is intended to implement Iowa Code sections 321.177, 321.180B, 321.189, 321.194 as amended by 2021 Iowa Acts, Senate File 231, and 321.196.

ITEM 4. Amend paragraph **604.21(1)"c"** as follows:

c. *Chauffeur's test.* A chauffeur's knowledge test is required for all:

(1) ~~Chauffeur's chauffeur's~~ instruction permits.

(2) ~~Class D driver's licenses except those with an endorsement for "passenger vehicle less than 16-passenger design."~~

ITEM 5. Amend rule **761—604.21(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1(8) as amended by 2021 Iowa Acts, House File 389, 321.180, 321.180A, 321.180B, 321.186, 321.189, 321.196 and 321.198.

ITEM 6. Amend subrule 605.7(3) as follows:

605.7(3) *For a Class D driver's license (chauffeur).* The following ~~endorsements~~ endorsement may be added to a Class D driver's license using ~~these~~ this number ~~codes~~ code:

~~1—Truck tractor semitrailer combination~~

~~2—Vehicle with 16,001 pounds gross vehicle weight rating or more. Not valid for truck tractor semitrailer combination~~

3—Passenger vehicle less than 16-passenger design

ITEM 7. Amend rule **761—605.7(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1(8) as amended by 2021 Iowa Acts, House File 389, 321.180, and 321.189.

ITEM 8. Amend subrule 605.25(7), introductory paragraph, as follows:

605.25(7) The department may determine means or methods for electronic renewal of a noncommercial driver's license.

ITEM 9. Adopt the following new subrule 605.25(8):

605.25(8) The department may determine means or methods for electronic renewal of a commercial driver's license.

a. An applicant who is otherwise eligible to renew a commercial driver's license must meet the same eligibility requirements for renewing a noncommercial driver's license listed in paragraph 605.25(7) "*a*" to renew the license electronically and must also meet the following criteria:

(1) The applicant is not subject to any of the following restrictions or endorsements:

H—Hazardous material

X—Hazardous material and tank

(2) The applicant does not also hold a valid commercial learner's permit under Iowa Code section 321.180(2) as documented by restriction 3 on the commercial driver's license.

(3) An applicant self-certifying to non-excepted interstate driving has a valid medical certificate on file with the department as required under rule 761—607.50(321).

b. The requirements in paragraphs 605.25(7) "*c*" and 605.25(7) "*d*" shall also apply to a license issued under this subrule.

ITEM 10. Amend rule **761—605.25(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.186; 321.188 as amended by 2021 Iowa Acts, House File 280, section 1; and 321.196; as amended by 2021 Iowa Acts, House File 280, section 2; the REAL ID Act of 2005 (49 U.S.C. Section 30301 note); and 6 CFR Part 37.

ITEM 11. Amend paragraph **607.16(2)"c"** as follows:

c. A Class C commercial driver's license allows a person to operate a commercial motor vehicle as specified in Iowa Code paragraph 321.189(1) "*c*." With the required endorsements and subject to the applicable restrictions, a Class C commercial driver's license is valid to operate any vehicle except a

TRANSPORTATION DEPARTMENT[761](cont'd)

~~truck-tractor-semitrailer combination as a chauffeur (Class D) or a vehicle requiring a Class A or Class B commercial driver's license.~~

ITEM 12. Amend rule ~~761—607.16(321)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1(8) as amended by 2021 Iowa Acts, House File 389, 321.177, 321.182, 321.188, 321.189, 321.196, and 321.449 and 2013 Iowa Acts, chapter 104, section 2.

ARC 5805C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to airports and aircraft registration and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 720, "Iowa Airport Registration," and Chapter 750, "Aircraft Registration," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 328.12 and 328.19.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 328.

Purpose and Summary

This proposed rule making affects Chapters 720 and 750 and reflects the organizational change of the Modal Transportation Bureau.

The proposed amendments to Chapter 720 revise rules concerning repayment of financial assistance associated with airport closings by removing date references that are no longer applicable because only one airport was closed during the time period between July 1, 2015, and October 4, 2017. That airport (the Onawa Municipal Airport) already applied for and received forgiveness of financial assistance from the Department.

Other amendments to Chapter 720 update references to the Federal Aviation Administration (FAA) Advisory Circular 150/5340-1L (Standards for Airport Markings) to the most current version, 150/5340-1M as amended on May 10, 2019. The FAA recommends the standards and guidelines in the advisory circular to establish uniform application of airfield surface markings for runways, taxiways and aprons. Version 150/5340-1M incorporates numerous changes, including:

- Adding a new criterion for centering runway landing designators (common industry practice).
- Adding a new definition of no-taxi islands applicable to this advisory circular.
- Adding a new red safety box that instructs airport operators not to apply preformed thermoplastic markings on runways because these markings significantly reduce pavement friction as compared with bare pavement.
 - Making the recommendation for training of personnel who apply surface markings.
 - Clarifying that all surface markings painted with the use of stencils are not to leave stencil gaps.
 - Clarifying requirements for black borders.
 - Adding an explanation of the functions and applications of no-taxi islands to mitigate runway incursions and taxiing excursions.
 - Deleting previous criteria for no-taxi islands.
 - Adding "Engineered Materials Arresting Systems" as another example of paved areas prior to the runway end.

TRANSPORTATION DEPARTMENT[761](cont'd)

- Clarifying the functions of a displaced threshold, the location where a displaced threshold begins as compared with where a nondisplaced threshold begins, and the use of arrow shafts.
- Adding criteria for replacing surface marking patterns to protect the approach zones and departure areas of runways.
- Adding criteria for enhancing the visual cues for runway approach zones and runway safety areas.
- Revising text to align with the FAA criterion for enhanced taxiway centerline surface markings that are collinear with on-centered surface painted holding position signs.
- Adding an instructional green box with guidance on how to relocate surface painted holding position signs between the two taxiway width categories (off-taxiway centerline placement and on-taxiway centerline placement).
- Adding a new criterion for when a taxiway edge marking is located at a runway holding position to read “a 6-inch (12 cm) gap is left between the holding position marking and the taxiway edge marking.”
- Revising the criterion for a 600-foot runway visual range to a 500-foot runway visual range.
- Adding more guidance regarding when to remove existing runway markings for a runway that has been closed or for an intersecting runway that has been closed.
- Clarifying the design criteria for building taxiways and taxiway intersections with cockpit-over centerline fillets and the marking criteria for using curved taxiway centerline markings.
- Emphasizing the design criteria for the standard width of taxiway entrances with a no-taxi island between entrance taxiways to a runway.
- Reinforcing placement of a vertical sign at runway holding position locations.
- Removing taxiway centerline marking between the surface painted holding position sign and the runway holding position marking.
- Making minor editorial changes throughout.

The proposed amendments to Chapter 750 add a definition of “specified minimum level of aviation services to the general public” for the purpose of aircraft registration fee computations. The definition includes the use of aircraft providing nonagricultural aviation services, including aircraft rental, flight training, or passenger and cargo air carrier operations.

An aviation business that owns and operates aircraft at a publicly owned, public-use airport and that provides, under agreement with the governing body of that airport, a specified minimum level of aviation services to the general public may be eligible for a special annual aircraft registration fee of \$100 pursuant to Iowa Code section 328.21(8). In recent years, a small number of Iowa-resident aerial applicators have sought to make agreements, or had already made agreements, with publicly owned airports to provide services such as airport management, fueling, aircraft maintenance, flight training, and air charter operations in order to qualify for this special registration fee for aerial application aircraft. At the same time, all nonresident owners and most resident owners of aerial application aircraft pay standard aircraft registration fees for business use based on standard fee computations. The result has been the development of an uneven playing field for aerial applicator registration fees, the creation of what appear to be inappropriate operating agreements in an attempt to qualify for the special fee, and the loss of revenue from aircraft registration fees going into the State Aviation Fund.

The State Aviation Fund directs 100 percent of aircraft registration fees and aviation fuel taxes to aviation safety programs and airport infrastructure programs providing critical support to aerial application operations in Iowa. The loss of revenue from aerial applicators trying to utilize the special fee has reduced revenue flow into aviation system programming, and the losses are increasing every year.

Other proposed amendments to Chapter 750 add a new rule requiring aircraft dealer special certificate holders to prove that an aircraft has not been in an inventory for a period of more than 24 calendar months when making application to the Department for a special certificate. The 24-month limit removes the considerable incentive for an aircraft owner to carry an aircraft in a special certificate dealer inventory in lieu of properly registering an aircraft. For several years, the Department has seen a pattern of aircraft owners applying for and using aircraft dealer special certificates in order to avoid paying annual aircraft registration fees and the one-time 6 percent use tax levied against the purchase price of an aircraft. The

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Department believes 24 calendar months is a reasonable time period for bona fide aircraft dealers to hold aircraft in a special certificate inventory. Aircraft held for longer periods of time are likely being held as investments or restoration projects and should be ineligible for the special certificate.

Fiscal Impact

The proposed amendments related to aircraft registration fee computations will have a fiscal impact to the State of Iowa of \$27,575 annually or \$137,875 over five years. The increased fee collections will be deposited into the State Aviation Fund for investment into Iowa's air transportation system, which includes facilities and services used by aerial applicators. The assumption is that 25 of the 350 aerial application aircraft registered with the Department will become ineligible for the special fee and owners of these aircraft will begin paying a standard business fee computation averaging \$1,203, instead of a \$100 special fee.

Estimates of increased revenue to the State Aviation Fund related to the proposed 24-month limit for aircraft dealer special certificate inventories vary widely because they are dependent on the value of individual aircraft that will need to be registered because the affected aircraft will no longer be eligible to be held in an aircraft dealer special certificate inventory and the aircraft will become subject to the standard business fee computation. It is therefore difficult to estimate the fiscal impact of limiting the time that aircraft can be held in special certificate inventories.

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.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 17, 2021. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on August 19, 2021, at 1 p.m. via conference call. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on August 17, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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

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

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

TRANSPORTATION DEPARTMENT[761](cont'd)

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 720.4(1) as follows:

720.4(1) Application for site approval. The sponsor shall complete Iowa Department of Transportation Form 300025, "Airport Site Approval and New Registration Application," and submit it to the ~~office of aviation~~ modal transportation bureau. This form is available from the ~~Office of Aviation~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1468; or through the department's ~~Web site~~ website at www.iowadot.gov.

ITEM 2. Amend rule 761—720.5(328) as follows:

761—720.5(328) Private-use airport. This rule applies to a proposed, new airport to be maintained for private use. The sponsor shall complete an application for a certificate of site approval on Form 300025 and submit it to the ~~office of aviation~~ modal transportation bureau. In the application, the sponsor shall certify that the airport, when completed, will be safe and adequate for the sponsor's intended use.

ITEM 3. Amend paragraph **720.10(2)"b"** as follows:

b. Marking.

(1) Paved runways. Paved runways shall be marked in accordance with FAA Circular ~~150/5340-1L~~ 150/5340-1M (Standards for Airport Markings) as amended through ~~September 27, 2013~~ May 10, 2019.

(2) Nonpaved runways. Airport markers shall be approved by the ~~office of aviation~~ modal transportation bureau. Markers shall be placed 200 feet apart outlining the length of the landing surface. Thresholds shall be marked using six markers placed perpendicular to the runway heading.

ITEM 4. Amend paragraph **720.10(3)"a"** as follows:

a. Approaches shall be clear of obstructions above a glide path of 20:1 from the ends of each usable runway. If an obstruction exists in an approach zone, the runway threshold on a paved runway shall be displaced in accordance with FAA Advisory Circular ~~150/5340-1L~~ 150/5340-1M (Standards for Airport Markings) as amended through ~~September 27, 2013~~ May 10, 2019. On a nonpaved runway, the runway end markers shall be relocated to provide the prescribed obstruction clearance. The runway length remaining between the displaced threshold and the departure end of the runway is the landing distance available.

ITEM 5. Amend rule 761—720.15(328) as follows:

761—720.15(328) Airport closing.

720.15(1) No change.

720.15(2) Marking. All marking indicating a usable runway shall be obliterated. The sponsor shall place at a central location a yellow X in accordance with FAA Advisory Circular ~~150/5340-1L~~ 150/5340-1M (Standards for Airport Markings) as amended through ~~September 27, 2013~~ May 10, 2019.

720.15(3) Temporary closing. When conditions require the temporary closing of a runway, it shall be marked on both ends with a yellow X in accordance with FAA Advisory Circular ~~150/5340-1L~~ 150/5340-1M (Standards for Airport Markings) as amended through ~~September 27, 2013~~ May 10, 2019.

720.15(4) Repayment of financial assistance.

a. ~~Review of closure on or after October 4, 2017.~~ Within 30 days of closing an airport (other than temporary closing), the sponsor shall request from the department a review of contractual obligations that require repayment of financial assistance. The department will provide a determination detailing grant obligations that must be repaid. Any repayment of grants must be made to the department in no more

TRANSPORTATION DEPARTMENT[761](cont'd)

than five equal annual installments, beginning one year from the airport's closure date. If an alternative future use of the airport facility is planned for a project that creates jobs and expands the economy, the sponsor may, within 30 days of the department's determination, request forgiveness of repayment. The request must include a plan detailing the alternative future use of the airport facility, an explanation of how the alternative future use creates jobs and expands the economy, a cost-benefit analysis from the sponsor, a commitment of private investment in the project equal to at least two times the amount of repayment due to the state, and a commitment from the sponsor, or associated political subdivision(s), to complete the alternative use project within five years. The department will review the request for forgiveness of repayment and approve or deny the request within 60 days of receipt.

~~b.—Review of closure after July 1, 2015, and before October 4, 2017. An airport that closed after July 1, 2015 (other than temporary closing), but before October 4, 2017, is eligible to request forgiveness for repayment of financial assistance from the department. By November 3, 2017, the sponsor shall request from the department a review of contractual obligations that require repayment of financial assistance. The department will provide a determination detailing grant obligations that must be repaid. Any repayment of grants must be made to the department in no more than two equal annual installments, beginning one year from October 4, 2017. If an alternative future use of the airport facility is planned for a project that creates jobs and expands the economy, the sponsor may, within 30 days of the department's determination, request forgiveness of repayment. The request must include a plan detailing the alternative future use of the airport facility, an explanation of how the alternative future use creates jobs and expands the economy, a cost-benefit analysis from the sponsor, a commitment of private investment in the project equal to at least two times the amount of repayment due to the state, and a commitment from the sponsor, or associated political subdivision(s), to complete the alternative use project within five years. The department will review the request for forgiveness of repayment and approve or deny the request within 60 days of receipt.~~

ITEM 6. Amend rule 761—750.1(328) as follows:

761—750.1(328) Purpose. This chapter establishes the procedures for registration of civil aircraft pursuant to Iowa Code chapter 328.

This rule is intended to implement Iowa Code chapter 328.

ITEM 7. Amend rule 761—750.2(328) as follows:

761—750.2(328) Definitions. The definitions in Iowa Code section 328.1 apply to this chapter of rules. In addition, the following definition is established for the purpose of Iowa Code section 328.21(8) and subrule 750.10(3):

“Specified minimum level of aviation services to the general public” means the use of aircraft that provide nonagricultural aviation services including aircraft rental, flight training, or passenger and cargo air carrier operations.

This rule is intended to implement Iowa Code ~~section~~ sections 328.1 and 328.21(8).

ITEM 8. Amend rule 761—750.3(17A) as follows:

761—750.3(17A) Information and forms. Information, instructions and forms are available from the ~~office of aviation~~ modal transportation bureau or on the department's ~~Web site~~ website at www.iowadot.gov. Application forms may also be obtained from aircraft dealers. The mailing address for aircraft registration is: Iowa Department of Transportation, ~~Office of Aviation~~ Modal Transportation Bureau, Aircraft Registration, 800 Lincoln Way, Ames, Iowa 50010.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 9. Renumber rule ~~761—750.30(328)~~ as **761—750.31(328)**.

ITEM 10. Adopt the following new rule 761—750.30(328):

761—750.30(328) Application for special certificate. When applying to the department for a special certificate, the applicant must submit reasonable proof of bona fide status as a manufacturer, transporter

TRANSPORTATION DEPARTMENT[761](cont'd)

or dealer. Dealer applicants must verify that no aircraft have been held in a dealer special certificate inventory for a period of more than 24 calendar months.

This rule is intended to implement Iowa Code section 328.29.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Jeff Plagge, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for July is 3.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective July 9, 2021, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .05%
More than 397 days	Minimum .05%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

USURY(cont'd)

August 1, 2020 — August 31, 2020	2.75%
September 1, 2020 — September 30, 2020	2.50%
October 1, 2020 — October 31, 2020	2.75%
November 1, 2020 — November 30, 2020	2.75%
December 1, 2020 — December 31, 2020	2.75%
January 1, 2021 — January 31, 2021	2.75%
February 1, 2021 — February 28, 2021	3.00%
March 1, 2021 — March 31, 2021	3.00%
April 1, 2021 — April 30, 2021	3.25%
May 1, 2021 — May 31, 2021	3.50%
June 1, 2021 — June 30, 2021	3.75%
July 1, 2021 — July 31, 2021	3.50%
August 1, 2021 — August 31, 2021	3.50%

ARC 5813C**UTILITIES DIVISION[199]****Notice of Intended Action****Proposing rule making related to regulation updates and providing an opportunity for public comment**

The Utilities Board hereby proposes to amend Chapter 8, “Civil Penalties,” Chapter 9, “Restoration of Agricultural Lands During and After Pipeline Construction,” Chapter 17, “Assessments,” and Chapter 38, “Local Exchange Competition,” 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 chapters 476, 477C and 479.

Purpose and Summary

The Board commences this proposed rule making to update its administrative rules following the Governor’s signature to and approval of 2021 Iowa Acts, House File 693, and to reinsert subparagraph 9.5(4)“d”(6), which was stricken in a recent rule making.

The Board issued an order on July 12, 2021, commencing this rule making. The order is available on the Board’s electronic filing system, efs.iowa.gov, under RMU-2021-0008.

Fiscal Impact

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

Jobs Impact

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

UTILITIES DIVISION[199](cont'd)

Waivers

Chapter-specific waiver provisions are unnecessary because any person may apply for waiver of any Board rule under rule 199—1.3(17A,474,476), which provides procedures for requesting a waiver of the rules in Chapters 8, 9, 17, and 38.

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 August 17, 2021. Comments should be directed to:

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITSupport@iub.iowa.gov

Public Hearing

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

September 14, 2021
11:30 a.m. to 1:30 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 8.1(5) as follows:

8.1(5) Pursuant to Iowa Code section 479.31 and in accordance with 49 CFR 190.223as amended through July 1, 2021, for a violation of the permit requirements for a pipeline or underground gas storage facility.

ITEM 2. Adopt the following **new** subparagraph **9.5(4)“d”(6)**:

(6) Before completing permanent tile repairs, all tile lines shall be examined visually by televising on both sides of the trench over the full extent of the working easement to check for tile that might have been damaged or misaligned by construction equipment. If tile lines are found to be damaged, they must be repaired to operate as well after construction as before construction.

ITEM 3. Amend subrule 17.2(9) as follows:

17.2(9) Industry direct assessments and remainder assessments for gas and electric utilities exempted from rate regulation by the board and for providers of telecommunications service required to register with the board pursuant to Iowa Code section 476.95A that are exempted from rate regulation under Iowa

UTILITIES DIVISION[199](cont'd)

Code chapter 476 shall be computed at one-half of the rate used in computing industry direct assessments and remainder assessments for other persons.

ITEM 4. Amend subrule **38.1(2)**, definition of “Competitive local exchange service provider,” as follows:

“*Competitive local exchange service provider*” means any person, including a municipal utility, that provides local exchange services, other than a local exchange carrier or a non-rate-regulated wireline provider of local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

ARC 5807C

EDUCATIONAL EXAMINERS BOARD[282]**Adopted and Filed Emergency After Notice****Rule making related to statements of professional recognition
for behavior analysts and mental health professionals**

The Educational Examiners Board hereby amends Chapter 16, “Statements of Professional Recognition (SPR),” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 272.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, Senate File 532.

Purpose and Summary

2021 Iowa Acts, Senate File 532, directs the Board to create statements of professional recognition for behavior analysts and mental health professionals.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 2, 2021, as **ARC 5667C**. A public hearing was held on June 23, 2021, at 1 p.m. in the Board Room, 701 East Court Avenue, Suite A, Des Moines, Iowa.

Emilie Souhrada, Iowa School Social Workers Association, and Denise Rathman, National Association of Social Workers, Iowa Chapter, were in attendance. Both attendees expressed their support after minor changes were drafted based on written comments.

Two written comments were received in support of the Notice with clarifying suggestions, including removing the word “school” from the catchwords of rule 282—16.10(272) and paragraph 16.1(1)“i,” removing the term “district” from paragraphs 16.10(2)“a” and 16.10(2)“c,” adding “or providing services to” regarding employment status in paragraph 16.10(2)“c,” and giving the responsibility to request authorization to “an administrator” in paragraph 16.10(2)“a.”

This rule making reflects the changes suggested through public comment.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a) and (b), the Board finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on July 8, 2021, because 2021 Iowa Acts, Senate File 532, includes language for emergency rule making, which allows the SPR to be established in a timely manner to accommodate the start of the academic year. There is a significant benefit to the public, because the earlier effective date will allow applicants to obtain the SPR prior to the start of the academic year so that essential mental health services can be provided to Iowa students immediately.

Adoption of Rule Making

This rule making was adopted by the Board on July 7, 2021.

Fiscal Impact

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

EDUCATIONAL EXAMINERS BOARD[282](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 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 282—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 became effective on July 8, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 16.1(1) as follows:

16.1(1) The following are authorizations that require or permit statements of professional recognition and licenses obtained from the professional licensure division, department of public health, or the board of nursing and that do not permit service as a teacher:

- a. School audiologist.
- b. School nurse.
- c. School occupational therapist.
- d. School physical therapist.
- e. School social worker.
- f. Special education nurse.
- g. Speech-language pathologist.
- h. School behavior analyst.
- i. Mental health professional.

ITEM 2. Adopt the following **new** rule 282—16.9(272):

282—16.9(272) School behavior analyst. A person who has obtained a master's degree and board-certified behavior analyst certification and who is licensed by the Iowa board of behavioral science may obtain a statement of professional recognition (SPR) from the board of educational examiners.

16.9(1) Authorization. The holder of this authorization can serve as a school behavior analyst to pupils from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The legalization for this support service personnel is through an SPR and not through teacher licensure.

16.9(2) Requirements.

- a. The special education director (or designee) of the school district or area education agency must submit a letter to the board of educational examiners to request that the authorization be issued.
- b. An applicant must also submit the following documents:
 - (1) A copy of a temporary or regular license from the board of behavioral science.
 - (2) An official transcript.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

c. While employed by an accredited K-12 school district or area education agency, the applicant must also maintain licensure with the Iowa board of behavioral science.

16.9(3) Validity. The SPR shall be valid for five years.

16.9(4) Temporary authorization. A temporary SPR will be issued for one school year if the class of license from the professional licensure division is temporary. A regular SPR will be issued with verification of a regular license.

ITEM 3. Adopt the following new rule 282—16.10(272):

282—16.10(272) Mental health professional. A mental health professional pursuant to Iowa Code section 228.1 who has obtained a license from a bureau under the Iowa department of public health shall obtain a statement of professional recognition (SPR) from the board of educational examiners to be employed by or provide services to an accredited public or private school.

16.10(1) Authorization. The holder of this authorization can serve as a mental health professional to pupils from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The legalization for this support service personnel is through an SPR and not through teacher licensure.

16.10(2) Requirements.

a. An administrator for the school or area education agency must submit a form to the board of educational examiners to request that the authorization be issued.

b. An applicant must also submit the following documents:

(1) A copy of a temporary or regular license from the relevant bureau of the Iowa department of public health.

(2) An official transcript.

c. While employed by or providing services to an accredited public or private school or area education agency, the applicant must also maintain licensure with the relevant bureau of the Iowa department of public health.

d. Social workers shall instead obtain the professional service license or SPR specific to school social work which includes the authorization to provide mental health services to an accredited public or private school or area education agency.

16.10(3) Validity. The SPR shall be valid for five years.

16.10(4) Temporary authorization. A temporary SPR will be issued for one school year if the class of license from the professional licensure division is temporary. A regular SPR will be issued with verification of a regular license.

[Filed Emergency After Notice 7/8/21, effective 7/8/21]

[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5795C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed Emergency

Rule making related to supervision

The Board of Social Work and Board of Behavioral Science hereby amend Chapter 31, "Licensure of Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, and Assistant Behavior Analysts," and Chapter 280, "Licensure of Social Workers," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 154C.4 and 154D.3 and 2021 Iowa Acts, House File 891.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 154C.4 and 154D.3 and 2021 Iowa Acts, House File 891.

Purpose and Summary

This rule making amends supervision requirements for social workers, mental health counselors, and marriage and family therapists to remove in-person supervision requirements and allow supervision to occur electronically. This rule making also updates language to clarify that independent-level social workers may provide supervision to mental health counselors and marriage and family therapists who are completing their postgraduate supervision requirements and vice versa, and independent-level licensed mental health counselors and marriage and family therapists can supervise social workers completing their postgraduate supervision requirements.

*Reason for Adoption of Rule Making Without
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Board of Social Work and Board of Behavioral Science find that notice and public participation are unnecessary or impractical because statute so provides.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Board of Social Work and Board of Behavioral Science also find that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on June 30, 2021, because 2021 Iowa Acts, House File 891, explicitly provides for the rules to become effective immediately upon filing.

Adoption of Rule Making

This rule making was adopted by the Board of Behavioral Science on June 10, 2021, and by the Board of Social Work on June 30, 2021.

Concurrent Publication of Notice of Intended Action

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 5794C** to allow for public comment.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board of Social Work and Board of Behavioral Science for a waiver of the discretionary provisions, if any, pursuant to 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

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making became effective on June 30, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **31.5(1)“d”** as follows:

~~d. Include a minimum of 25 percent of all clinical supervision in person.~~ Be completed in person or by electronic means.

~~(1) The first two meetings shall be face-to-face and in person.~~

(2) (1) Up to 50 percent of all supervision may be completed by telephone.

~~(3) Up to 75 percent of all supervision may be completed by electronic means.~~

(4) (2) Supervision by electronic means is acceptable if the system utilized is a confidential, interactive, secure, real-time system that provides for visual and audio interaction between the licensee and the supervisor.

ITEM 2. Rescind paragraph **31.5(2)“b.”**

ITEM 3. Reletter paragraphs **31.5(2)“c”** and **“d”** as **31.5(2)“b”** and **“c.”**

ITEM 4. Amend relettered paragraph **31.5(2)“b”** as follows:

b. Effective October 1, 2020, the supervisor shall:

(1) Be an Iowa-licensed marital and family therapist with a minimum of three years of clinical experience following licensure or shall be a supervisor or supervisor candidate approved by the American Association for Marriage and Family Therapy Commission on Supervision; or

(2) Be an Iowa-licensed mental health counselor in Iowa with at least three years of clinical experience following licensure or shall be approved by the National Board for Certified Counselors (NBCC) as a supervisor; ~~and or~~

(3) Be an Iowa-licensed social worker independent level with at least three years of clinical experience following licensure at the independent level; and

~~(3) (4)~~ Have completed at least a six-hour continuing education course in counseling supervision or one master’s level course in counseling supervision; and

(4) (5) Meet a minimum of four hours per month with the supervisee; and

~~(5) (6)~~ Provide training that is appropriate to the functions to be performed; and

~~(6) (7)~~ Ensure that therapeutic work is completed under the professional supervision of a supervisor; and

~~(7) (8)~~ Not supervise any marital and family therapy or permit the supervisee to engage in any therapy that the supervisor cannot perform competently.

ITEM 5. Amend paragraph **31.7(1)“d”** as follows:

~~d. Include a minimum of 25 percent of all clinical supervision in person.~~ Be completed in person or by electronic means.

~~(1) The first two meetings shall be face-to-face and in person.~~

(2) (1) Up to 50 percent of all supervision may be completed by telephone.

~~(3) Up to 75 percent of all supervision may be completed by electronic means.~~

(4) (2) Supervision by electronic means is acceptable if the system utilized is a confidential, interactive, secure, real-time system that provides for visual and audio interaction between the licensee and the supervisor.

ITEM 6. Rescind paragraph **31.7(2)“b.”**

ITEM 7. Reletter paragraphs **31.7(2)“c”** and **“d”** as **31.7(2)“b”** and **“c.”**

ITEM 8. Amend relettered paragraph **31.7(2)“b”** as follows:

b. Effective October 1, 2020, the supervisor shall:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- (1) Be an Iowa-licensed mental health counselor in Iowa with at least three years of clinical experience following licensure or shall be approved by the National Board for Certified Counselors (NBCC) as a supervisor; or
- (2) Be an Iowa-licensed marital and family therapist with a minimum of three years of clinical experience following licensure or shall be a supervisor or supervisor candidate approved by the American Association for Marriage and Family Therapy Commission on Supervision; ~~and~~ or
- (3) Be an Iowa-licensed social worker independent level with at least three years of clinical experience following licensure at the independent level; and
- ~~(3)~~ (4) Have completed at least a six-hour continuing education course in counseling supervision or one master's level course in counseling supervision; and
- (4) ~~(5)~~ Meet a minimum of four hours per month with the supervisee; and
- ~~(5)~~ (6) Provide training that is appropriate to the functions to be performed; and
- ~~(6)~~ (7) Ensure that therapeutic work is completed under the professional supervision of a supervisor; and
- ~~(7)~~ (8) Not supervise any mental health counselor or permit the supervisee to engage in any therapy that the supervisor cannot perform competently.

ITEM 9. Amend paragraph **280.6(3)“a”** as follows:

~~a. The first supervision meeting must occur in person. After the first supervision meeting, the remaining supervision~~ Supervision may occur through in-person meetings or through electronic meetings using an interactive real-time system that provides for visual and audio interaction between the supervisor and supervisee.

ITEM 10. Amend paragraph **280.6(4)“a”** as follows:

~~a. To be eligible to serve as a supervisor for the period of supervised professional practice, a social worker supervisor shall:~~

(1) Hold an active Iowa license to practice social work at the independent level, an active Iowa license to practice mental health counseling without supervision, or an active Iowa license to practice marital and family therapy without supervision in Iowa. If the supervised professional practice occurs in another state, a social worker supervisor licensed in that state may serve as a supervisor if the social worker is licensed at a level equivalent to the independent level. A social worker licensed in another state and may provide direct supervision hours if the social worker is licensed at a level equivalent to the independent level supervisor holds an equivalent license.

(2) and (3) No change.

[Filed Emergency 6/30/21, effective 6/30/21]

[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5784C

CREDIT UNION DIVISION[189]**Adopted and Filed****Rule making related to waivers**

The Credit Union Division hereby amends Chapter 23, “Uniform Waiver and Variance Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 533.104.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

These amendments update rules in accordance with changes to Iowa Code section 17A.9A. The changes call for deletion of the word “variance” when the word is used in relation to “waiver.” Amendments are also adopted relating to submission of information regarding waivers on the Legislative Services Agency’s Internet site.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5577C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Credit Union Review Board on June 1, 2021.

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

Since this is an amendment to the uniform waiver rules, no waiver is permissible.

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 September 1, 2021.

The following rule-making actions are adopted:

CREDIT UNION DIVISION[189](cont'd)

ITEM 1. Amend **189—Chapter 23**, title, as follows:

~~UNIFORM WAIVER AND VARIANCE RULES~~

ITEM 2. Amend rule 189—23.1(17A,ExecOrd11), introductory paragraph, as follows:

189—23.1(17A,ExecOrd11) Scope of chapter. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the board or the superintendent in situations where no other more specifically applicable law provides for waivers. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the board or the superintendent. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the division does not possess delegated authority to bind the courts to any extent with its definition. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

ITEM 3. Amend subrule **23.1(1)**, definition of “Waiver or variance,” as follows:

“~~Waiver or variance~~” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

ITEM 4. Amend subrule 23.1(2) as follows:

23.1(2) Applicability.

a. The superintendent may grant a waiver ~~or variance~~ from a rule adopted by the board or superintendent only if (1) the board or superintendent has jurisdiction over the rule; (2) no statute or rule otherwise controls the granting of a waiver ~~or variance~~ from the rule from which waiver ~~or variance~~ is requested; and (3) the requested waiver ~~or variance~~ is consistent with applicable statutes, constitutional provisions, or other provisions of law.

b. No waiver ~~or variance~~ may be granted from a requirement which is imposed by statute.

ITEM 5. Amend rules 189—23.2(17A,ExecOrd11) and 189—23.3(17A,ExecOrd11) as follows:

189—23.2(17A,ExecOrd11) Superintendent discretion. The decision on whether the circumstances justify the granting of a waiver ~~or variance~~ shall be made at the discretion of the superintendent upon consideration of all relevant factors. Each petition for a waiver ~~or variance~~ shall be evaluated by the superintendent based on the unique, individual circumstances set out in the petition.

23.2(1) Criteria for waiver ~~or variance~~. The superintendent may, in response to a completed petition ~~or on the superintendent’s own motion~~, grant a waiver ~~or variance~~ from a rule, in whole or in part, as applied to the circumstances of a specified situation if the superintendent finds all of the following:

a. The application of the rule would result in an undue hardship on the person for whom the waiver ~~or variance~~ is requested;

b. The waiver ~~or variance~~ from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

In determining whether a waiver ~~or variance~~ should be granted, the superintendent shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the superintendent shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

23.2(2) Special waiver ~~or variance~~ rules not precluded. These uniform waiver ~~and variance~~ rules shall not preclude the superintendent from granting waivers ~~or variances~~ in other contexts including, without limitation, those described in Iowa Code sections 533.303 and 533.401 or on the basis of other standards if a statute or other rule authorizes the superintendent to do so and the superintendent deems it appropriate to do so.

CREDIT UNION DIVISION[189](cont'd)

189—23.3(17A,ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.

23.3(1) Application. All petitions for waiver or variance must be submitted in writing to the Credit Union Division, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

23.3(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver or variance is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- c. The relevant facts that the petitioner believes would justify a waiver or variance under each of the four criteria specified in subrule 23.2(1).
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A history of any prior contacts between the superintendent and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Any information known to the requester regarding the treatment of similar cases by the superintendent.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver or variance.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver or variance.

23.3(3) Burden of persuasion. When a petition is filed for a waiver or variance from a rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the superintendent should exercise the superintendent's discretion to grant the petitioner a waiver or variance.

ITEM 6. Amend rule **189—23.5(17A,ExecOrd11)**, catchwords, as follows:

189—23.5(17A,ExecOrd11) Superintendent's responsibilities regarding petition for waiver or variance.

ITEM 7. Amend subrules 23.5(1) to 23.5(4) as follows:

23.5(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the superintendent may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the superintendent may, on the superintendent's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the superintendent or the superintendent's designee.

23.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the board or superintendent so provides by rule or order; or (c) when a statute so requires.

23.5(3) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

CREDIT UNION DIVISION[189](cont'd)

23.5(4) Conditions. The superintendent may place any condition on a waiver ~~or variance~~ that the board or superintendent finds desirable to protect the public health, safety, and welfare.

ITEM 8. Amend subrule 23.5(7) as follows:

23.5(7) Time for ruling. The superintendent shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the superintendent shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

ITEM 9. Amend rules 189—23.6(17A,ExecOrd11) to 189—23.11(17A,ExecOrd11) as follows:

189—23.6(17A,ExecOrd11) Public availability. All orders granting or denying waivers ~~and variances~~ under this chapter shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver ~~or variance~~ and orders granting or denying a waiver ~~or variance~~ petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the superintendent is authorized or required to keep confidential. The superintendent may accordingly redact confidential information from petitions or orders prior to public inspection.

189—23.7(17A,ExecOrd11) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request or petition is based are not true or if material facts have been withheld. A waiver ~~or variance~~ issued by the superintendent pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and opportunity for hearing, the superintendent issues an order finding any of the following:

1. to 3. No change.

189—23.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver ~~or variance~~ order is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

189—23.9(17A,ExecOrd11) Defense. After the superintendent issues an order granting a waiver ~~or variance~~, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

189—23.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver ~~or variance~~ is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the order in response to the request unless a contrary time is provided by rule or statute.

189—23.11(17A,ExecOrd11) Summary reports Submission of waiver information. ~~Semiannually, the superintendent shall prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the superintendent shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the superintendent's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

Exhibit A

Sample Petition (Request) for Waiver/~~Variance~~

BEFORE THE SUPERINTENDENT OF CREDIT UNIONS

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).



PETITION FOR WAIVER

A request for waiver ~~or variance~~ from a rule adopted by the superintendent shall include the following information in the petition for waiver ~~or variance~~ where applicable and known:

- a. Provide the petitioner’s (person asking for a waiver ~~or variance~~) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver ~~or variance~~ is requested.
- c. Describe the specific waiver ~~or variance~~ requested; include the exact scope and operative time period that the waiver ~~or variance~~ will extend.
- d. Explain the important facts that the petitioner believes justify a waiver ~~or variance~~. Include in your answer (1) why applying the rule will result in undue hardship on the petitioner; and (2) how granting the waiver ~~or variance~~ will not prejudice the substantial legal rights of any person; and (3) that the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.
- e. Provide a history of prior contacts between the superintendent and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver ~~or variance~~; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Provide information known to the petitioner regarding the treatment by the superintendent of similar cases.
- g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver ~~or variance~~.
- h. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver ~~or variance~~.
- i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver ~~or variance~~.
- j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver ~~or variance~~.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner’s signature

Date

Petitioner should note the following when requesting or petitioning for a waiver ~~or variance~~:

- 1. The petitioner has the burden of proving to the superintendent, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in an undue hardship on the petitioner; and (b) waiver ~~or variance~~ in the specific case would not prejudice the substantial legal rights of any person; and (c) the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

CREDIT UNION DIVISION[189](cont'd)

2. The superintendent may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Credit Union Division, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

[Filed 6/24/21, effective 9/1/21]

[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5803C

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Rule making related to teacher and administrator licensure

The Educational Examiners Board hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Chapter 15, "Special Education Support Personnel Authorizations," Chapter 16, "Statements of Professional Recognition (SPR)," Chapter 18, "Issuance of Administrator Licenses and Endorsements," Chapter 20, "Renewals," Chapter 22, "Authorizations," Chapter 24, "Paraeducator Certificates," and Chapter 27, "Issuance of Professional Service Licenses," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 272.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 272.2.

Purpose and Summary

The United States Department of Education has recently changed accreditation language to include a broader scope, and these amendments reflect the changes.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 2, 2021, as **ARC 5665C**. A public hearing was held on June 23, 2021, at 1 p.m. in the Board Room, 701 East Court Avenue, Suite A, Des Moines. No one attended the public hearing. No public comments were received. Two changes from the Notice were made to correct cross-references in rules 282—13.1(272C) and 282—18.1(272).

Adoption of Rule Making

This rule making was adopted by the Board on July 7, 2021.

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.

EDUCATIONAL EXAMINERS BOARD[282](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 282—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 September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 282—13.1(272) as follows:

282—13.1(272) All applicants desiring Iowa licensure.**13.1(1) Definitions.**

“Coursework” means requirements completed for semester hour credit through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“Degree” means a specific qualification earned by a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“Nontraditional” means any method of teacher preparation that falls outside the traditional method of preparing teachers.

“Proficiency,” for the purposes of paragraph 13.5(2) “e,” means that an applicant has passed all parts of the standard.

“Recognized non-Iowa teacher preparation institution” means an institution that is state-approved and accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“State-approved” means a program for teacher preparation approved for state licensure.

“Traditional” means a one- or two-year sequenced teacher preparation program of instruction taught at a state-approved college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education that includes commonly recognized pedagogy classes coursework and requires a student teaching component.

~~13.1(1)~~ 13.1(2) Licenses, authorizations, certificates, and statements of professional recognition. Licenses, authorizations, certificates, and statements of professional recognition are issued upon application filed on a form provided by the board of educational examiners and upon completion of the following:

a. National criminal history background check. An initial applicant will be required to submit a completed fingerprint packet that accompanies the application to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet will be assessed to the applicant.

b. Iowa division of criminal investigation background check. An Iowa division of criminal investigation (DCI) background check will be conducted on initial applicants. The fee for the evaluation of the DCI background check will be assessed to the applicant.

c. Registries and records check. A check of the following registries and records will be conducted on initial applicants: the sex offender registry under Iowa Code section 692A.121, the central registry for child abuse information established under Iowa Code chapter 235A, the central registry for dependent adult abuse information maintained under Iowa Code chapter 235B, and the information in the Iowa court

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

information system available to the general public. The fee for checks of these registries and records will be assessed to the applicant.

~~13.1(2)~~ **13.1(3)** *Temporary permits.* The executive director may issue a temporary permit to an applicant for any type of license, certification, or authorization issued by the board, after receipt of a fully completed application; determination that the applicant meets all applicable prerequisites for issuance of the license, certification, or authorization; and satisfactory evaluation of the Iowa criminal history background check and registries and records check set forth in ~~13.1(1)“b”~~ paragraphs 13.1(2)“b” and “c.” The temporary permit shall serve as evidence of the applicant’s authorization to hold a position in Iowa schools, pending the satisfactory completion of the national criminal history background check. The temporary permit shall expire upon issuance of the requested license, certification, or authorization or 90 days from the date of issuance of the permit, whichever occurs first, unless the temporary permit is extended upon a finding of good cause by the executive director.

ITEM 2. Amend paragraph **13.5(1)“a”** as follows:

a. Have a baccalaureate degree ~~from a regionally accredited institution.~~

ITEM 3. Amend subrule 13.5(2) as follows:

13.5(2) *Applicants from non-Iowa institutions.*

a. ~~Definitions~~ Original application. Applicants under this subrule have completed a teacher preparation program outside the state of Iowa and are applying for their first Iowa teaching license.

~~“Nontraditional” means any method of teacher preparation that falls outside the traditional method of preparing teachers, that provides at least a one- or two-year sequenced program of instruction taught at regionally accredited and state-approved colleges or universities, that includes commonly recognized pedagogy classes being taught for course credit, and that requires a student teaching component.~~

~~“Proficiency,” for the purposes of paragraph 13.5(2)“e,” means that an applicant has passed all parts of the standard.~~

~~“Recognized non-Iowa teacher preparation institution” means an institution that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located.~~

b. and c. No change.

d. If the teacher preparation program was considered nontraditional, candidates will be asked to verify the following:

(1) That the program was for secondary education;

(2) A baccalaureate degree with a cumulative grade point average of 2.50 on a 4.0 scale ~~from a regionally accredited institution;~~ and

(3) The completion of a student teaching or internship experience or three years of teaching experience.

e. to g. No change.

ITEM 4. Amend rule 282—13.8(272) as follows:

282—13.8(272) Specific requirements for a master educator’s license. A master educator’s license is valid for five years and may be issued to an applicant who:

1. Is the holder of or is eligible for a standard license as set out in rule 282—13.7(272), and

2. Verifies five years of successful teaching experience, and

3. Completes one of the following options:

- Master’s degree ~~from a regionally accredited college or university~~ in a recognized endorsement area, or

- Master’s degree ~~from a regionally accredited college or university~~ in curriculum, effective teaching, or a similar degree program which has a focus on school curriculum or instruction.

ITEM 5. Amend subparagraph **13.17(1)“a”(1)** as follows:

(1) The applicant has met the minimum coursework requirements for licensure but has some coursework deficiencies. Any coursework deficiencies must be completed for college credit ~~through a regionally accredited institution,~~ with the exception of human relations which may be taken for licensure renewal credit through an approved provider.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

ITEM 6. Amend subparagraph **13.17(3)“b”(1)** as follows:

(1) The applicant has completed a baccalaureate degree and a traditional state-approved teacher preparation program at a regionally accredited and state-approved two- or four-year college.

ITEM 7. Amend subparagraph **13.28(32)“c”(2)** as follows:

(2) Program requirements.

1. The applicant must have met the requirements for a standard Iowa teaching license and a teaching endorsement in mathematics, science, engineering, industrial technology, or agriculture.

2. The applicant must hold a master's degree ~~from a regionally accredited institution. The master's degree must be~~ in math, science, engineering or technology or another area with at least 12 hours of college-level science and at least 12 hours of college-level math (or completion of Calculus I) to include coursework in computer programming.

ITEM 8. Amend subrule 15.1(2) as follows:

15.1(2) ~~The orientation and mobility specialist license is based on school-centered preparation, but the sequence of coursework does not permit service as a teacher. Licensure procedures, requirements, and definitions are set out in 282—Chapter 13.~~

ITEM 9. Adopt the following new subrule 16.1(3):

16.1(3) Degrees. Degrees must be from a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

ITEM 10. Amend rule 282—18.1(272) as follows:

282—18.1(272) All applicants desiring an Iowa administrator license.

18.1(1) Definitions.

“Coursework” means requirements completed for semester hour credit through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“Degree” means a specific qualification earned through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“Recognized non-Iowa institution” means an institution that is state-approved and is accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

“State-approved” means a program for administrator preparation approved for state licensure.

~~18.1(1)~~ **18.1(2) Administrator licenses.** Administrator licenses are issued upon application filed on a form provided by the board of educational examiners and upon completion of the background check requirements set forth in rule 282—13.1(272).

~~18.1(2)~~ **18.1(3) Temporary permits.** The executive director may issue a temporary permit to an applicant for any type of license, certification, or authorization issued by the board, after receipt of a fully completed application; determination that the applicant meets all applicable prerequisites for issuance of the license, certification, or authorization; and satisfactory evaluation of the Iowa criminal history background check and registries and records check set forth in 282—paragraphs ~~13.1(1)“b”~~ 13.1(2)“b” and “c.” The temporary permit shall serve as evidence of the applicant's authorization to hold a position in Iowa schools, pending the satisfactory completion of the national criminal history background check. The temporary permit shall expire upon issuance of the requested license, certification, or authorization or 90 days from the date of issuance of the permit, whichever occurs first, unless the temporary permit is extended upon a finding of good cause by the executive director.

ITEM 11. Amend rule 282—18.6(272) as follows:

282—18.6(272) Specific requirements for an administrator prepared out of state. An applicant seeking Iowa licensure who completes an administrator preparation program from a recognized non-Iowa institution shall verify the requirements of rules 282—18.1(272) and 282—18.4(272) through ~~traditional course-based preparation program and a~~ transcript review. ~~A recognized non-Iowa administrator preparation institution is one that is state-approved and is accredited by the regional~~

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

~~accrediting agency for the territory in which the institution is located.~~ Applicants must hold and submit a copy of a valid or expired regular administrator certificate or license in another state, exclusive of a temporary, emergency or substitute license or certificate.

18.6(1) Administrator exchange license. A one-year nonrenewable administrator exchange license may be issued to an individual who ~~has not met any of the following requirements:~~

~~a. Endorsement requirements. The applicant has not completed a minimum of 75 percent of the coursework for the PK-12 principal and PK-12 supervisor of special education endorsement, and any additional administrator endorsements desired~~ Has met a minimum of 75 percent of the coursework requirements for administrative licensure but has some coursework deficiencies.

~~b. Regular administrator certificate or license in the state in which the preparation was completed. The applicant is~~ Is eligible for and has applied for a regular valid and current out-of-state administrator certificate or license in the state in which the preparation was completed but ~~has not yet received the certificate or license and is waiting for the processing of the license.~~

~~c. Approved evaluator training requirement. The applicant has~~ Has not completed the approved evaluator training requirement.

18.6(2) Conversion. Each applicant who receives the one-year administrator exchange license must complete any identified ~~licensure~~ coursework deficiencies in order to be eligible for an initial administrator license or a professional administrator license in Iowa. Any coursework deficiencies must be completed for college credit ~~through a regionally accredited institution~~, with the exception of the human relations component which may be taken for licensure renewal credit through an approved provider.

18.6(3) and 18.6(4) No change.

ITEM 12. Amend rule 282—20.1(272) as follows:

282—20.1(272) General renewal information. This chapter contains renewal requirements for those individuals desiring to renew the initial, standard, master educator, professional administrator, ~~area education agency administrator~~, or substitute license or a statement of professional recognition (SPR). Individuals desiring to renew a license issued under some other title are referred to 282—Chapters 22, 23, and 24.

ITEM 13. Adopt the following new subrule 20.3(7):

20.3(7) College or university degrees and credit. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

ITEM 14. Amend subrule 20.5(2) as follows:

20.5(2) Six units are needed for renewal. These units may be earned in any combination listed as follows:

~~a. One unit may be earned for each semester hour of graduate credit, completed from a regionally accredited institution, which leads toward the completion of a planned master's, specialist's, or doctor's degree program.~~

~~b. One unit may be earned for each semester hour of graduate or undergraduate credit, completed from a regionally accredited institution, which may not lead to a degree but which adds greater depth/breadth to present endorsements held.~~

~~c. One unit may be earned for each semester hour of credit, completed from a regionally accredited institution, which may not lead to a degree but which leads to completion of requirements for an endorsement not currently held.~~

~~d. to f.~~ No change.

ITEM 15. Amend subrule 20.6(2) as follows:

20.6(2) Four units are needed for renewal. For an applicant who also holds a specialist's or doctor's degree, two units are needed for renewal. These units may be earned in any combination listed below:

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a. One unit may be earned for each semester hour of graduate credit, ~~completed from a regionally accredited institution,~~ which leads toward the completion of a planned master's, specialist's, or doctor's degree program.

b. One unit may be earned for each semester hour of graduate or undergraduate credit, ~~completed from a regionally accredited institution,~~ which may not lead to a degree but which adds greater depth/breadth to present endorsements held.

c. One unit may be earned for each semester hour of credit, ~~completed from a regionally accredited institution,~~ which may not lead to a degree but which leads to completion of requirements for an endorsement not currently held.

d. to f. No change.

ITEM 16. Amend rule 282—20.7(272) as follows:

282—20.7(272) Specific renewal requirements for a substitute license. In addition to the provisions set forth in this rule, an applicant must meet the general requirements set forth under rule 282—20.3(272). An applicant for renewal of a substitute license shall meet one of the requirements listed below:

1. Verification of at least 30 days of substitute teaching during the term of the license or one year of teaching experience within the last five years completed during the term of a valid Iowa teaching license.

2. Completion of ~~a local education agency or area education agency course~~ one licensure renewal credit approved through licensure renewal guidelines established by the board of educational examiners.

3. Completion of one semester hour of credit taken from a community college, college, or university.

ITEM 17. Amend subrule 20.9(2) as follows:

20.9(2) Four units are needed for renewal. For an applicant who also holds a specialist's or doctor's degree, two units are needed for renewal. These units may be earned in any combination listed below:

a. One unit may be earned for each semester hour of graduate credit, ~~completed from a regionally accredited institution,~~ which leads toward the completion of a planned specialist's or doctor's degree program.

b. One unit may be earned for each semester hour of graduate or undergraduate credit, ~~completed from a regionally accredited institution,~~ which may not lead to a degree but which adds greater depth/breadth to present endorsements held.

c. One unit may be earned for each semester hour of credit, ~~completed from a regionally accredited institution,~~ which may not lead to a degree but which leads to completion of requirements for an administrator endorsement not currently held.

d. and e. No change.

ITEM 18. Amend paragraph **22.1(2)"a,"** introductory paragraph, as follows:

a. ~~Credit hours~~ Content requirements. Requirements completed for semester hour credit must be through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education. Applicants must complete ~~credit hours in~~ the following areas content requirements:

ITEM 19. Amend subrule 22.2(1) as follows:

22.2(1) Application process. Any person interested in the substitute authorization shall submit records of credit to the board of educational examiners for an evaluation in terms of the required courses or contact hours. Application materials are available from the office of the board of educational examiners, online at www.boee.iowa.gov or from institutions or agencies offering approved courses or contact hours. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

a. *Requirements.* Applicants for the substitute authorization shall meet the following requirements:

(1) No change.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

(2) Degree or certificate. Applicants must have achieved a minimum of an associate's degree or 60 semester hours of college coursework ~~from a regionally accredited institution.~~

(3) and (4) No change.

b. to d. No change.

ITEM 20. Amend subrule 22.3(3) as follows:

22.3(3) Application process. Any person interested in the school business official authorization shall submit records of credit to the board of educational examiners for an evaluation in terms of the required courses or contact hours. Application materials are available from the office of the board of educational examiners, online at www.boee.iowa.gov, or from institutions or agencies offering approved courses or contact hours. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

ITEM 21. Amend paragraph **22.5(3)“a”** as follows:

a. The applicant must have completed a baccalaureate degree through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

ITEM 22. Amend subrule 22.9(2) as follows:

22.9(2) Application process. Any person interested in the career and technical secondary authorization shall submit the application to the board of educational examiners for an evaluation. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

ITEM 23. Amend subparagraph **22.9(3)“e”(1)** as follows:

(1) Applicants must commit to complete the following requirements within the term of the initial authorization. Coursework must be completed for college semester hour credit ~~from a regionally accredited institution.~~

1. Coursework in the methods and techniques of career and technical education.
2. Coursework in course and curriculum development.
3. Coursework in the measurement and evaluation of programs and students.
4. An approved human relations course.
5. Coursework in the instruction of exceptional learners to include the education of individuals with disabilities and the gifted and talented.

ITEM 24. Amend subrule 22.10(1) as follows:

22.10(1) Application process. Any person interested in the activities administration authorization shall submit an application and records of credit to the board of educational examiners for an evaluation of the required courses or contact hours. Application materials are available from the office of the board of educational examiners online at www.boee.iowa.gov. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

a. Requirements. Applicants for the activities administration authorization shall meet the following requirements:

(1) Degree. A baccalaureate degree or higher in athletic administration or related field ~~from a regionally accredited institution~~ is required.

(2) No change.

b. and c. No change.

ITEM 25. Amend subrule 22.10(3) as follows:

22.10(3) Renewal.

a. The authorization may be renewed upon application and verification of successful completion of the following renewal activities:

(1) Applicants for renewal of an activities administration authorization must complete one of the following professional development options:

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

1. Document attendance at one state IHSADA convention and one LTI course relating to the knowledge and understanding of professional ethics and legal responsibilities of activities administrators.
2. Complete three LTI courses.
3. Complete 2 semester hours of college credit ~~from a regionally accredited institution.~~
4. Complete 2 licensure renewal credits from an approved provider.

(2) Applicants for renewal of an activities authorization must complete child and dependent adult abuse training as stated in 282—subrule 20.3(4).

b. No change.

ITEM 26. Amend subrule 22.12(2) as follows:

22.12(2) Initial orientation and mobility authorization. The initial authorization is valid for three years. Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education. An applicant must:

a. Hold a baccalaureate or master's degree from an approved state ~~and regionally accredited~~ program in orientation and mobility or equivalent coursework.

b. to f. No change.

ITEM 27. Amend subrule 22.12(4) as follows:

22.12(4) Renewal of orientation and mobility license. ~~Renewal requirements for the career and technical secondary authorization.~~ Applicants must meet the renewal requirements set forth in rule 282—20.3(272) and 282—subrule 20.5(2).

ITEM 28. Amend subrule 24.5(2) as follows:

24.5(2) Possess an associate's degree or have earned 62 semester hours of college coursework ~~from a regionally accredited institution of higher education.~~ Degrees and semester hour credits shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education.

ITEM 29. Amend rule 282—27.1(272) as follows:

282—27.1(272) Professional service license. A professional service licensee is an individual prepared to provide professional services in Iowa schools but whose preparation has not required completion of the teacher preparation coursework set forth in rule 281—79.15(256). Degrees and coursework shall be completed through a college or university accredited by an institutional accrediting agency as recognized by the U.S. Department of Education. The professional service license may be issued in the following areas but does not permit service as a teacher:

1. School counselor.
2. School psychologist.
3. Speech-language pathologist.
4. Supervisor of special education (support).
5. Director of special education of an area education agency.
6. School social worker.
7. School audiologist.

ITEM 30. Amend subrule 27.2(1) as follows:

27.2(1) Initial professional service license. An initial professional service license valid for a minimum of two years with an expiration date of June 30 may be issued to an applicant for licensure to serve as a school audiologist, school psychologist, school social worker, speech-language pathologist, supervisor of special education (support), director of special education of an area education agency, or school counselor who:

a. Has a master's degree in a recognized professional educational service area ~~from a regionally accredited institution.~~

b. to e. No change.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

ITEM 31. Amend subrule 27.2(5) as follows:

27.2(5) Class G license. A nonrenewable Class G license valid for one year may be issued to an individual who must complete a school counseling practicum or internship in an approved program in preparation for the professional school counselor endorsement. The Class G license may be issued under the following limited conditions:

- a. Verification of a baccalaureate degree ~~from a regionally accredited institution.~~
- b. Verification from the institution that the individual is admitted and enrolled in a school counseling program.
- c. Verification that the individual has completed the coursework and competencies required prior to the practicum or internship.
- d. Written documentation of the requirements listed in paragraphs 27.2(5) "a" to "c," provided by the official at the institution where the individual is completing the approved school counseling program and forwarded to the Iowa board of educational examiners with the application form for licensure.

ITEM 32. Amend subrule 27.5(2) as follows:

27.5(2) Four units are needed for renewal. For an applicant who also holds a specialist's or doctor's degree, two units are needed for renewal. These units may be earned in any combination listed below:

- a. One unit may be earned for each semester hour of graduate credit, ~~completed from a regionally accredited institution,~~ which leads toward the completion of a planned master's, specialist's, or doctor's degree program.
- b. One unit may be earned for each semester hour of graduate or undergraduate credit, ~~completed from a regionally accredited institution,~~ which may not lead to a degree but which adds greater depth/breadth to present endorsements held.
- c. One unit may be earned for each semester hour of credit, ~~completed from a regionally accredited institution,~~ which may not lead to a degree but which leads to completion of requirements for an endorsement not currently held.
- d. No change.

[Filed 7/8/21, effective 9/1/21]

[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5802C

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Rule making related to deaf and hard-of-hearing persons

The Educational Examiners Board hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Chapter 14, "Special Education Endorsements," Chapter 16, "Statements of Professional Recognition (SPR)," and Chapter 27, "Issuance of Professional Service Licenses," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 272.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2585.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Purpose and Summary

2020 Iowa Acts, House File 2585, changed the terminology used in relation to deaf and hard-of-hearing persons, and the adopted rules reflect the same changes.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 2, 2021, as **ARC 5666C**. A public hearing was held on June 23, 2021, at 1 p.m. in the Board Room, 701 East Court Avenue, Suite A, Des Moines. 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 Board on July 7, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 282—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 September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **13.28(25)“b”** as follows:

b. Content. Completion of 18 semester hours of coursework in American Sign Language to include the following:

- (1) Second language acquisition.
- (2) Sociology of the deaf and hard-of-hearing community.
- (3) Linguistic structure of American Sign Language.
- (4) Language teaching methodology specific to American Sign Language.
- (5) Teaching the culture of deaf and hard-of-hearing people.
- (6) Assessment of students in an American Sign Language program.

ITEM 2. Amend subrule 14.2(7) as follows:

14.2(7) 5-12 mildly disabled endorsement. This endorsement authorizes instruction to mildly disabled children who require special education program adaptations while assigned to a regular classroom for basic instructional purposes, or mildly disabled students placed in a special education class who receive part of their instruction in a regular classroom, or mildly disabled students requiring

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

specially designed instruction while assigned to a regular classroom for basic instructional purposes. To fulfill the requirements for this endorsement, the applicant must:

- a. Hold a regular education instruction endorsement at the secondary level (grades 5-12).
- b. Hold one of the following endorsements at the secondary level: learning disabilities, mild to moderate intellectual disabilities, behavioral disorders, multicategorical resource room or multicategorical-special class with integration.

NOTE: These endorsements are designed for programs serving primarily mildly disabled students; ~~the sensory impaired.~~ Students who have sensory disorders are not included as “mildly disabled.”

ITEM 3. Amend subparagraph **14.2(8)“a”(2)** as follows:

(2) Characteristics of learners. Preparation which includes various etiologies of hearing loss, an overview of current trends in educational programming for students with hearing loss and educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming from birth to age 21. Preparation in the social, emotional and behavioral characteristics of individuals with hearing loss, including the impact of such characteristics on classroom learning. Knowledge of the anatomy and physiology of the hearing mechanism and knowledge of the development of secondary senses when ~~hearing is impaired~~ a hearing disorder is present, effect of hearing loss on learning experiences, psychological aspects of hearing loss, and effects of medications on the hearing system. Preparation in the psychological and social-emotional characteristics of individuals with hearing loss to include the major social characteristics of individuals with hearing loss and the effects of this disability on learning, and the social and emotional aspects of individuals with hearing loss. Physical development and potential health ~~impairments~~ implications as they relate to the development and behavior of students with hearing loss. Components of linguistic and nonlinguistic communication used by individuals who are deaf or ~~hard-of-hearing~~ hard of hearing and communication modes used by and with individuals who are deaf or ~~hard-of-hearing~~ hard of hearing, including current theories of language development in individuals who are deaf or ~~hard-of-hearing~~ hard of hearing.

ITEM 4. Amend subrule 16.2(1) as follows:

16.2(1) Authorization. The holder of this statement of professional recognition is authorized to serve as a school audiologist to pupils from birth to age 21 who ~~have hearing impairments~~ are deaf or hard of hearing (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

ITEM 5. Amend subrule 27.3(5) as follows:

27.3(5) Professional service administrator:

a. *Authorization.* The holder of this endorsement is authorized to serve as a supervisor of special education support programs. However, an individual holding a statement of professional recognition is not eligible for the professional service administrator endorsement.

b. *Program requirements.*

(1) An applicant must hold a master’s degree in preparation for school psychology, speech/language pathology, audiology (or education of ~~the hearing-impaired~~ students who are deaf or hard of hearing), or social work.

(2) No change.

c. *Other.* The applicant must:

(1) Have four years of support service in a school setting with special education students in the specific discipline area desired.

(2) Meet the practitioner licensure requirements of one of the following endorsements:

1. School audiologist (or ~~hearing-impaired~~ deaf or hard of hearing at K-8 and 5-12).
2. School psychologist.
3. School social worker.

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4. Speech-language pathologist.

ITEM 6. Amend paragraph **27.3(8)“a”** as follows:

a. *Authorization.* The holder of this endorsement is authorized to serve as a school audiologist to pupils from birth to age 21 who ~~have hearing impairments~~ are deaf or hard of hearing (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

[Filed 7/8/21, effective 9/1/21]

[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5810C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to supplemental nutrition assistance program

The Human Services Department hereby amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 17A and section 217.6 and 7 CFR 273.16(f).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A and section 217.6 and 7 CFR 273.16(f).

Purpose and Summary

The Department has changed the formal name of Iowa’s food assistance program from Food Assistance to the Supplemental Nutrition Assistance Program (SNAP) to be consistent with the name of the federal program and to alleviate confusion around food benefits that are available.

Federal regulations give states the option of establishing procedures to allow an individual accused of an intentional SNAP violation to waive the individual’s right to an administrative disqualification hearing. With the recommendation of the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS), the Department has decided to take advantage of this option. The Department is responsible for investigating any case of alleged intentional program violation. The Department will notify a SNAP household when the Department submits a referral to determine whether an individual of that household intentionally violated SNAP rules. Currently, the Department’s only options to ensure appropriate cases are acted upon are through an administrative disqualification hearing or through criminal prosecution by a court of an appropriate jurisdiction.

These amendments give an individual who is suspected of an intentional program violation an opportunity to waive the individual’s right to an administrative disqualification hearing, if the individual so chooses, on Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

If the individual chooses to sign the form, the member will be disqualified from participating in SNAP for a specified time and agrees to repay any overpayment associated with the violation. No administrative disqualification hearing will be held. The same disqualification penalty will be imposed if the individual chooses to give up the right to an administrative disqualification hearing and signs the waiver form or if the individual participates in the hearing and is found to have committed an intentional program violation by an administrative law judge.

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No further administrative appeal procedure exists after an individual waives the individual's right to an administrative disqualification hearing and a disqualification penalty has been imposed.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 7, 2021, as **ARC 5549C**. One organization provided written comments on the proposed amendments.

Comment 1:

The respondent believes the proposed change inadequately incorporates the directives in the Code of Federal Regulations (CFR) Chapter 7 Section 273.16 that are meant to provide participants with protection from erroneous deprivation of critical benefits. The respondent requested that the regulation explicitly incorporate language from 7 CFR 273.16.

Response 1:

Rule 441—7.2(17A) already indicates that to the extent that federal law related to a specific program is more specific than the rules in Chapter 7, the program-specific federal or state law shall control; the rule also provides a reference to the federal code citation for SNAP. However, to protect clients and their fundamental human need to access basic nutrition, the introductory paragraph of rule 441—7.19(17A) in Item 5 has been revised to read as follows:

“441—7.19(17A) Supplemental Nutrition Assistance Program (SNAP) administrative disqualification hearings. The department acts on alleged intentional program violations either through an administrative disqualification hearing or referral to a court of appropriate jurisdiction. An individual accused of an intentional program violation may waive the individual's right to an administrative disqualification hearing in accordance with the procedures outlined in this rule and in 7 CFR 273.16(e) and (f).”

Comment 2:

Proposed rule 441—7.19(17A) mentions Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing. However, the respondent noted the rule does not contain any information about what states are required to include in such a form or under which circumstances the Department can issue such a notice to a SNAP participant.

The respondent requested that the proposed rule make it entirely clear that the Department is required to provide all of the criteria required by 7 CFR 273.16(e) and (f) in the waiver form. The respondent also suggested the rules provide that the form say, prominently and in bold, that the form need not be returned in order to get a hearing on the allegations of fraud.

Response 2:

Federal regulations at 7 CFR 273.16(f)(1) provide the requirements of what must be in the written notification sent to the individual to inform the individual of the possibility of waiving the administrative disqualification hearing. It is not necessary to repeat the requirements within the rules and is covered by existing rule 441—7.2(17A), which indicates that the program-specific federal law shall control and provides a reference to the federal code citation for SNAP. Also, the USDA FNS has reviewed Iowa's Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, and has approved the form since it met the stated federal requirements.

No change was made based on this comment.

Comment 3:

The respondent requested that a statement be added to the rules indicating the Department must ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household and that such evidence warrants scheduling a disqualification hearing. The respondent stated that this review must be conducted before the appeals section issues Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

Response 3:

The Department already utilizes an established procedure whereby a referral for an administrative disqualification hearing is reviewed by someone other than the eligibility worker prior to submission

HUMAN SERVICES DEPARTMENT[441](cont'd)

to the appeals section. This practice already exists, and the Department does not include procedural processes in the rules.

No change was made based on this comment.

Comment 4:

Federal regulations require that intentional program violation waivers be sent by mail to prevent a situation where a fraud investigator could meet with an individual in person and pressure the individual to sign the waiver. The respondent suggested that the rules explicitly provide that Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, will be sent by mail only.

Response 4:

Based on the respondent's comment, subrule 7.19(1) in Item 5 has been revised to read as follows:

“7.19(1) When a case is referred for an administrative disqualification hearing, the appeals section shall mail written notification to the individual that the individual can waive the right to an administrative disqualification hearing by signing and returning Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.”

Comments on Form 470-5530:

When the respondent provided comments on the rules, the respondent had not yet reviewed Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing. Some of the comments related to the content of the form itself and not specifically to the context of the rules. A copy of the form and the form's instructions were shared with the respondent, and subsequent comments were provided by the respondent on the form.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on July 8, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule **441—7.1(17A)**, definitions of “Assistance program,” “Good cause” and “Intentional program violation,” as follows:

“*Assistance program*” means a program administered by the department or on the department's behalf through which qualifying individuals receive benefits or services. Assistance programs include,

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but are not necessarily limited to, ~~food assistance~~ the Supplemental Nutrition Assistance Program (SNAP), Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (hawki) program, foster care, adoption, and aftercare services.

“*Good cause*” means an intervening cause, not attributable to the negligence of a party, reasonably resulting in a delay or ~~in attendance~~ failure to attend, for purposes of subrules 7.4(3) and 7.9(2).

“*Intentional program violation*” means deliberately making a false or misleading statement; or misrepresenting, concealing, or withholding facts; or committing any act that is a violation of the ~~Food and Nutrition Act of 2008~~ Supplemental Nutrition Assistance Program (SNAP), ~~food assistance program~~ SNAP regulations, or any state law relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of SNAP benefits or an electronic benefit transfer (EBT) card. An intentional program violation is determined through a ~~food assistance~~ SNAP administrative disqualification hearing. ~~The hearing~~, a court conviction, or when an individual signs and returns Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, which may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both.

ITEM 2. Amend rule 441—7.2(17A) as follows:

441—7.2(17A) Governing law and regulations. In the absence of an applicable rule in this chapter, the DIA rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIA rules, the program-specific federal or state law shall control. For example, ~~food assistance~~ Supplemental Nutrition Assistance Program (SNAP) appeals shall be conducted in accordance with 7 CFR 273.15 and 7 CFR 273.16, and medical assistance appeals shall be conducted in accordance with 42 CFR Part 431, subpart E, and Part 438, subpart F.

ITEM 3. Amend paragraph 7.4(3)“a” as follows:

a. ~~Food assistance~~ Supplemental Nutrition Assistance Program (SNAP), Medicaid eligibility, healthy and well kids in Iowa (hawki), fee-for-service Medicaid coverage, family planning program and autism support program. For appeals pertaining to ~~food assistance~~ Supplemental Nutrition Assistance Program (SNAP), Medicaid eligibility, healthy and well kids in Iowa (hawki), fee-for-service Medicaid coverage, the family planning program or the autism support program, the appellant must appeal on or before the ninetieth day following the date of notice of an adverse benefit determination.

ITEM 4. Amend paragraph 7.4(3)“i” as follows:

i. *Assistance program overpayments.* For appeals pertaining to the family investment program, refugee cash assistance, PROMISE JOBS, child care assistance, medical assistance, healthy and well kids in Iowa (hawki), family planning program or ~~food assistance~~ Supplemental Nutrition Assistance Program (SNAP) overpayments, the party-in-interest’s right to appeal the existence, computation and amount of the overissuance or overpayment begins when the department sends the first notice informing the party-in-interest of the overissuance or overpayment.

ITEM 5. Adopt the following new rule 441—7.19(17A):

441—7.19(17A) Supplemental Nutrition Assistance Program (SNAP) administrative disqualification hearings. The department acts on alleged intentional program violations either through an administrative disqualification hearing or referral to a court of appropriate jurisdiction. An individual accused of an intentional program violation may waive the individual’s right to an administrative disqualification hearing in accordance with the procedures outlined in this rule and in 7 CFR 273.16(e) and (f).

7.19(1) When a case is referred for an administrative disqualification hearing, the appeals section shall mail written notification to the individual that the individual can waive the right to an administrative

HUMAN SERVICES DEPARTMENT[441](cont'd)

disqualification hearing by signing and returning Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing.

7.19(2) By signing Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, the individual:

- a.* Waives the right to an administrative disqualification hearing;
- b.* Consents to the SNAP disqualification period designated on Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, and a reduction of benefits for the period of disqualification; and
- c.* Acknowledges that remaining household members, if any, may be held responsible for repayment of the resulting claim.

7.19(3) An administrative disqualification hearing shall be scheduled if the individual does not sign and mail or fax Form 470-5530, Waiver of Right to an Administrative Disqualification Hearing, to the appeals section within ten days of receipt of the written notification stating the individual can waive the right to an administrative disqualification hearing. The date on which the written notification is received is considered to be five days after the date on the notification, unless the individual shows the notification was not received within the five-day period.

7.19(4) An individual who waives the right to an administrative disqualification hearing will be subject to the same penalties as an individual found to have committed an intentional program violation in an administrative disqualification hearing.

7.19(5) No further administrative appeal procedure exists after an individual waives the individual's right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty shall not be changed by a subsequent fair hearing decision.

[Filed 7/8/21, effective 9/1/21]

[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5808C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to deaf and hard-of-hearing persons

The Human Services Department hereby amends Chapter 73, "Managed Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 81, "Nursing Facilities," Chapter 82, "Intermediate Care Facilities for Persons with an Intellectual Disability," and Chapter 113, "Licensing and Regulation of Foster Family Homes," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

This rule making replaces the term "deaf" with "deaf or hard of hearing" or "deaf and hard of hearing" and replaces the term "hearing-impaired" with "deaf or hard of hearing" throughout the Department's rules as a result of 2020 Iowa Acts, House File 2585. This rule making covers the Department chapters affected by the legislation.

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Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 19, 2021, as **ARC 5619C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on July 8, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 73.21(2) as follows:

73.21(2) Outreach to members with special needs. The managed care organization shall provide enhanced outreach to members with special needs including, but not limited to, persons with psychiatric disabilities, an intellectual disability or other cognitive impairments, illiterate persons, non-English-speaking persons, and persons with visual impairments or who are deaf or hard of hearing impairments.

ITEM 2. Amend paragraph **78.1(16)“g”** as follows:

g. The information in paragraphs “b” through “f” shall be effectively presented to a blind, deaf, hard-of-hearing, or otherwise ~~handicapped~~ disabled individual and an interpreter shall be provided when the individual to be sterilized does not understand the language used on the consent form or used by the person obtaining consent. The individual to be sterilized may have a witness of the individual's choice present when consent is obtained.

ITEM 3. Amend subparagraph **78.9(9)“c”(4)** as follows:

(4) Preexisting mental or physical disabilities such as deaf, hard of hearing, blind, hemiplegic, activity-limiting disease, sickle cell anemia, uncontrolled hypertension, uncontrolled diabetes, mental illness, or intellectual disability.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Amend subparagraph **78.19(1)“d”(3)** as follows:

(3) Aural rehabilitation, the instruction given by a qualified speech pathologist in speech reading or lip reading to patients who have suffered a hearing loss or become hard of hearing (input impairment), constitutes a covered service if reasonable and necessary to the patient's illness or injury. Group treatment is not covered. Audiological services related to the use of a hearing aid are not reimbursable.

ITEM 5. Amend subparagraph **78.34(9)“b”(17)** as follows:

(17) Telecommunications device for the deaf or hard of hearing.

ITEM 6. Amend subparagraph **78.37(9)“b”(17)** as follows:

(17) Telecommunications device for the deaf or hard of hearing.

ITEM 7. Amend subparagraph **78.41(4)“b”(17)** as follows:

(17) Telecommunications device for the deaf or hard of hearing.

ITEM 8. Amend subparagraph **78.43(5)“b”(17)** as follows:

(17) Telecommunications device for the deaf or hard of hearing.

ITEM 9. Amend subparagraph **78.46(2)“b”(17)** as follows:

(17) Telecommunications device for the deaf or hard of hearing.

ITEM 10. Amend subparagraph **81.13(10)“b”(2)** as follows:

(2) By arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or ~~hearing~~ hearing impairment or the deaf or hard of hearing or the office of a professional specializing in the provision of vision or hearing assistive devices.

ITEM 11. Amend subparagraph **82.2(7)“a”(2)** as follows:

(2) The facility shall not segregate clients solely on the basis of their physical disabilities. It shall integrate clients who have ambulation deficits or who are deaf, hard of hearing, blind, or have seizure disorders with others of comparable social and intellectual development.

ITEM 12. Amend paragraph **113.7(1)“a”** as follows:

a. At least one UL (Underwriter's Laboratory)-approved smoke detector. On floors that are used for sleeping, the smoke detector shall be in a location where sleeping areas can be alerted. For ~~hearing-impaired~~ deaf or hard-of-hearing children, the foster parent shall install a smoke detector in the child's bedroom that will use an alternative means of waking the child.

[Filed 7/8/21, effective 9/1/21]

[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5809C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to individual placement and support

The Human Services Department hereby amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” 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.

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State or Federal Law Implemented

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

Purpose and Summary

These amendments implement the Individual Placement and Support (IPS) Supported Employment (SE) evidence-based model within the Home- and Community-Based Services (HCBS) Habilitation Supported Employment services. These amendments establish the provider qualifications and implementation criteria applicable to the IPS SE providers. These amendments also implement the outcome-based reimbursement methodology for IPS SE.

IPS is a model of supported employment for people with serious mental illness. IPS SE helps people living with behavioral health conditions work at regular jobs of their choosing. Although variations of supported employment exist, IPS is the only evidence-based practice of supported employment.

IPS research (27 randomized controlled trials) shows IPS is more effective than alternate vocational approaches regardless of a variety of client background factors (e.g., ethnicity, gender, socioeconomic status, barriers to employment).

IPS is research-based. Efficacy and effectiveness are empirically validated through a body of rigorous research, replicated in a wide range of settings by multiple investigators. IPS has standardized practice guidelines. Its critical components are well defined in a “manualized” service approach, measured via a 25-item Fidelity Scale.

IPS was developed by practitioners in the fields of employment and psychiatry, including Deborah R. Becker, M.Ed, CRC; Robert E. Drake, MD, Ph.D; and Gary Bond, Ph.D, at the Dartmouth Psychiatric Research Center of Dartmouth Medical School in the late 1980s. The Dartmouth Psychiatric Research Center is now called The IPS Center at Westat in Lebanon, New Hampshire. The IPS Center started the International Learning Collaborative (ILC) in 2001 with three sites. As of 2020, there are 24 U.S. states or territories and six countries in the ILC. Westat leads the dissemination, quality control, research, and support of IPS nationally and globally.

Iowa currently has two qualified IPS providers, which have participated in an IPS pilot project since 2018 with funding for training and technical assistance provided by their mental health and disability services regions. These two IPS providers initially received reimbursement through their regions for IPS outcomes and then through the Iowa Medicaid State Plan HCBS Habilitation Services program through an exception to policy (ETP). At the same time Iowa Medicaid began reimbursing these two providers for the IPS Model through an ETP, Iowa Vocational Rehabilitation Services (IVRS) adopted an IPS funding model that reimburses equal to Iowa Medicaid.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 19, 2021, as **ARC 5623C**. The Department received four comments from two respondents on the proposed amendments. The comments and corresponding responses from the Department are divided into two topic areas of provider standards and reimbursement.

Provider standards

Comment 1:

“A suggested edit to paragraph 76 [of the commenter’s document] is ‘Providers shall be accredited Community Mental Health Centers (CMHCs) in good standing, and/or Employment Service Providers who are enrolled in IVRS and Medicaid Habilitation Providers are eligible to form an IPS Team.’

“In the experience of the Vera French Community Mental Health Center, part of why IPS works is the seamless integration of mental health habilitation services with the employment process. In fact, elsewhere in this document, there is a requirement that the IPS team include both vocational and mental health service providers. Yet, only those providers of vocational services under this current section are eligible. It is our belief that either half of the IPS team (mental health or vocation services) should at least be eligible to form an IPS team under this opportunity, subject to securing the partnerships necessary to

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meet all other conditions under this document. The Vera French Community Mental Health Center has many years of experience providing habilitation services and would be interested in forming an IPS team under this state initiative. In fact, Vera French at the end of 2019 secured over \$200,000 in local, private funding to create an IPS program in Davenport. Vera French pursued IPS on behalf of our clients because it was an evidence-based practice. Yet, despite this experience and our ability to document substantial local financial support, the document as is currently written prevents Vera French from growing our IPS program with State of Iowa assistance.”

Response 1:

CMHCs wishing to deliver State Plan HCBS Habilitation Supported Employment services must be enrolled to deliver SE under the HCBS Habilitation program. The following agencies may be enrolled to provide employment services:

(1) An agency that is certified by the Department to provide supported employment services under:

1. The home- and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A); or

2. The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

(2) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider or a community employment service provider.

(3) An agency that is accredited by the Council on Accreditation.

(4) An agency that is accredited by the Joint Commission.

(5) An agency that is accredited by the Council on Quality and Leadership.

(6) An agency that is accredited by the International Center for Clubhouse Development.

Currently, employment support services are not identified in the CMHC Core Services in Iowa Code chapter 230A, and it is unclear that the CMHC accreditation include the review of the delivery of employment supports or how CMHCs are qualified to deliver comprehensive supported employment services. The Department is willing to continue to work with the Mental Health and Disability Services Division of the Department and the CMHCs to explore adding CMHC accreditation as a qualifying criterion for enrollment as a supported employment services provider.

Comment 2:

“Please clarify what is a sufficient level of knowledge and skill. Please clarify what CES certification is.”

Response 2:

As stated in the Department’s definition of the term, “certified employment specialist” or “CES” means a person who has demonstrated a sufficient level of knowledge and skill to provide integrated employment support services to a variety of client populations and has earned a CES certification through a nationally recognized accrediting body.

Certified employment specialists obtain CES certification through a national accrediting body. Certification is offered through the Association of People Supporting Employment First (APSE). The CESP credential is designed for employment support professionals to enhance their professional standing, wages and career advancement options, as a measure of staff competency for providers of employment services. The certification awarded designates that participants have demonstrated the requisite work-related knowledge, skills, or competencies and met other requirements established by the certification program provider (e.g., academic degree, a specified number of years of occupational or professional experience).

Comment 3:

“People served in IPS are occasionally only funded under Habilitation and do not have an open file with IVRS. In those cases there would not be an IVRS counselor on the team. We would suggest changing this definition to read: ‘IPS team’ means, at a minimum, an IPS employment specialist, a behavioral health specialist, Iowa Vocational Rehabilitation Services (IVRS) counselor, and/or a case manager or care coordinator.”

Response 3:

HUMAN SERVICES DEPARTMENT[441](cont'd)

As stated in the Department's definition of the term, "IPS team" means, at a minimum, an IPS employment specialist, behavioral health specialist, IVRS counselor, and case manager or care coordinator.

In cases where a member receiving IPS is not actively working with IVRS, the inclusion of the IVRS counselor on the team would not be applicable. No changes will be made to the rules as a result of this comment at this time.

Reimbursement:**Comment 4:**

"Under the Current IPS Exception to Policy the outcome payments are billed as follows: Outcome 1 is billed under T2015u3 for 34 units as a lump sum upon completion of the Career Plan. Outcome 2 is billed under T2018 for 30 units as a lump sum upon completion of the first day on the job. Outcome 3 is billed under T2018 for 30 units as a lump sum upon completion of 45 days on the job. Outcome 4 is billed under H2025 u5 for 1 unit as a lump sum upon completion of 90 days on the job. Can you clarify that this will continue when these rules go into effect?"

Response 4:

Upon implementation of the administrative rules, IPS SE will have a dedicated procedure code and modifier for each of the four outcome payments as noted in the table below. Procedure codes and modifiers will be as follows:

Model to be implemented September 1, 2021

Outcome Description	IME IPS Service Code	Service Code Description	Units authorized
#1. Completed Employment Plan	T2018 U3	IPS Completed Employment Plan	1 unit
#2. 1st Day Successful Placement	T2018 U4	IPS 1st Day Successful Placement	1 unit
#3. 45 Days Successful Job Retention	T2018 U5	IPS 45 Days Successful Job Retention	1 unit
#4. 90 Days Successful Job Stabilization	T2018 U6	IPS 90 Days Successful Job Stabilization	1 unit

No changes from the Notice have been made based upon comments. A change was made for consistency in the name of the IPS Employment Center at Westat.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on July 8, 2021.

Fiscal Impact

The purpose of these amendments is to implement the IPS SE evidence-based model. These amendments establish the provider qualifications and implementation criteria applicable to the IPS evidence-based practice model for approved supported employment providers. The IME currently reimburses for the IPS SE Model through an ETP for two IPS certified providers. The current IPS model reimbursement methodology is consistent with how the Department reimburses for traditional SE services within the Habilitation program. This rule making will change the IPS payment structure to an outcome-based reimbursement methodology and is expected to have a higher per-recipient cost than the current method. The cost impact will be low initially since only current IPS recipients will be impacted, but is expected to grow over time as more providers elect to participate. The initial cost for only IPS recipients is estimated at \$33,330 total and \$12,652 for the state share, but the cost could

HUMAN SERVICES DEPARTMENT[441](cont'd)

grow to \$1,105,203 total and \$419,535 for the state share if all those currently receiving the traditional SE model transition to IPS.

The fiscal impact cannot be determined because the degree to which providers/members will transition to IPS is not known. Based on the above, the annual state share cost is expected to be between \$12,652 and \$419,535, and likely closer to the low end at initial implementation. Participation in the IPS SE Model has led to improved mental health, physical health, and overall functioning for job seekers, which in turn leads to reduced expenditures related to hospitalizations, emergency room visits, prescription drugs, and other Medicaid-covered services and supports. These potential savings are not incorporated in the above cost estimates.

Jobs Impact

Adoption of these amendments is likely to increase the number of individuals with serious mental illness who are able to obtain and maintain employment. The adoption of these amendments may also create additional CES positions within the SE provider community.

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 September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Certified employment specialist,” “Individual placement and support,” “IPS 25-item supported employment fidelity scale,” “IPS implementation,” “IPS reviewer,” “IPS team,” “IPS trainer,” “Prospective IPS team” and “Provisionally approved IPS team” in subrule **77.25(1)**:

“*Certified employment specialist*” or “*CES*” means a person who has demonstrated a sufficient level of knowledge and skill to provide integrated employment support services to a variety of client populations and has earned a CES certification through a nationally recognized accrediting body.

“*Individual placement and support*” or “*IPS*” means the evidence-based practice of supported employment that is guided by IPS practice principles outlined by the IPS Employment Center at Westat, and as measured by its most recently published 25-item supported employment fidelity scale available online at ipsworks.org/wp-content/uploads/2017/08/ips-fidelity-manual-3rd-edition-2-4-16.pdf. The IPS practice principles are:

1. Focus on competitive employment: Agencies providing IPS services are committed to competitive employment as an attainable goal for people with behavioral health conditions seeking employment. Mainstream education and specialized training may enhance career paths.

2. Zero exclusion criteria based on client choice: People are not excluded on the basis of readiness, diagnoses, symptoms, substance use history, psychiatric hospitalizations, homelessness, level of disability, or legal system involvement.

3. Integration of rehabilitation and mental health services: IPS programs are closely integrated with mental health treatment teams.

HUMAN SERVICES DEPARTMENT[441](cont'd)

4. Attention to worker preferences: Services are based on each person's preferences and choices, rather than providers' judgments.

5. Personalized benefits counseling: Employment specialists help people obtain personalized, understandable, and accurate information about their social security, Medicaid, and other government entitlements.

6. Rapid job search: IPS programs use a rapid job search approach to help job seekers obtain jobs directly, rather than providing lengthy preemployment assessment, training, and counseling. If further education is part of their plan, IPS specialists assist in these activities as needed.

7. Systematic job development: Employment specialists systematically visit employers, who are selected based on job seeker preferences, to learn about their business needs and hiring preferences.

8. Time-unlimited and individualized support: Job supports are individualized and continue for as long as each worker wants and needs the support.

"IPS 25-item supported employment fidelity scale" means the fidelity scale published by the IPS Employment Center at Westat, resulting in scores of exemplary fidelity, good fidelity, fair fidelity, or not supported employment.

"IPS implementation" means the process advocated by the IPS Employment Center at Westat, which consists of the following phases:

1. Formation of IPS team steering group and one-day meeting with the IPS trainer and team members.

2. Completion of the IPS Readiness Assessment developed by the IPS Employment Center at Westat and individual review with the IPS trainer.

3. Completion of a one-day IPS kick-off team training with the IPS trainer and team members.

4. Participation in individual team training and monthly consultations as follows:

- Two-and-a-half-day individual team training with the IPS trainer and team members.
- Virtual training by the IPS Employment Center at Westat for at least three people per team.
- Leadership training for two people per team at the IPS Employment Center at Westat.
- Virtual monthly technical assistance for two hours per month per team.

5. Participation in the International Learning Collaborative, including:

- Participation in the International Learning Collaborative annual conference by two people per state.

- Virtual monthly technical assistance calls with the IPS Employment Center at Westat mentor assigned to the team.

- Participation in the prescribed data tracking and management activities.

6. Completion of one baseline fidelity review per IPS team, with two IPS reviewers on site for two days per review.

7. Evaluation and development of next steps, with an on-site half-day meeting for the IPS trainer and the team.

"IPS reviewer" means a person who is qualified to complete fidelity reviews of IPS services and is one of the following:

1. A person who has provided IPS services or has supervised an IPS team in Iowa which has obtained a fidelity score of "good" or better, has completed the IPS Employment Center at Westat's training to become an IPS reviewer, and has shadowed one or more IPS fidelity reviews;

2. An existing IPS reviewer from a state which is a member of the IPS International Learning Collaborative;

3. An IPS reviewer contracted directly from the IPS Employment Center at Westat;

4. A CES with a bachelor's degree who has completed the IPS Employment Center at Westat's training to become an IPS reviewer and has shadowed one or more IPS fidelity reviews.

"IPS team" means, at a minimum, an IPS employment specialist, a behavioral health specialist, Iowa Vocational Rehabilitation Services (IVRS) counselor, and a case manager or care coordinator.

"IPS trainer" means a person who is qualified to provide training and technical assistance for IPS implementation and is one of the following:

HUMAN SERVICES DEPARTMENT[441](cont'd)

1. A person who has provided IPS services or has supervised an IPS team in Iowa which has obtained a fidelity score of “good” or better, and has completed the IPS Employment Center at Westat’s training to become an IPS trainer;
2. An existing IPS trainer from a state which is a member of the IPS International Learning Collaborative;
3. An IPS trainer contracted directly from the IPS Employment Center at Westat;
4. A CES with a bachelor’s degree who has completed the IPS Employment Center at Westat’s training to become an IPS trainer.

“*Prospective IPS team*” means a group that is forming an IPS team to deliver IPS services but who has not yet completed implementation phase 4a.

“*Provisionally approved IPS team*” means a group that has (1) formed a team to deliver IPS services, (2) completed implementation phase 4a, and (3) begun to deliver IPS services.

ITEM 2. Adopt the following **new** paragraph **77.25(10)“d”**:

d. Providers qualified to offer IPS services shall meet the following requirements:

- (1) Providers shall meet the provider qualifications listed in this subrule.
- (2) Providers shall be accredited to provide supported employment and have provided supported employment for a minimum of two years.
- (3) Providers shall demonstrate adequate funding has been secured for the training and technical assistance required for IPS implementation. Adequate funding is defined as at least the amount required for the start-up of one IPS team to complete all phases of IPS implementation. Evidence of such funding shall be made available to the department at the time of enrollment. Evidence may include a written funding agreement or other documentation from the funder.
- (4) Providers shall receive training and technical assistance throughout IPS implementation from an IPS trainer. Evidence of the IPS team’s agreement for such training and technical assistance shall be made available to the department at the time of enrollment.
- (5) Prospective IPS teams shall complete IPS implementation as defined in subrule 77.25(1) and as outlined by the IPS Employment Center at Westat.
- (6) Prospective IPS teams are provisionally approved until the IPS team has obtained at least a “fair” score on a baseline fidelity review completed by IPS reviewers.
- (7) Provisionally approved IPS teams shall complete IPS implementation phases 1 through 4a within 12 months of enrolling.
- (8) Upon completion of IPS implementation phase 4a, provisionally approved IPS teams shall deliver IPS services according to the IPS outcomes model.
- (9) Upon completion of IPS implementation phase 7, IPS teams are qualified to deliver IPS services, subject to the following:

1. IPS teams must obtain a baseline fidelity review score of “fair” or better within 14 months of completion of IPS implementation phase 1. The fidelity review must be completed by IPS reviewers. The fidelity reviews shall be provided to the department upon receipt by the IPS team.

2. In the event an IPS team fails to achieve a fidelity score of “fair” or better, the IPS team shall receive technical assistance to address areas recommended for improvement as identified in the fidelity review. If the subsequent fidelity review results in a score of less than “fair” fidelity, the IPS team will be provisionally approved for no more than 12 months or until the fidelity score again reaches “fair” fidelity, whichever date is earliest.

3. IPS teams who do not achieve a “fair” fidelity score within 12 months from being provisionally approved will no longer be qualified to deliver IPS services until they again reach the minimum “fair” fidelity score.

ITEM 3. Adopt the following **new** definition of “Certified employment specialist” in subrule **78.27(1)**:

“*Certified employment specialist*” or “*CES*” means a person who has demonstrated a sufficient level of knowledge and skill to provide integrated employment support services to a variety of client populations and has earned a CES certification through a nationally recognized accrediting body.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Amend subrule **78.27(1)**, definition of “Individual placement and support,” as follows:

“Individual placement and support” or “IPS” means an evidence-based supported employment model that helps people with mental illness to seek and obtain the evidence-based practice of supported employment that is guided by IPS practice principles outlined by the IPS Employment Center at Westat, and as measured by its most recently published 25-item supported employment fidelity scale available online at ipsworks.org/wp-content/uploads/2017/08/ips-fidelity-manual-3rd-edition-2-4-16.pdf. The IPS practice principles are:

1. Focus on competitive employment: Agencies providing IPS services are committed to competitive employment as an attainable goal for people with behavioral health conditions seeking employment. Mainstream education and specialized training may enhance career paths.
2. Zero exclusion criteria based on client choice: People are not excluded on the basis of readiness, diagnoses, symptoms, substance use history, psychiatric hospitalizations, homelessness, level of disability, or legal system involvement.
3. Integration of rehabilitation and mental health services: IPS programs are closely integrated with mental health treatment teams.
4. Attention to worker preferences: Services are based on each person’s preferences and choices, rather than providers’ judgments.
5. Personalized benefits counseling: Employment specialists help people obtain personalized, understandable, and accurate information about their social security, Medicaid, and other government entitlements.
6. Rapid job search: IPS programs use a rapid job search approach to help job seekers obtain jobs directly, rather than providing lengthy preemployment assessment, training, and counseling. If further education is part of their plan, IPS specialists assist in these activities as needed.
7. Systematic job development: Employment specialists systematically visit employers, who are selected based on job seeker preferences, to learn about their business needs and hiring preferences.
8. Time-unlimited and individualized support: Job supports are individualized and continue for as long as each worker wants and needs the support.

ITEM 5. Reletter paragraphs **78.27(10)“d”** to **“f”** as **78.27(10)“e”** to **“g.”**

ITEM 6. Adopt the following **new** paragraph **78.27(10)“d”**:

d. Individual placement and support (IPS).

- (1) IPS shall include the following activities, which shall be described and documented in the member’s employment plan:
 1. Development of the career profile, including previous work experience, goals, preferences, strengths, barriers, skills, disclosure preferences, career advancement, education and plan for graduation.
 2. Integration of IPS team members and the behavioral health team, including routine staffing meetings regarding IPS clients.
 3. Addressing barriers to employment, which may be actual or perceived. Support may include addressing justice system involvement, a lack of work history, limited housing, child care, and transportation.
 4. Rapid job search and systematic job development. CESs help members seek jobs directly, and do not provide extensive preemployment assessment and training or intermediate work experiences. The job process begins within 30 days of starting IPS services. This rapid job search is supported by CESs developing relationships with employers through multiple face-to-face meetings. CESs take time to learn about the employers’ needs and the work environment while gathering information about job opportunities that might be a good fit for individuals they are working with.
 5. Disclosure counseling, to assist the member in making an informed decision on disclosure of a disability to a prospective or current employer.
 6. Identification and implementation of job accommodations and assistive technology supports.
 7. Ongoing benefits counseling. The member must receive information on available work incentive programs, or referral to professional benefits counselors for a personalized work incentives plan for any state or federal entitlement.

HUMAN SERVICES DEPARTMENT[441](cont'd)

8. Time-unlimited follow-along supports. These supports are planned for early in the employment process, are personalized, and follow the member for as long as the member needs support. The focus is supporting the member in becoming as independent as possible and involving family members, co-workers, and other natural supports. These supports can be provided on or off the job site and focus on the continued acquisition and development of skills needed to maintain employment.

(2) Units of service. Reimbursement is made for each outcome achieved for the member participating in the IPS supported employment model. Outcomes are as follows:

1. Outcome #1: Completed employment plan.
2. Outcome #2: First day of successful job placement.
3. Outcome #3: 45 days successful job retention.
4. Outcome #4: 90 days successful job retention.

ITEM 7. Amend subrule 79.1(2), provider category of “HCBS waiver service providers,” paragraph 19, as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
19. Supported employment:		
<u>Individual placement and support</u>	<u>Fee schedule</u>	<u>Fee schedule in effect 7/1/21.</u>
Individual supported employment	Fee schedule	Fee schedule in effect 7/1/16. Total monthly cost for all supported employment services not to exceed \$3,059.29 per month.
Long-term job coaching	Fee schedule	Fee schedule in effect 7/1/16. Total monthly cost for all supported employment services not to exceed \$3,059.29 per month.
Small-group supported employment (2 to 8 individuals)	Fee schedule	Fee schedule in effect 7/1/16. Maximum 160 units per week. Total monthly cost for all supported employment services not to exceed \$3,059.29 per month.

[Filed 7/8/21, effective 9/1/21]

[Published 7/28/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5799C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rule making related to waterway zoning

The Natural Resource Commission (Commission) hereby amends Chapter 40, “Boating Speed and Distance Zoning,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455A.5(6), 462A.26(2) and 462A.32(1).

NATURAL RESOURCE COMMISSION[571](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 462A.26 and 462A.32.

Purpose and Summary

Chapter 40 contains rules governing water navigation, specifically vessel speed and distance zoning. This rule making amends subrule 40.31(2). This subrule designates a five-mile-per-hour boating speed zone on East Okoboji Lake in the area known as the Narrows. The Narrows, as its name indicates, is a location where the lake is severely constricted by a large point protruding from the northeast. Currently, the speed zone is defined as an area extending 300 feet north and 200 feet south of the Narrows and is marked on the water using lines of buoys. The purpose of the zone is to reduce the speed of boat traffic for safety purposes and to reduce shoreline erosion caused by boat wakes. This amendment extends the speed zone an additional distance of approximately 800 feet from the existing south boundary to a buoy line extending from the point at 16486 255th Avenue east to the state property adjacent to 16313 256th Avenue on the east side of East Okoboji Lake. This extension will help further reduce shoreline erosion, which is an ongoing problem in this area.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5593C**. A public hearing was held on May 26, 2021, at 6 p.m. via conference call. 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 Commission on July 7, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa as it requires no additional revenues or staffing to implement. 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.

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.

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 September 1, 2021.

NATURAL RESOURCE COMMISSION[571](cont'd)

The following rule-making action is adopted:

Amend subrule 40.31(2) as follows:

40.31(2) Zone 2. Zone 2 shall be the area which is 300 feet north of the area commonly known as the Narrows on East Okoboji and ~~200 feet south of the area commonly known as the Narrows on~~ extends to a southern boundary of a buoy line from the point at 16486 255th Avenue east to the state property adjacent to 16313 256th Avenue on the east side of East Okoboji.

[Filed 7/7/21, effective 9/1/21]

[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5785C

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Adopted and Filed

Rule making related to five-year review of rules

The Real Estate Appraiser Examining Board hereby amends Chapter 1, "Organization and Administration," Chapter 3, "General Provisions for Examinations," Chapter 4, "Associate Real Property Appraiser," Chapter 5, "Certified Residential Real Property Appraiser," Chapter 6, "Certified General Real Property Appraiser," Chapter 7, "Disciplinary Actions Against Certified and Associate Appraisers," Chapter 8, "Investigations and Disciplinary Procedures," Chapter 9, "Renewal, Expiration and Reinstatement of Certificates and Registrations, and Inactive Status," Chapter 10, "Reciprocity," Chapter 11, "Continuing Education," and Chapter 12, "Fees," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 543D.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 543D.

Purpose and Summary

These amendments implement what the Board considers to be high- and medium-priority changes based on a five-year rolling review of its rules. This is the second level of changes from the Board. The highest-priority changes have already gone through the rule-making process and became effective on November 25, 2020. These amendments will reduce conflict between the rules and statute, reduce conflict within the rules and better follow current internal practices.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5611C**. A public hearing was held on May 25, 2021, at 11 a.m. in the Small Conference Room, Third Floor, 200 East Grand Avenue, Des Moines, Iowa. No one attended the public hearing.

The first written comment was from the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council. The ASC requested that the words "Appraisal Subcommittee of the" be added before the text "Federal Financial Institutions Examining Council" in rule 193F—12.3(543D). The second written comment was from the Iowa Division of Banking's Finance Bureau Chief, who requested minor wording changes to subrules 1.20(2), 4.1(5), 5.3(1), 5.6(1), 5.6(10), 6.6(1), and 8.1(4) and to new rule 193F—9.6(272C,543D) and renumbered rule 193F—9.7(272C,543D) to provide better sentence structure and consistency.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

The following changes were made since publication of the Notice. The Board revised the new sentence at the end of amended subrule 1.20(2) to remove the words “and receive approval from the executive officer for the supervisor’s absence” and replace them with “so that it may be determined if the work product review meeting should be rescheduled”; revised new paragraph 4.1(5)“a” to add “and in the manner” and remove “or, in the event there are no paper forms, be submitted through the state’s database”; revised new paragraph 4.1(5)“e” to substitute the words “fee specified in 193F—Chapter 12” for “proper fee” and remove the second sentence; reorganized the numbering of subrule 5.3(1) and revised new subparagraph 5.3(1)“a”(5) (paragraph 5.3(1)“e” in the Notice) to remove the word “proper” from the first sentence and remove the second sentence; amended the second sentence of subrule 5.6(1) to clarify that applicants will be requested to submit “both electronically and on paper” one copy of each report and work file for each selected appraisal; updated subrule 6.3(1) to mirror subrule 5.3(1) as revised; removed striking from the word “or” in paragraph 7.3(3)“h”; revised the introductory paragraph of rule 193F—8.14(543D) to state that the Board shall “set forth the board’s decision, order, or both in the case” and to add a sentence stating that “the board’s decision may include, without limitation, any of the following outcomes, either individually or in combination”; revised the introductory paragraph of new rule 193F—9.6(272C,543D) to substitute the words “the person has retired” for “any person who has retired” in the second sentence and to clarify the third sentence by adding the words “in retired status” in reference to the associate or certified appraiser and revising the rest of the sentence to read, “that the registration or certification be placed into active status so long as the associate or certified appraiser has not renewed the registration or certification in inactive status or allowed the registration or certification to lapse prior to the request to return to active status”; removed “requested to be” from the new language at the end of the first sentence of renumbered rule 193F—9.7(272C,543D); and made the Appraisal Subcommittee’s requested revision to the name of the entity in rule 193F—12.3(543D).

Adoption of Rule Making

This rule making was adopted by the Board on June 23, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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 September 1, 2021.

The following rule-making actions are adopted:

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 1. Amend subrule 1.20(2) as follows:

1.20(2) Summary of certification requirements. As more fully set out in 193F—Chapters 3, 5, and 6, a person who is in the process of completing the education, experience, and examination required for certification as a certified appraiser may not submit an application for certification to the board until all prerequisites have been satisfactorily completed. The prerequisites include the following: qualifying college and core criteria appraiser education, qualifying examination, 1,500 hours of qualifying experience in a minimum of 12 months for residential appraisers or 3,000 hours of qualifying experience in a minimum of 18 months for general appraisers, and work product review. Work product review requires numerous steps, as provided in 193F—5.6(543D) and 193F—6.6(543D). The work product review process includes the applicant's submission of a work product experience log to the board; the board's selection of three appraisals to review; communication of the selected appraisals to the applicant; the applicant's submission of the three appraisals and associated work files to the board in electronic and paper formats; review of the appraisals and work files by a reviewer retained by the board; the reviewer's submission of review reports to the board; a meeting between the applicant, the applicant's supervisor, and the board's work product review committee; a formal board vote at a board meeting; and communication of approval, denial, or deferral to the applicant. All of these steps must be completed before an applicant with approved work product can submit an application for certification to the board office. If the applicant's supervisor is unable to attend the work product review meeting, the applicant, or the applicant's supervisor, must submit the circumstances surrounding the absence to the executive officer so that it may be determined if the work product review meeting should be rescheduled.

ITEM 2. Amend rule 193F—1.23(272C,543D) as follows:

193F—1.23(272C,543D) Applications. Unless otherwise provided by rule of the board, abandoned applications shall be deemed withdrawn. An application is abandoned if the applicant has not accessed or modified the application through the board's electronic licensing database within the preceding six months, or when approved by the board but the applicant has failed to pay any required fees within 30 calendar days of the date approved by the board. For purposes of this rule, "application" means any request, application, registration, or petition submitted to the board through the licensing database, including but not limited to the following:

1. to 22. No change.

ITEM 3. Amend rule 193F—3.2(543D), introductory paragraph, as follows:

193F—3.2(543D) Examinations. Examinations for certified residential real property appraisers and certified general real property appraisers shall be AQB-endorsed and administered by the board or its authorized representative as often as the board deems necessary, but not less than one time per year. Successful completion of the examination is valid for a period of 24 months.

ITEM 4. Amend subrule 3.4(1) as follows:

3.4(1) All initial applications for certification or associate registration shall be made on forms provided by the board. The board may deny an application as described in Iowa Code sections 543D.12 and 543D.17. Specific examples of grounds for denial include knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or participating in any form of fraud or misrepresentation; the revocation of another professional license; or, subject to the limitations and processes set forth in Iowa Code section 272C.15 and corresponding implementing rules located at 193F—Chapter 13, a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions and duties of a person developing real estate appraisals and communicating real estate appraisals to others. The board may also deny an application based on disciplinary action pending or taken against an associate appraiser registration applicant consistent with Iowa Code section 272C.12.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 5. Renumber subrules **4.1(4)** and **4.1(5)** as **4.1(5)** and **4.1(6)**.

ITEM 6. Adopt the following **new** subrule 4.1(4):

4.1(4) Supervision. An applicant must obtain the services of a certified appraiser who meets the supervisor qualification criteria in rule 193F—15.3(543D).

ITEM 7. Amend renumbered subrule 4.1(5) as follows:

4.1(5) Application form. After completing the education, training, background check, and obtainment of a supervisor outlined in subrules 4.1(1) and 4.1(2) to 4.1(4), a person applying for registration as an associate appraiser shall apply for registration ~~on the form provided by the board. The form and the appropriate application fee shall be submitted to the board.~~ A sufficient application within the meaning of Iowa Code section 17A.18(2) must:

- a. Be on a form and in the manner prescribed by the board;
- b. Be signed by the applicant and supervisor(s), be certified as accurate, or display an electronic signature by the applicant and supervisor(s) if submitted electronically;
- c. Be fully completed;
- d. Reflect, on its face, full compliance with all applicable qualifying education requirements including the supervisory appraiser/trainee appraiser course;
- e. Be accompanied by the fee as identified in 193F—Chapter 12.

ITEM 8. Amend subrule 4.2(4) as follows:

4.2(4) Logs. An associate appraiser shall maintain an appraisal experience log that includes all information required by the AQB and the board as a precondition for certification and shall maintain the log contemporaneously with the performance of supervised real property appraisal services. Every log page shall have the names and signatures of the associate appraiser and supervisory appraiser, the state certification number of the supervisory appraiser, and the date of ~~signature~~ signatures. Required log entries shall, at a minimum, include the following for each appraisal:

- a. Type of property;
- b. Date of report;
- c. ~~Address~~ Complete address of appraised property or full legal description;
- d. A specific description of work performed by the associate appraiser, ~~and~~ scope of review, ~~and~~ supervision of the supervisory appraiser;
- e. Number of actual work hours by the associate on the assignment; and
- f. The approach(es) to value utilized in the report.

ITEM 9. Amend subrule 4.6(1) as follows:

4.6(1) In order to reinstate or reactivate an associate registration that has lapsed or been placed in inactive or retired status, the applicant must complete all continuing education required for reinstatement pursuant to 193F—subrule 11.2(5). For purposes of this rule, in addition to the most recent edition of a seven-hour USPAP course, the board shall allow for continuing education only those courses that have been AQB-approved as qualifying education required for certification, as outlined in rules 193F—5.2(543D) and 193F—6.2(543D). The purpose of this requirement is to ensure that those associates reinstating a lapsed, retired, or inactive registration are progressing toward certification. Any qualifying education course taken under this rule as continuing education shall also apply as qualifying education toward certification. If the applicant has completed all qualifying education prior to applying to reinstate a lapsed, retired, or inactive associate registration, the applicant may use any approved continuing education course as provided in 193F—Chapter 11, in addition to the required seven-hour USPAP update course, toward the continuing education required for reinstatement.

ITEM 10. Amend subrule 5.3(1) as follows:

5.3(1) Qualification.

~~a.~~ In order to qualify to sit for the certified residential real property appraiser examination, the applicant must:

(1) ~~Complete~~ complete the board's application form and provide copies of documentation of completion of all courses claimed that qualify the applicant to sit for the examination.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

- a. A sufficient application within the meaning of Iowa Code section 17A.18(2) must:
- (1) Be on a form and in the manner prescribed by the board;
 - (2) Be signed by the applicant, be certified as accurate, or display an electronic signature by the applicant if submitted electronically;
 - (3) Be fully completed;
 - (4) Reflect, on its face, full compliance with all applicable continuing education requirements; and
 - (5) Be accompanied by the fee specified in 193F—Chapter 12.
- ~~(2) Pay the fee specified in 193F—Chapter 12.~~
- b. The core criteria, collegiate education, and experience must be completed and the documentation submitted to the board at the time of application to sit for the examination.

ITEM 11. Amend rule 193F—5.6(543D) as follows:

193F—5.6(543D) Work product review.

5.6(1) An applicant shall submit a complete appraisal log at the time of application for examination and work product review. The board will select three appraisals that demonstrate a diversity of experience and approaches to value over various time frames for work product review and request that the applicant submit ~~four paper copies, both electronically and on paper, one copy~~ of each report and ~~four paper copies of each work file in addition to an electronic format requested by the board~~ for each of the selected appraisals along with the appropriate form and fee. The work product submission shall not be redacted by the applicant; however, the applicant may request the reports remain confidential as specified in subrule 5.6(2). The fee for work product review of the appraisals is provided in 193F—Chapter 12. The board may select the appraisals at random from the entire log or within certain types of appraisals. The board reserves the right to request one or more additional appraisals if those submitted by the applicant raise issues concerning the applicant's competency or compliance with applicable appraisal standards or the degree to which the submitted appraisals are representative of the applicant's work product. Such additional appraisals may be selected at random from the applicant's log or may be selected specifically to provide an example of the applicant's work product regarding a particular type of appraisal.

5.6(2) to 5.6(8) No change.

5.6(9) After accumulating a minimum of 500 hours of appraisal experience, an applicant may voluntarily submit work product to the board to be reviewed by a peer reviewer for educational purposes only. A maximum of three reports may be submitted for review during the experience portion of the certification process. Work product submitted for educational purposes only will not result in disciplinary action on either the associate appraiser or the associate appraiser's supervisor so long as the appraisal review does not reveal negligent or egregious errors or omissions. The fee for voluntary submissions of work product for review is provided in 193F—Chapter 12.

5.6(10) No change.

ITEM 12. Amend subrule 6.3(1) as follows:

6.3(1) In order to qualify to sit for the certified general real property appraiser examination, the applicant must:

~~a. Complete~~ complete the board's application form and provide copies of documentation of completion of all courses claimed that qualify the applicant to sit for the examination.

- a. A sufficient application within the meaning of Iowa Code section 17A.18(2) must:
- (1) Be on a form and in the manner prescribed by the board;
 - (2) Be signed by the applicant, be certified as accurate, or display an electronic signature by the applicant if submitted electronically;
 - (3) Be fully completed;
 - (4) Reflect, on its face, full compliance with all applicable continuing education requirements; and
 - (5) Be accompanied by the fee specified in 193F—Chapter 12.

~~b. Pay the fee specified in 193F—Chapter 12.~~

~~e. b.~~ The ~~degree, education~~ core criteria, collegiate education, and experience must be completed and documentation submitted to the board at the time of application to sit for the examination.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 13. Amend rule 193F—6.6(543D) as follows:

193F—6.6(543D) Work product review.

6.6(1) An applicant shall submit a complete appraisal log at the time of application for examination and work product review. The board will then select three appraisals that demonstrate a diversity of experience and approaches to value over various time frames for work product review and request that the applicant submit four paper copies, both electronically and on paper, one copy of each report and four paper copies of each work file in addition to an electronic format requested by the board for each of the selected appraisals along with the appropriate form and fee. The work product submission shall not be redacted by the applicant; however, the applicant may request the reports remain confidential as specified in subrule 6.6(2). The fee for work product review of the appraisals is provided in 193F—Chapter 12. The board may select the appraisals at random from the entire log or within certain types of appraisals. The board reserves the right to request one or more additional appraisals if those submitted by the applicant raise issues concerning the applicant's competency or compliance with applicable appraisal standards or the degree to which the submitted appraisals are representative of the applicant's work product. Such additional appraisals may be selected at random from the applicant's log or may be selected specifically to provide an example of the applicant's work product regarding a particular type of appraisal.

6.6(2) and 6.6(3) No change.

6.6(4) ~~The board, or a committee of the board, will evaluate the submitted work product.~~ The board will submit the appraisals to a peer review consultant for an opinion on the appraiser's compliance with applicable appraisal standards.

6.6(5) to 6.6(8) No change.

6.6(9) After accumulating a minimum of 500 hours of appraisal experience, an applicant may voluntarily submit work product to the board to be reviewed by a peer reviewer for educational purposes only. A maximum of three reports may be submitted for review during the experience portion of the certification process. Work product submitted for educational purposes only will not result in disciplinary action on either the associate appraiser or the associate appraiser's supervisor so long as the appraisal review did not reveal negligent or egregious errors or omissions. The fee for voluntary submissions of work product for review is provided in 193F—Chapter 12.

6.6(10) No change.

ITEM 14. Amend paragraph **7.3(3)“h”** as follows:

h. Representing oneself as a registered associate appraiser or certified appraiser when one's registration or certificate has been suspended, revoked, surrendered, or placed on inactive or retired status, or has lapsed.

ITEM 15. Amend rule 193F—8.14(543D) as follows:

193F—8.14(543D) Decisions. The board shall make findings of fact and conclusions of law, and ~~may take one or more of the following actions~~ set forth the board's decision, order, or both in the case. The board's decision may include, without limitation, any of the following outcomes, either individually or in combination:

1. Dismiss the charges;
2. Suspend or revoke the appraiser's certification or associate's registration as authorized by law;
3. Impose civil penalties, the amount which shall be set at the discretion of the board, but which shall not exceed \$1000 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code section 543D.17 and chapter 272C or for any repeat offenses;
4. Impose a period of probation, either with or without conditions;
5. Require reexamination;
6. Require additional professional education, reeducation, or continuing education;
7. Issue a citation and a warning;
8. Require desk review of the appraiser's work product;

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

- 9. Issue a consent order either with or without conditions;
- 10. Require consultation with one or more peer reviewers;
- 11. Revoke an appraiser's eligibility to supervise;
- 12. Require submission of monthly logs;
- ~~10-13.~~ 13. Impose any other form of discipline authorized by a provision of law that the board, in its discretion, believes is warranted under the circumstances of the case.

ITEM 16. Amend paragraph **8.15(1)“h”** as follows:

h. Whether the respondent practiced with a lapsed, inactive, retired, suspended, revoked, or surrendered certificate or registration.

ITEM 17. Amend **193F—Chapter 9**, title, as follows:

RENEWAL, EXPIRATION AND REINSTATEMENT OF
CERTIFICATES AND REGISTRATIONS, RETIRED STATUS, AND INACTIVE STATUS

ITEM 18. Amend rule 193F—9.5(272C,543D) as follows:

193F—9.5(272C,543D) Inactive status.

9.5(1) to 9.5(3) No change.

9.5(4) *Renewal.* A person registered as inactive may renew the person's certificate or associate registration to inactive status on the biennial schedule described in 193F—9.1(272C,543D). Such person is exempt from the continuing education requirements for renewal and will be charged a reduced rate, as provided in 193F—Chapter 12. An inactive certificate or associate registration shall lapse if not timely renewed. An active certificate holder or associate registrant may renew as inactive if such person has not completed all continuing education requirements and may thereafter apply for active status, through the reactivation process as provided in subrule 9.6(6), when the deficiency has been remedied.

9.5(5) *Grounds for discipline.* Certified and associate appraisers are not authorized to practice or to hold themselves out to the public as certified or registered appraisers during the period of time that the certificate or registration is in retired or inactive status. Any violation of this subrule shall be grounds for discipline.

9.5(6) No change.

ITEM 19. Renumber rule **193F—9.6(272C,543D)** as **193F—9.7(272C,543D)**.

ITEM 20. Adopt the following new rule 193F—9.6(272C,543D):

193F—9.6(272C,543D) Retired status. An associate or certified appraiser may place the associate or certified appraiser's registration or certification in retired status. For purposes of this rule, the term “retired” means the person has retired from working as an associate or certified appraiser in all jurisdictions and has requested to be placed in retired status on forms provided by the board. An associate or certified appraiser in retired status may request that the registration or certification be placed into active status so long as the associate or certified appraiser has not renewed the registration or certification in inactive status or allowed the registration or certification to lapse prior to the request to return to active status. The board will not provide a refund of biennial registration and certification fees when an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Associate and certified appraisers in retired status are exempt from the renewal requirement. While in retired status, appraisers may not hold themselves out to the public as being registered or certified appraisers during the period of time that the registration or certification is in retired status. For all intents and purposes, retired status is similar to lapsed status with the exceptions that:

9.6(1) The associate or certified appraiser may place the associate or certified appraiser's registration or certification in retired status at any point;

9.6(2) Until such time as the registration or certification expires, the applicant will not be subject to the reactivation or reinstatement criteria;

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

9.6(3) If the associate or certified appraiser places the registration or certification into inactive status at the time of renewal, or the applicant lets the registration or certification lapse, the applicant will be required to reactivate or reinstate pursuant to rule 193F—4.6(272C,543D), or subrule 9.4(5) or 9.5(6) as applicable.

ITEM 21. Amend renumbered rule 193F—9.7(272C,543D) as follows:

193F—9.7(272C,543D) Property of the board. Every certificate or associate registration issued by the board shall, while it remains in the possession of the holder, be preserved by the holder but shall, nevertheless, always remain the property of the board. In the event that a certificate or associate registration is revoked or suspended, ~~or is not renewed, or is registered in inactive status, or is placed in retired status,~~ it shall, on demand, be delivered by the holder to the board. The board shall generally not request return of a certificate or associate registration if it has not been revoked, suspended or voluntarily surrendered in a disciplinary action, but may do so if the board reasonably determines that grounds exist to believe that a person holding a lapsed, retired, or inactive certificate or associate registration has engaged in a practice for which active certification or registration is required.

ITEM 22. Amend subrule 10.1(2) as follows:

10.1(2) The board may issue a reciprocal certificate to a nonresident individual who is certified and demonstrates good standing in another state. An appraiser who is listed in good standing on the National Registry of the Appraisal Subcommittee satisfies the requirement that good standing be demonstrated and does not need to submit additional documentation. An appraiser who is not listed in good standing on the National Registry of the Appraisal Subcommittee must supply an official letter of good standing issued by the licensing board of the appraiser's resident state and bearing its seal. An appraiser may verify the appraiser's status on the National Registry of the Appraisal Subcommittee by accessing the ASC's website at www.asc.gov.

ITEM 23. Amend rule 193F—10.2(543D) as follows:

193F—10.2(543D) Nonresident temporary practice.

10.2(1) The board will recognize, on a temporary basis, the certification of an appraiser issued by another state for a period of six months, unless the applicant requests, and is approved for, a one-time extension, of which the one-time extension will not exceed six months, prior to the expiration of the original issued temporary practice permit.

10.2(2) The appraiser must register with the board and identify the property(ies) to be appraised; ~~and the name and address of the client and the estimated length of time the appraiser will be in the state.~~ The appraiser must demonstrate good standing to be considered for a temporary practice permit. An appraiser who is listed in good standing on the National Registry of the Appraisal Subcommittee satisfies the requirement that good standing be demonstrated and does not need to submit additional documentation. An appraiser who is not listed in good standing on the National Registry of the Appraisal Subcommittee must supply an official letter of good standing issued by the licensing board of the appraiser's resident state and bearing its seal. An appraiser may verify the appraiser's status on the National Registry of the Appraisal Subcommittee by accessing the ASC's website at www.asc.gov. Registration shall be on a form provided by the board and submitted to the board office prior to the performance of the appraisal. The appraiser shall pay the appropriate fee as required in rule 193F—12.1(543D).

10.2(3) An appraiser holding an inactive, retired, or lapsed certificate as a real estate appraiser in Iowa may apply for a temporary practice permit if the appraiser holds an active, unexpired certificate as a real estate appraiser in good standing in another jurisdiction and is otherwise eligible for a temporary practice permit.

10.2(4) and **10.2(5)** No change.

10.2(6) An appraiser holding an inactive, retired, or lapsed Iowa certificate who applies to reinstate to active status in Iowa shall not be given credit for any fees paid during the biennial period for one or more temporary practice permits.

10.2(7) and **10.2(8)** No change.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

ITEM 24. Amend rule 193F—11.2(272C,543D) as follows:

193F—11.2(272C,543D) Continuing education requirements.

11.2(1) to 11.2(4) No change.

11.2(5) Prior to reinstatement or reactivation of a certified general registration or a certified residential registration, a certified credential holder in inactive, retired, or lapsed status must complete all required continuing education hours that would have been required if the certified credential holder was in active status. The required hours must also include the most recent edition of a ~~7-hour~~ seven-hour National USPAP Update Course. Waivers may not be granted to credential holders who have failed to meet the continuing education requirements.

11.2(6) During each two-year renewal period, a continuing education program may be taken for credit only once, except USPAP courses as long as it is not the same USPAP course (e.g., an appraiser may take the 2018-2019 USPAP and the 2020-2021 USPAP update course but may not take two 2018-2019 USPAP update courses).

11.2(7) to 11.2(9) No change.

ITEM 25. Amend subrule 11.7(3) as follows:

11.7(3) All required forms and attachments must be submitted for approval at least 30 days prior to the first offering of each program. The board will approve or deny each program, in whole or part, within 15 days of the date the board receives ~~the fee and~~ a fully completed application. Payments for course program applications must be made within 30 calendar days of the date the application is approved by the board or the application approval may be reversed.

ITEM 26. Amend rule 193F—12.1(543D) as follows:

193F—12.1(543D) Required fees. The following fee schedule applies to certified general, certified residential and associate appraisers.

Initial examination application fee	\$150
Examination fee (and reexamination fee)	\$145
Biennial registration fee for active status (initial, reciprocal, renewal):	
Certified real property appraiser > one year	\$200
Certified real property appraiser < one year	\$100
Associate real property appraiser > one year	\$200
Associate real property appraiser < one year	\$100
Biennial registration fee for inactive status (initial, reciprocal, renewal):	
Certified real property appraiser	\$100
Associate real property appraiser	\$50
Temporary practice permit fee (each request)	\$100
Fee to reinstate a lapsed <u>or retired</u> license (lapsed <u>or retired</u> to active status)	\$150 (plus the registration fee)
Fee to reactivate an inactive <u>or retired</u> license (inactive <u>or retired</u> to active status)	\$50 (plus the registration fee)
Formal wall certificate	\$25
Work product review fees:	
Original submission, certified residential	\$300
Original submission, certified general	\$650
Additional residential reports as requested by the board	\$150 per report

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

Additional nonresidential reports as requested by the board	\$250 per report
Voluntary submission of residential reports for review	\$150 per report
Voluntary submission of nonresidential reports for review	\$250 per report
Course application fee (non-AQB-approved courses and secondary providers)	\$50
Pre-/post-course application fee	\$25
Background check	\$51
ASC National Registry fee > one year, separate from registration fee	\$80
ASC National Registry fee < one year, separate from registration fee	\$40
Fee to add supervisory appraiser	\$25
Fee to add course instructor	\$10
Waiver to administrative rules	\$25
Late renewal fee (associate, certified)	\$50

ITEM 27. Amend rule 193F—12.3(543D) as follows:

193F—12.3(543D) Federal registry fee. The board shall collect and transmit to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, on an annual basis, a roster of individuals who have received certification or registration as real property appraisers and a registry fee of \$40 for each individual listed on the roster. ~~The registry fee is included in the registration fee.~~

[Filed 6/24/21, effective 9/1/21]

[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5798C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to computer peripherals and Iowa Code citations

The Revenue Department hereby amends Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," and Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3 and 2020 Acts, House File 2641.

Purpose and Summary

Through 2020 Iowa Acts, House File 2641, the General Assembly added the term "computer peripheral" to an existing sales tax exemption in Iowa Code section 423.3(47) and defined that term in

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Iowa Code section 423.1. This rule making adds that term to the Department's rule implementing that exemption as applicable.

While amending Chapter 230 to address this legislative change, the Department has also taken this opportunity to clean up a few other items in and related to those rules. First, the Department has replaced a variety of definitions of terms which are also defined in the Iowa Code with references to the appropriate Iowa Code citation. Second, the Department has rescinded rules 701—18.45(422,423) and 701—18.58(422,423), which implemented the exemption in Iowa Code section 423.3(47) prior to 2016. In doing this, the Department has moved the definition of the term “directly used” from rule 701—18.45(422,423) to Chapter 230; the Department has made no change to the definition itself. Third, the Department has updated implementation references throughout Chapter 230 that have been out of date since sales tax was moved out of Iowa Code chapter 422 several years ago.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 2, 2021, as **ARC 5659C**. 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 July 7, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The Legislative Services Agency's fiscal note provided an estimated fiscal impact of \$0 for the section of 2020 Iowa Acts, House File 2641, that added this language to the Iowa Code.

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 701—7.28(17A).

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 September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Rescind and reserve rule **701—18.45(422,423)**.

ITEM 2. Rescind and reserve rule **701—18.58(422,423)**.

ITEM 3. Amend rule **701—230.2(423)**, implementation sentence, as follows:

This rule is intended to implement 2005 Iowa Code ~~Supplement subsection~~ section 423.3(49).

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ITEM 4. Amend rule **701—230.3(423)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code section ~~423.3(49)~~ 423.3(50).

ITEM 5. Amend rule **701—230.4(423)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code section ~~423.3(50)~~ 423.3(51).

ITEM 6. Amend rule **701—230.5(423)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code section ~~423.3(51)~~ 423.3(52).

ITEM 7. Amend rule **701—230.6(423)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code section ~~423.3(52)~~ 423.3(53).

ITEM 8. Amend rule **701—230.7(423)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code section ~~423.3(53)~~ 423.3(54).

ITEM 9. Amend subrule 230.8(1) as follows:

230.8(1) Exempt sales and rentals of machinery and equipment. The sales price from sales or rentals of core making, mold making, and sand handling machinery and equipment directly and primarily used by a foundry in the mold making process is exempt from tax. For the purposes of this rule, a “foundry” is an establishment where metal, but not plastic, is melted and poured into molds. A nonexclusive list of equipment which may be exempt under this rule includes sand storage tanks, conveyers, patterns, mallor controllers, and sand mixers. A nonexclusive list of items which would not be exempted by this rule includes sand and other materials (as opposed to equipment) used to build molds or cores, and supplies. Services used in the mold making process are not exempted from tax by this rule. For the purposes of this rule, core making, mold making, and sand handling equipment also include replacement parts necessary for the operation of the equipment which is used directly and primarily by a foundry in the mold making process. ~~Reference 701—subrule 18.58(1)~~ See subrule 230.14(2) for definitions of “directly used,” “equipment,” and “machinery,” and see Iowa Code section 423.3(47) “d” for definitions of “replacement part” and “supplies.”

ITEM 10. Amend rule **701—230.9(423)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code section ~~423.3(50)~~ 423.3(51).

ITEM 11. Amend rule **701—230.10(423)**, implementation sentence, as follows:
This rule is intended to implement ~~2007~~ Iowa Code ~~Supplement~~ section 423.3(92).

ITEM 12. Amend rule 701—230.14(423) as follows:

701—230.14(423) Exemption for the sale of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies used for certain manufacturing purposes if the sale occurs on or after July 1, 2016. Rules 701—230.14(423) to 701—230.20(423) exempt the sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies when used in an exempt manufacturing purpose. Rule 701—230.21(423) exempts the purchase of fuel used in such computers, computer peripherals, machinery, and equipment. Rule 701—230.22(423) exempts the service of designing or installing such new industrial machinery and equipment. Rules 701—230.14(423) to 701—230.22(423) apply to sales of such products occurring on or after July 1, 2016. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

230.14(1) Generally. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax if the property is any of the following:

- a. Directly and primarily used in processing by a manufacturer (see rule 701—230.15(423)).
- b. Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals,

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machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product (see rule 701—230.16(423)).

c. Directly and primarily used in research and development of new products or processes of processing (see rule 701—230.17(423)).

d. Computers or computer peripherals used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise (see rule 701—230.18(423)).

e. Directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

f. Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government (see rule 701—230.20(423)).

g. Fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, computer peripherals, machinery, or equipment used in an exempt manner described in paragraph “a,” “b,” “c,” “e,” or “f” (see rule 701—230.21(423)).

230.14(2) *Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies.*

a. *Computers and computer peripherals.* Rescinded by 2020 Iowa Acts, House File 2641, section 97, effective July 1, 2020. “Computer” and “computer peripheral” mean the same as defined in Iowa Code section 423.1.

b. *Machinery.* “Machinery” is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. Machinery also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery.

c. *Equipment.* In general usage, “equipment” refers to devices or tools used to produce a final product or achieve a given result. Exempt “equipment” under these rules includes tables on which property is assembled on an assembly line, if those tables are directly and primarily used in processing by a manufacturer.

d. *Replacement parts.* “Replacement part” means ~~tangible personal property other than computers, machinery, equipment, or supplies, regardless of the cost or useful life of the tangible personal property, that meets all of the following conditions: the same as defined in Iowa Code section 423.3(47)“d.”~~

~~(1) The tangible personal property replaces a component of a computer, machinery, or equipment, which component is capable of being separated from the computer, machinery, or equipment;~~

~~(2) The tangible personal property performs the same or similar function as the component it replaced; and~~

~~(3) The tangible personal property restores the computer, machinery, or equipment to an operational condition, or upgrades or improves the efficiency of the computer, machinery, or equipment.~~

e. *Supplies.* “Supply” “Supplies” means ~~tangible personal property, other than computers, machinery, equipment, or replacement parts, that meets one of the following conditions: the same as defined in Iowa Code section 423.3(47)“d.”~~

~~(1) The tangible personal property is to be connected to a computer, machinery, or equipment and requires regular replacement because the item is consumed or deteriorates during use. Such supplies include, but are not limited to, saw blades, drill bits, filters, and other similar items with a short useful life.~~

~~(2) The tangible personal property is used in conjunction with a computer, machinery, or equipment and is specially designed for use in manufacturing specific products and may be used interchangeably and intermittently on a particular computer, machine, or piece of equipment. Such supplies include, but are not limited to, jigs, dies, tools, and other similar items.~~

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~~(3) The tangible personal property comes into physical contact with other tangible personal property used in processing and is used to assist with or maintain conditions necessary for processing. Such supplies include, but are not limited to, cutting fluids, oils, coolants, lubricants, and other similar items with a short useful life.~~

~~(4) The tangible personal property is directly and primarily used in an activity described in rules 701—230.14(423) to 701—230.20(423). Such supplies include, but are not limited to, prototype materials and testing materials.~~

f. Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies. “Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies” means tangible personal property that is incorporated into a computer, computer peripheral, machinery, equipment, replacement part, or supply when the computer, computer peripheral, machinery, equipment, replacement part, or supply is constructed or assembled.

g. Exclusions. Sales of the following property, or materials used to construct or self-construct the following property, are not exempt under rules 701—230.14(423) to 701—230.20(423) regardless of how the property is used.

(1) Land.

(2) Intangible property.

(3) Hand tools. “Hand tool” means a tool that can be held in the hand or hands and is powered by human effort.

(4) Point-of-sale equipment, ~~and computers, and computer peripherals~~. “Point-of-sale equipment, ~~and computers, and computer peripherals~~” means input, output, and processing equipment, ~~and computers, and computer peripherals~~ used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and is located at the counter, desk, or other specific point where the transaction occurs. Point-of-sale equipment, ~~and computers, and computer peripherals~~ do not include equipment, ~~and computers, and computer peripherals~~ used primarily for depositing or withdrawing funds from financial institution accounts.

(5) Certain centrally assessed industrial machinery, equipment, ~~and computers, and computer peripherals~~. Property that is centrally assessed by the department of revenue under Iowa Code sections 428.24 to 428.29 or chapters 433, 434, 437, 437A, 437B, and 438 does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423). Property used but not owned by persons whose property is defined by such provisions of the Iowa Code, which would be assessed by the department of revenue if the persons owned the property, also does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423).

(6) Vehicles subject to registration. The general sales and use tax does not apply to vehicles subject to registration under Iowa Code chapter 321. Instead, such vehicles are subject to the fee for new registration under Iowa Code section 321.105A. Vehicles subject to registration are not exempt from the fee for new registration under rules 701—230.14(423) to 701—230.20(423), unless the vehicle is directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

h. Examples. When used for an exempt purpose under rules 701—230.14(423) to 701—230.20(423), the following items may be exempt computers, computer peripherals, machinery, equipment, replacement parts, or supplies. This list is not all-inclusive.

(1) Coolers, including coolers that do not change the nature of materials stored in them.

(2) Equipment that eliminates bacteria.

(3) Palletizers.

(4) Storage bins.

(5) Property used to transport raw, semifinished, or finished goods.

(6) Vehicle-mounted cement mixers.

(7) Self-constructed machinery and equipment.

(8) Packaging and bagging equipment, including conveyer systems.

(9) Equipment that maintains an environment necessary to preserve a product’s integrity.

(10) Equipment that maintains a product’s integrity directly.

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(11) Quality control equipment.

(12) Water used for cooling.

230.14(3) *Leased and rented property.* The exemptions under rules 701—230.14(423) to 701—230.22(423) apply to property regardless of how it is sold, including leased or rented property. The lease of computers, computer peripherals, machinery, equipment, replacement parts, or supplies may be exempt from sales and use tax if the lessee uses the property in an exempt manner under rules 701—230.14(423) to 701—230.20(423). Additionally, a lessor's purchase of computers, computer peripherals, machinery, equipment, replacement parts, or supplies for lease or resale may be an exempt sale for resale under Iowa Code section 423.3(2).

230.14(4) *Record keeping.* Individuals claiming an exemption must always be able to prove they qualify for the exemption. To claim the exemptions described in this rule, purchasers must be able to prove that computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are used for an exempt purpose under rules 701—230.14(423) to 701—230.20(423). When both exempt and nonexempt machinery and equipment are used in the same facility, replacement parts and supplies used in the machinery and equipment are exempt under these rules only to the extent the purchaser can prove which replacement parts and supplies were used in the exempt machinery and equipment. Detailed, contemporaneous records should be maintained to verify that qualifying property is used for an exempt purpose. The precise records required may vary from purchaser to purchaser. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are not exempt under rules 701—230.14(423) to 701—230.20(423) if the property is not used for an exempt purpose.

This rule is intended to implement Iowa Code section 423.3(47) as amended by 2016 Iowa Acts, House File 2433 2020 Iowa Acts, House File 2641.

ITEM 13. Amend rule 701—230.15(423) as follows:

701—230.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer if the sale occurs on or after July 1, 2016. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in processing by a manufacturer. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

230.15(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

b. to e. No change.

230.15(2) No change.

230.15(3) *Processing.*

a. Generally. "Processing" means a series of operations in which materials are manufactured, refined, purified, created, combined, transformed, or stored by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes, but is not limited to, refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; construction of packaging and shipping devices; placement into shipping containers or any type of shipping device or medium; and the movement of materials, components, or products until shipment from the processor. "Receipt or producing of raw materials" means activities performed upon tangible personal property only. and "receipt or producing of raw materials" mean the same as defined in Iowa Code section 423.3(47) "d."

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With respect to raw materials produced from or upon real estate, “production of raw materials” is deemed to occur immediately following the severance of the raw materials from the real estate.

b. to d. No change.

230.15(4) and **230.15(5)** No change.

230.15(6) *Replacement parts and supplies.*

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in ~~paragraph 230.14(2)“d.”~~ Iowa Code section 423.3(47)“d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in ~~paragraph 230.14(2)“e.”~~ Iowa Code section 423.3(47)“d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

This rule is intended to implement Iowa Code section 423.3(47)“a”(1).

ITEM 14. Amend rule 701—230.16(423) as follows:

701—230.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions if the sale occurs on or after July 1, 2016. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product. ~~For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).~~

230.16(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

b. Directly used (see subrule 230.15(2));

c. Primarily used (see subrule 230.15(2));

d. Used by a manufacturer (see subrule 230.15(4)); and

e. Used to maintain:

(1) A manufactured product’s integrity;

(2) Unique environmental conditions required for a manufactured product; or

(3) Unique environmental conditions required for other computers, computer peripherals, machinery, equipment, replacement parts, or supplies directly and primarily used in processing by a manufacturer.

230.16(2) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in ~~paragraph 230.14(2)“d.”~~ Iowa Code section 423.3(47)“d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer

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peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in ~~paragraph 230.14(2)“e.”~~ Iowa Code section 423.3(47)“d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

230.16(3) No change.

This rule is intended to implement Iowa Code section 423.3(47)“a”(2).

ITEM 15. Amend rule 701—230.17(423) as follows:

701—230.17(423) Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing if the sale occurs on or after July 1, 2016. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in research and development of new products or processes of processing. ~~For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).~~

230.17(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

b. to d. No change.

230.17(2) and **230.17(3)** No change.

230.17(4) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in ~~paragraph 230.14(2)“d.”~~ Iowa Code section 423.3(47)“d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in ~~paragraph 230.14(2)“e.”~~ Iowa Code section 423.3(47)“d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact

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with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing, or an exempt supply must itself be directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

230.17(5) No change.

This rule is intended to implement Iowa Code section 423.3(47) “a”(3).

ITEM 16. Amend rule 701—230.18(423) as follows:

701—230.18(423) Exemption for the sale of computers and computer peripherals used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise if the sale occurs on or after July 1, 2016. The sales price of computers and computer peripherals is exempt from sales and use tax when the computers and computer peripherals are used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise. The sales price of machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is not exempt under this rule. ~~For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).~~

230.18(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a. Computers or computer peripherals (see ~~paragraph 230.14(2) “a”~~ Iowa Code section 423.1);
- b. Used in processing or storage of data or information (see subrule 230.18(2)); and
- c. Used by:
 - (1) An insurance company (see subrule 230.18(3));
 - (2) A financial institution (see subrule 230.18(3)); or
 - (3) A commercial enterprise (see subrule 230.18(3)).

230.18(2) Processing or storage of data or information. All computers store and process information. However, only if the “final output” for a user or consumer is stored or processed data will the computer be eligible for exemption from tax under this rule.

230.18(3) Insurance company, financial institution, or commercial enterprise.

a. ~~Insurance company. An insurance company is an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or an insurer authorized to do business in Iowa as an insurer or as a licensed insurance producer under Iowa Code chapter 522B. “Insurance company” means the same as defined in Iowa Code section 423.3(47) “d.”~~ Excluded from the definition of “insurance company” are benevolent associations governed by Iowa Code chapter 512A, fraternal benefit societies governed by Iowa Code chapter 512B, and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

b. ~~Financial institution. A financial institution is any bank incorporated under the provisions of any state or federal law, any savings and loan association incorporated under the provisions of federal law, any credit union organized under the provisions of any state or federal law, any corporation licensed as an industrial loan company under Iowa Code chapter 536A, and any affiliate of a bank, savings and loan association, credit union, or industrial loan company. “Financial institution” means the same as defined in Iowa Code section 527.2.~~

c. ~~Commercial enterprise. A commercial enterprise is a business or manufacturer conducted for profit, other than an insurance company or financial institution. “Commercial enterprise” includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations as well as nonprofit organizations. A hospital that is a not-for-profit organization is not a commercial enterprise. The term “profession” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term “occupation” means the principal business of an individual, such as the business~~

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of farming. ~~A professional entity that carries on any profession or occupation, such as an accounting firm, is not a commercial enterprise.~~ means the same as defined in Iowa Code section 423.3(47) "d."

230.18(4) Exempt property. To qualify for exemption under this rule, tangible personal property must satisfy the definition of "computers" or "computer peripherals" contained in ~~paragraph 230.14(2)"a."~~ Iowa Code section 423.1. Other property, including machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies, is not exempt under this rule, even if the property is used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

230.18(5) No change.

This rule is intended to implement Iowa Code section 423.3(47) "a"(4).

ITEM 17. Amend rule 701—230.19(423) as follows:

701—230.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products if the sale occurs on or after July 1, 2016. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in recycling or reprocessing of waste products. ~~For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).~~

230.19(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

b. to d. No change.

230.19(2) No change.

230.19(3) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in ~~paragraph 230.14(2)"d."~~ Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in ~~paragraph 230.14(2)"e."~~ Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products, or an exempt supply must itself be directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

230.19(4) Examples.

a. Computers, computer peripherals, machinery, and equipment that may be exempt from sales and use tax under this rule include, but are not limited to, compactors, balers, crushers, grinders, cutters, and shears if directly and primarily used in recycling or reprocessing.

b. to d. No change.

EXAMPLE A: Company A recycles household waste. Company A uses several machines in its facility to separate waste products into recyclable and nonrecyclable materials and to further separate

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the recyclable materials into paper, plastic, or glass. The sales prices of all separating machines are exempt from sales and use tax as machines directly and primarily used in recycling of waste products.

EXAMPLE B: Company B uses grinding machines to convert logs, stumps, pallets, crates, and other waste wood into wood chips. Company B then uses its trucks to deliver the wood chips to local purchasers. The sales prices of the grinding machines are exempt from sales and use tax as machines directly and primarily used in recycling or reprocessing of waste products. The trucks used to transport the wood chips are not used in recycling or reprocessing because the wood chips are in their final form when loaded onto the trucks.

This rule is intended to implement Iowa Code sections 321.105A(2) “c”(24) and 423.3(47) “a”(5).

ITEM 18. Amend rule 701—230.20(423), introductory paragraph, as follows:

701—230.20(423) Exemption for the sale of pollution-control equipment used by a manufacturer if the sale occurs on or after July 1, 2016. The sales price of pollution-control equipment, including but not limited to equipment required or certified by an agency of Iowa or of the United States government, is exempt from sales and use tax when the property is used by a manufacturer. Other equipment, and computers, computer peripherals, machinery, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies are not exempt from sales and use tax under this rule. ~~For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).~~

ITEM 19. Amend rule 701—230.21(423) as follows:

701—230.21(423) Exemption for the sale of fuel or electricity used in exempt property if the sale occurs on or after July 1, 2016. The sales price of fuel or electricity consumed by computers, computer peripherals, machinery, or equipment that is exempt from sales and use tax under rule 701—230.14(423), 701—230.15(423), 701—230.16(423), 701—230.17(423), 701—230.19(423), or 701—230.20(423) is also exempt from sales and use tax. The sales price of electricity or other fuel consumed by replacement parts, supplies, ~~or computers, or computer peripherals~~ used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise remains subject to tax even if such property is exempt under rules 701—230.14(423) to 701—230.20(423). ~~For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).~~

EXAMPLE: A manufacturer operates a power plant. The manufacturer uses energy from the power plant to operate machinery and equipment used directly and primarily in processing at its manufacturing facility. The fuel consumed in the manufacturer’s power plant is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “b.”

ITEM 20. Amend rule 701—230.22(423) as follows:

701—230.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment if the sale occurs on or after July 1, 2016. The sales price from the services of designing or installing new industrial machinery or equipment is exempt from sales and use tax. The enumerated services of electrical or electronic installation are included in this exemption.

230.22(1) to 230.22(3) No change.

230.22(4) Industrial machinery or equipment.

a. Generally. “Industrial machinery or equipment” means machinery or equipment, as defined in subrule 230.14(2). The sale of industrial machinery or equipment must also qualify for exemption under any of the following:

(1) Property used directly and primarily in processing by a manufacturer (see rule 701—230.15(423)).

(2) Property used directly and primarily by a manufacturer to maintain the integrity of the manufacturer’s product or to maintain unique environmental conditions for computers, computer peripherals, machinery, or equipment (see rule 701—230.16(423)).

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(3) Property used directly and primarily in research and development of new products or processes of processing (see rule 701—230.17(423)).

(4) Property used directly and primarily in recycling or reprocessing of waste products (see rule 701—230.19(423)).

(5) Pollution-control equipment used by a manufacturer (see rule 701—230.20(423)).

b. Exclusions. The following property is not industrial machinery or equipment regardless of how the purchaser uses it:

(1) Computers or computer peripherals (see ~~paragraph 230.14(2)“a”~~ Iowa Code section 423.1).

(2) Replacement parts (see ~~paragraph 230.14(2)“d”~~ Iowa Code section 423.3(47)“d”).

(3) Supplies (see ~~paragraph 230.14(2)“e”~~ Iowa Code section 423.3(47)“d”).

(4) Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies (see paragraph 230.14(2)“f”).

230.22(5) Billing. The sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply. The exemption applies to new industrial machinery or equipment regardless of how it is purchased, including leased or rented machinery or equipment.

EXAMPLE: Dealer sells and installs two new machines for Manufacturer. Manufacturer uses one machine on its production floor, where the machine is directly and primarily used in processing. Manufacturer uses the other machine in its machine shop, where the machine is not directly and primarily used in processing. Dealer gives an invoice to Manufacturer that separately itemizes the sales prices for each machine and each installation. The machine used on the production floor is new industrial machinery or equipment, and the sales prices of the machine and its installation are exempt from sales and use tax. The machine used in the machine shop is not new industrial machinery or equipment, and the sales prices of the machine and its installation are taxable.

This rule is intended to implement Iowa Code section 423.3(48).

[Filed 7/7/21, effective 9/1/21]

[Published 7/28/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5801C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to relief from joint and several liability

The Revenue Department hereby amends Chapter 38, “Administration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 422.21 and 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 422.21.

Purpose and Summary

This rule making updates rule 701—38.15(422) to reflect certain changes to Iowa Code section 422.21(7) and to provide taxpayers with additional clarity when seeking relief from joint and several liability for tax, penalty, and interest owed to the Department. The changes to the rule describe who may qualify for relief from joint and several liability, the information applicants for relief must submit to the

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Department, the standard for evaluating whether an individual is eligible for relief, the administrative process for appealing a denial of relief, and the rights of the nonrequesting spouse or former spouse.

The amended rule provides that if an individual has sought and received a determination under Section 6015 of the Internal Revenue Code regarding relief from joint and several liability at the federal level, that individual is required to provide that documentation to the Department. In circumstances where the individual seeking relief from joint and several liability has not received a final determination from the Internal Revenue Service regarding the individual's eligibility for relief at the federal level, the amended rule explains that the applicant bears the burden of showing that the individual is eligible for relief under Section 6015 of the Internal Revenue Code and describes the information the applicant must present to the Department to establish eligibility. The amended rule also clarifies the time period in which a request for relief from joint and several liability must be submitted to the Department and the process through which a taxpayer whose request for relief has been denied may appeal that decision.

Additionally, the amended rule addresses the rights of the nonrequesting spouse or former spouse. The amended rule outlines the Department's role in notifying the nonrequesting spouse or former spouse and describes the information any such notice must contain. Finally, the amended rule articulates the process by which a nonrequesting spouse or former spouse may intervene before the Department in order to participate in the determination of whether relief from joint and several liability is appropriate and lists the information that must be contained in the nonrequesting spouse's or former spouse's notice of intervention.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5613C**. The Department did not receive any comments on the proposed amendment to the rule. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on June 28, 2021.

Fiscal Impact

This rule making has no fiscal impact beyond the legislation it is intended to implement.

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 701—7.28(17A).

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 September 1, 2021.

The following rule-making action is adopted:

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Amend rule 701—38.15(422) as follows:

701—38.15(422) Relief of innocent spouse from joint and several liability under Iowa Code section 422.21(7) for substantial understatement of tax attributable to other nonrequesting spouse or former spouse. Married or formerly married taxpayers are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where the spouses file separately on the combined return form. However, pursuant to Iowa Code section 422.21(7), a married person who meets is eligible for relief under the criteria for an innocent spouse established in Section 6015 of the Internal Revenue Code may be relieved of liability for an understatement of Iowa tax that is attributable to erroneous items of the other nonrequesting spouse or former spouse. For state income tax purposes, the requirements set forth in this rule shall control to the extent that they conflict with Section 6015 of the Internal Revenue Code.

38.15(1) Filing status required for return with an innocent spouse relief from joint and several liability. For state income tax purposes, a married or formerly married taxpayer filing a return with a spouse can may qualify as an innocent spouse for relief from joint and several liability under Iowa Code section 422.21(7) only if the taxpayers file taxpayer filed a joint return or file filed separately on the a combined return form. A married taxpayer who files a separate return that has been accepted by the state will not be eligible for innocent spouse status.

38.15(2) Scope of relief for Iowa income tax purposes. An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. An erroneous item is any item resulting in an understatement or deficiency in Iowa taxes to the extent that the item is omitted from, or improperly reported or characterized on, an Iowa tax return, including Iowa deductions and tax credits that would not be included on a federal return.

38.15(3) Presumption and burden of proof when requesting innocent spouse relief.

a. Presumption. The department shall presume that a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief for the relevant tax years shows that the innocent spouse granted relief by that document qualifies for innocent spouse relief for Iowa income tax purposes for those tax years. If the person seeking innocent spouse relief does not provide the department with a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief within the time frame set forth in subrule 38.15(4), the department shall presume that the person seeking innocent spouse relief does not meet the criteria to qualify for innocent spouse relief for Iowa income tax purposes and shall deny the request. The burden is on the person seeking innocent spouse relief to rebut this presumption with other evidence.

b. Request without Internal Revenue Service approval. If the department denies a claim for innocent spouse relief, the person seeking innocent spouse relief may protest the department's determination under 701—Chapter 7. The department will evaluate the protest by applying the criteria set forth in Section 6015 of the Internal Revenue Code and the related regulations. The department will defer to federal court cases, letter rulings, and revenue rulings in interpreting Section 6015 of the Internal Revenue Code and the related regulations. The provisions of Sections 6015(e) and 6015(f) of the Internal Revenue Code regarding relief for separation of liabilities and equitable relief, respectively, are applicable for Iowa income tax purposes for tax years beginning on or after January 1, 2002. The burden is on the person seeking innocent spouse relief to show that the person meets the federal criteria for innocent spouse relief.

38.15(3) Requirement to provide IRS determination or other evidence of eligibility.

a. If the person seeking relief from joint and several liability under Iowa Code section 422.21(7) also applied for tax relief from the federal government under Section 6015 of the Internal Revenue Code and received a final determination letter or other document issued by the Internal Revenue Service in connection with relief requested under Section 6015 of the Internal Revenue Code, the person is required to provide the department with a copy of such letter or document within the time frame set forth in subrule 38.15(6). Failure to provide this required information, if it exists, will result in the denial of the request for relief from joint and several liability under Iowa Code section 422.21(7).

REVENUE DEPARTMENT[701](cont'd)

b. If the person seeking relief from joint and several liability under Iowa Code section 422.21(7) also applied for federal relief under Section 6015 of the Internal Revenue Code but did not receive a final determination letter or other document issued by the Internal Revenue Service in connection with the requested relief, the person must provide the department with other evidence to support the position that the taxpayer is eligible for relief under Iowa Code section 422.21(7).

c. If the person seeking relief under Iowa Code section 422.21(7) did not apply for federal relief under Section 6015 of the Internal Revenue Code, the person must submit a written statement to the department detailing the reason for not applying for relief under Section 6015 of the Internal Revenue Code as well as evidence to support the position that the taxpayer is eligible for relief under Iowa Code section 422.21(7).

38.15(4) *Burden of proof; evaluation of criteria listed under Section 6015 of the Internal Revenue Code.* The burden is on the person seeking relief from joint and several liability to show that the person is eligible for relief under Iowa Code section 422.21(7). In determining whether the person seeking relief from joint and several liability is eligible for relief under Iowa Code section 422.21(7), the department shall apply this rule and the relevant criteria set forth in Section 6015 of the Internal Revenue Code and the related federal regulations.

38.15(5) *Protesting a denied request for relief from joint and several liability.* If the department denies a claim for relief from joint and several liability under Iowa Code section 422.21(7), the person seeking relief may protest the department's determination under 701—Chapter 7. The department will evaluate the protest by applying the criteria set forth in this rule and Section 6015 of the Internal Revenue Code and the related regulations. In protest proceedings, the burden is on the person seeking relief from joint and several liability to show that the person meets the criteria for relief under this rule and Section 6015 of the Internal Revenue Code.

~~**38.15(4)**~~ **38.15(6)** *Time period for requesting innocent-spouse relief from joint and several liability.* For tax periods beginning on or after January 1, 2004, ~~innocent-spouse relief from joint and several liability~~ must be requested within two years after the date ~~the department initiates collection action against the person claiming innocent-spouse relief~~ of the notice of assessment. However, an ~~extended time period~~ applicant who fails to ~~request~~ meet this deadline may be granted equitable relief for ~~innocent spouses~~ if the applicant satisfies the criteria listed under Section 6015(f) of the Internal Revenue Code ~~can be granted under the provisions of~~ and, if applicable, Internal Revenue Service Notice 2011-70, which became effective July 25, 2011.

38.15(7) *Notice to nonrequesting spouse or former spouse.* On or before 60 days from the date the person seeking relief from joint and several liability files a request with the department, the department may notify the nonrequesting spouse or former spouse of the request for relief. The notice will advise the nonrequesting spouse or former spouse of the right to intervene by filing a notice of intervention with the department in accordance with subrules 38.15(8) and 38.15(9). The notice shall not include the current address or contact information of the spouse or former spouse requesting relief. The department will use the last-known address of the nonrequesting spouse when sending the notice.

38.15(8) *Intervention by nonrequesting spouse or former spouse.* If the nonrequesting spouse or former spouse desires to intervene, such individual shall file a notice of intervention with the department not later than 60 days after the date the notice of the request for relief from joint and several liability is sent by the department to the nonrequesting spouse or former spouse, unless the department directs otherwise.

38.15(9) *Contents of notice of intervention.*

a. A notice of intervention must be in the following format:

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DEPARTMENT OF REVENUEName of Intervenor**NOTICE OF
INTERVENTION**Address of IntervenorDocket No.

b. A notice of intervention must contain all of the following, where applicable and known to the intervenor:

(1) The name, address, telephone number, and identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or individual tax identification number (ITIN) of the person who is requesting intervention);

(2) The docket number of the proceeding initiated by the person seeking relief from joint and several liability under Iowa Code section 422.21(7);

(3) A copy of a determination letter or other document, if any, issued by the Internal Revenue Service showing that the person seeking relief from joint and several liability under Section 6015 of the Internal Revenue Code has been granted or denied relief for the relevant tax years;

(4) A clear and concise statement of the grounds for intervention, all relevant facts, and the reasons why the intervenor agrees or disagrees with the person seeking relief from joint and several liability as to that person's entitlement to such relief;

(5) A citation to any specific statutes, rules, policies, decisions, or orders which may be relevant in the department's determination of the applicability of relief from joint and several liability to the person seeking such relief;

(6) Any information known to the petitioner relating to the department's treatment of similar cases; and

(7) The signature of the intervenor at the conclusion of the notice of intervention attesting to the accuracy and truthfulness of the information set forth in the notice of intervention.

This rule is intended to implement Iowa Code section 422.21 as amended by ~~2002 Iowa Acts, House File 2116~~ 2020 Iowa Acts, House File 2641.

[Filed 6/28/21, effective 9/1/21]

[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5811C**SECRETARY OF STATE[721]****Adopted and Filed****Rule making related to petitions for rule making and waivers**

The Secretary of State hereby amends Chapter 8, "Petitions for Rule Making," and Chapter 10, "Waiver and Variance Rules," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 17A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

SECRETARY OF STATE[721](cont'd)

Purpose and Summary

These amendments update two chapters of the Secretary of State's rules in accordance with changes made by 2020 Iowa Acts, House File 2389, sections 7 and 10. The changes call for deletion of the word "variance" when the word is used in relation to "waiver." The changes also call for sharing the disposition of rule-making petitions with the Administrative Rules Review Committee.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 27, 2021, as **ARC 5397C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Secretary of State on July 8, 2021.

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 Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—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 September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 8.4(1) as follows:

8.4(1) Within 30 days after the filing of a petition, the agency must submit ~~a copy of the petition and any accompanying brief~~ the petition, any accompanying brief, and the disposition of the petition to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

ITEM 2. Amend **721—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 17A.7 ~~as amended by 1998 Iowa Acts, chapter 1202.~~

SECRETARY OF STATE[721](cont'd)

ITEM 3. Amend **721—Chapter 10**, title, as follows:

WAIVER AND VARIANCE RULES

ITEM 4. Amend rule 721—10.1(17A) as follows:

721—10.1(17A) Definition. For purposes of this chapter, a “waiver ~~or variance~~” means action by the agency which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 5. Amend rule 721—10.4(17A) as follows:

721—10.4(17A) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule 721—10.6(17A), the agency may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the agency finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

ITEM 6. Rescind rule **721—10.12(17A)**.

ITEM 7. Renumber rules **721—10.13(17A)** to **721—10.16(17A)** as **721—10.12(17A)** to **721—10.15(17A)**.

[Filed 7/8/21, effective 9/1/21]

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ARC 5815C

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Adopted and Filed

Rule making related to waivers

The Iowa Department of Veterans Affairs hereby amends Chapter 4, “Agency Procedure for Rule Making,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 35A.5(12).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A and 2020 Iowa Acts, House File 2389.

Purpose and Summary

This amendment updates rule 801—4.15(17A,35D) in accordance with changes to Iowa Code section 17A.9A made by 2020 Iowa Acts, House File 2389, section 10. The legislation called for the deletion of the word “variance” when the word is used in relation to “waiver.”

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](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 June 2, 2021, as **ARC 5655C**. An informal hearing was held on June 8, 2021. No one attended the hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on July 7, 2021.

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.

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 September 1, 2021.

The following rule-making action is adopted:

Amend rule 801—4.15(17A,35D) as follows:

801—4.15(17A,35D) Procedures for granting waivers.

4.15(1) Any person may file a petition with the commission of veterans affairs requesting a waiver ~~or variance~~, in whole or in part, of a commission rule on the grounds that the application of the rule to the particular circumstances of that person justifies a waiver under this uniform waiver rule. The commission chairperson shall receive written petitions.

4.15(2) A petition for a waiver ~~or variance~~ shall include the following information where applicable and known to the person requesting the waiver ~~or variance~~:

- a.* The name, address, and case number or state identification number of the entity or person for whom a waiver ~~or variance~~ is requested.
- b.* A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.
- c.* The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.
- d.* The relevant facts that the petitioner believes would justify a waiver ~~or variance~~. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.
- e.* A history of the commission's action relative to the petitioner.
- f.* Any information regarding the commission's treatment of similar cases, if known.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

g. The name, address, and telephone number of any person inside or outside state government who would be adversely affected by the granting of the petition or who otherwise possesses knowledge of the matter with respect to the waiver ~~or variance~~ request.

h. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information pertaining to the waiver ~~or variance~~.

4.15(3) The procedural guidelines stated under the Iowa Administrative Procedure Act, Iowa Code chapter 17A, shall govern the form, filing, timing and contents of petitions for the waivers of rules and the procedural rights of persons in relation to such petitions.

4.15(4) The commission shall acknowledge a petition upon receipt. The petitioner shall serve notice on all persons to whom notice is required by any provision of law and provide a written statement to the commission attesting that notice has been served.

4.15(5) Prior to issuing an order granting or denying a waiver ~~or variance~~ request, the commission may request additional information from the petitioner relative to the application and surrounding circumstances.

4.15(6) An order granting or denying a request for waiver ~~or variance~~ shall be in writing and contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which that action is based, and a description of the precise scope and operative period of the waiver ~~or variance~~ if one is issued. The commission shall grant or deny a petition for the waiver ~~or variance~~ of all or a portion of a rule as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a waiver petition has been filed in a contested case proceeding, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the commission to grant or deny such a petition within the required time period shall be deemed a denial of that petition by the commission.

4.15(7) Within seven days of its issuance, any order issued under the uniform waiver rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

4.15(8) Subject to the provisions of Iowa Code section 17A.3(1) "e," the commission shall maintain a record of all orders granting and denying requests for waivers ~~or variances~~ under this uniform waiver rule. The records shall be indexed by rule and available for public inspection.

4.15(9) ~~Semiannually, the commission shall prepare a report identifying~~ Within 60 days of granting or denying a waiver, the commission shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver ~~or variance~~ has been granted or denied, the number of times a waiver ~~or variance~~ was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, a general summary of the reasons justifying the commission's actions on the waiver ~~or variance~~ requests and, to the extent practicable, detailing the extent to which the granting of a waiver ~~or variance~~ has affected the general applicability of the rule itself and established a precedent for additional waivers ~~or variances~~. ~~Copies of this report shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

4.15(10) The provisions of rules 801—4.14(17A,35D) and 801—4.15(17A,35D) shall not apply to rules that define the meaning of a statute or other provisions of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition and do not authorize the commission to waive any requirement created or duty imposed by statute.

4.15(11) After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is invoked.

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ARC 5800C

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Adopted and Filed

Rule making related to Iowa veterans home

The Commission of Veterans Affairs hereby amends Chapter 10, "Iowa Veterans Home," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 35D.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 35D.

Purpose and Summary

These amendments update the rules relating to the Iowa Veterans Home procedures and comply with requirements for rule making pursuant to 2020 Iowa Acts, House File 2312.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 2, 2021, as **ARC 5660C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on July 7, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on September 1, 2021.

The following rule-making actions are adopted:

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 1. Amend rule **801—10.1(35D)**, definition of “Collaborative care plan,” as follows:
“*Collaborative care plan*” means the plan of care developed for a member by the ~~interdisciplinary~~ resident care committee.

ITEM 2. Amend rule **801—10.1(35D)**, definition of “Legal representative,” as follows:
“*Legal representative*” for purposes of applicant or member personal and care decisions means durable power of attorney for health care, guardian, or next-of-kin (spouse, adult children, parents, adult siblings), ~~as provided in Iowa Code chapters 144A, 144B, and 633~~. For applicant or member financial decisions, “legal representative” means conservator, power of attorney, fiduciary or representative payee or next-of-kin (spouse, adult children, parents, adult siblings).

ITEM 3. Rescind the definition of “Interdisciplinary resident care committee” in rule **801—10.1(35D)**.

ITEM 4. Adopt the following new definition of “Resident care committee” in rule **801—10.1(35D)**:
“*Resident care committee*” or “*RCC*” means the member, a social worker, a registered nurse, a dietitian, a medical provider, a recreation specialist and a mental health provider, as required, who are involved in reviewing the member’s assessment data and developing a collaborative care plan for the individual member.

ITEM 5. Adopt the following new definition of “Visitation” in rule **801—10.1(35D)**:
“*Visitation*” is considered part of the individual’s therapeutic program. Visits are expected to benefit the individual’s treatment goals while meeting the security needs of the facility and ensuring the safety of the individual and visitor.

ITEM 6. Amend paragraph **10.2(1)“f”** as follows:
f. Individuals admitted to the domiciliary level of care must meet DVA criteria stated in Department of Veterans Affairs, State Veterans Homes Home Per Diem Program, Veterans Health Administration, M-1, Part 1, Chapter 3.11(h) (1), (2), and (3), and have prior DVA approval if the individual’s income level exceeds the established cap Directive 1610SH.01(1).

ITEM 7. Amend paragraph **10.3(2)“d”** as follows:
d. Website: www.iowaveteranshome.org ivh.iowa.gov.

ITEM 8. Amend subrule 10.3(3) as follows:
10.3(3) ~~The applicant shall be scheduled for a~~ provide a copy of a physical which has been completed within three months of application. ~~If needed, a physical examination by a medical shall be scheduled by the applicant’s primary care provider, and the results of the examination shall be entered on the application by the examining medical provider. If the applicant has had a complete physical examination within three months of application, a copy of this physical shall suffice.~~ Information must be authenticated by the medical provider’s original signature or electronic signature.

ITEM 9. Rescind paragraph **10.3(4)“a.”**

ITEM 10. Reletter paragraphs **10.3(4)“b”** to “i” as **10.3(4)“a”** to “h.”

ITEM 11. Amend relettered paragraph **10.3(4)“a”** as follows:
a. A copy of the veteran’s honorable discharge (DD214) from the armed forces of the United States.

ITEM 12. Amend relettered paragraph **10.3(4)“e”** as follows:
e. A copy of the marriage license(s), ~~divorce decrees~~ decree(s) or death certificate ~~for~~ of the spouse, if as applicable.

ITEM 13. Amend subrule 10.6(2) as follows:
10.6(2) Upon arrival at IVH, the applicant or legal representative shall meet with the admissions ~~office and resident finance office~~ staff for an admission interview.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 14. Amend subrule 10.6(3) as follows:

10.6(3) During the interview ~~in the admissions office with the admissions coordinator,~~ the following items will be reviewed and signed by the applicant or legal representative:

- a. Permission for Treatment, Form 475-0814.
- b. The "Contractual Agreement," Form 475-1833.
- c. The applicant's resources.
- d. The member support, billing process and banking services.

ITEM 15. Rescind subrule **10.6(4)**.

ITEM 16. Renumber subrules **10.6(5)** to **10.6(7)** as **10.6(4)** to **10.6(6)**.

ITEM 17. Amend paragraph **10.14(3)"c"** as follows:

c. ~~The first ten days of each hospitalization. On the eleventh day the member's bed shall be held without charge until the termination of hospital stay and member returns to IVH. After ten days, IVH assumes the authority to discharge the resident but reserves the right to negotiate an extension to the bed hold, if warranted, in the best interest of the resident and family, at the discretion of the commandant or designee.~~ A hospital stay may occur more than once in a calendar year.

ITEM 18. Amend paragraph **10.16(2)"c"** as follows:

c. *Assets of a married member with spouse in a care facility.* If a member's spouse is residing in a nursing facility, the member shall be treated as a single member for asset determination purposes. If the member and the spouse become members of IVH on the same day, all resources of both members shall be added together and split one-half to each member for asset determination purposes. If the spouse is residing in a residential care facility or an assisted living facility, the rules pertaining to a spouse living in the community apply.

ITEM 19. Amend paragraph **10.16(2)"d"** as follows:

d. *Assets of a married member with spouse living in the community.* When liquid assets not exempted in paragraph "a" above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. ~~These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.~~

The assets attributed to the member shall be determined from the documented assets of both the member and spouse living in the community as of the first day of admission to IVH. All resources of both the member and the spouse shall be added together. If the total resources are less than \$24,000 ~~(the amount set by 441 IAC 75.5(3)"d" and "f," Public Law 100-365 and Public Law 100-485)~~ the predetermined amount set by the department of human services, then that amount ~~shall be protected for the spouse living in~~ is awarded to the community spouse. ~~If~~ The amount in excess of this predetermined figure, up to an equal amount, if applicable, the next \$24,000 shall be awarded to the member. Any resources over ~~\$48,000~~ this combined amount shall be split one-half to the member and one-half to the spouse up to a predetermined maximum amount set by the department of human services. All resources over the predetermined maximum amount shall be awarded to the member ~~unless it is determined that the member would never be eligible for Medicaid benefits; in this circumstance, assets will be split one-half to the member and one-half to the spouse.~~ Other resources attributed to the spouse living in the community shall be determined by the department of human services through the attribution process These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.

(1) to (3) No change.

ITEM 20. Amend subrule 10.17(3) as follows:

10.17(3) An applicant or legal representative shall not knowingly and intentionally divest an asset, as set out in subrule 10.17(1), within the period established by Title XIX statute prior to admission, with the intention of reducing the applicant's member support or of obtaining admission to IVH.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

When it is determined by the commandant or designee that an applicant did intentionally divest an asset, upon admission that applicant ~~shall~~ may be charged member support as if the divestment did not occur.

ITEM 21. Amend subrule 10.17(4) as follows:

10.17(4) A member or legal representative shall not knowingly and intentionally divest an asset, as described in subrule 10.17(1), while a member with the intention of reducing the member support.

When it is discovered that a member or legal representative improperly divested an asset(s), that member ~~shall~~ may be charged member support as if the divestment did not occur.

ITEM 22. Amend subrule 10.35(7) as follows:

10.35(7) Upon the death of a member with personal funds deposited with IVH, ~~IVH will first take payment for the final support bill, and upon receipt of documentation of an outstanding balance, IVH will promptly convey the member's funds to the funeral home or to the individual paying the last funeral expenses. If no bill is presented for funeral expenses, IVH will collect any balance owing for the resident's final support bill, which may include debts owed to the IVH arts and crafts and ceramics program. If funds remain, IVH, upon receipt of documentation of the outstanding balance, will convey promptly the member's funds to the funeral home or to the individual paying last funeral expenses. IVH will notify promptly the estate recovery program of the death of any IVH resident who has been on Title XIX. Upon IVH's receipt of notification from the estate recovery program, any funds remaining in the deceased resident's membership account will be disbursed according to the deceased resident's directions. If probate papers are produced, a final accounting of those funds must also be provided to the individual administering the member's estate along with a disbursement of any remaining funds. If the value of the member's estate is so small as to make the granting of administration inadvisable, IVH must hold, then deliver all money plus interest within one year to the proper heirs equally or adhere to the member's request in the member's last will and testament.~~

ITEM 23. Amend subrule 10.35(8) as follows:

10.35(8) A member discharged while on leave from IVH shall have the member's account closed ~~before the first~~ by the tenth day of the month following discharge.

ITEM 24. Amend paragraph **10.36(1)"d"** as follows:

d. Hospital leaves. Leaves spent in approved medical facilities away from IVH shall not be counted against the 59-day leave time limit as set out in paragraph 10.14(3)"*b.*"

Hospital leaves shall be granted and the charges for such leaves shall be as follows: During the first ten consecutive days of any hospital stay, the member shall pay the regular and usual assessed charge for the member's level of care. ~~Beginning on the eleventh day through the remainder of the hospitalization~~ After the tenth day, if a mutual agreement is made between the resident or legal representative and the commandant or designee for the member's bed to be held for additional days, the member shall not be charged. Each monthly member support bill shall reflect any adjustments related to hospitalization.

Leaves to other medical facilities for the purpose of treatment shall be treated as hospital leaves.

ITEM 25. Amend paragraph **10.36(2)"e"** as follows:

e. A bed shall be held for a hospitalized member for up to ten consecutive days. After ten days, IVH assumes the authority to discharge the resident, but reserves the right to negotiate an extension to the bed hold, if warranted, in the best interest of the resident and the facility, at the discretion of the commandant or designee. The member's client participation shall be paid according to the department of human services' income maintenance worker for all hospitalized days until member returns or is discharged.

ITEM 26. Amend paragraph **10.36(3)"b"** as follows:

b. Upon return from a pass, the member must remain in residence ~~past midnight of the day of return before another pass is issued~~ 24 hours before another pass can be issued.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 27. Amend paragraph **10.37(2)“b”** as follows:

b. Designate that the member shall receive personal mail items, but business mail received at IVH from entitlement sources or concerning assets shall be routed to the resident finance office, cashier's office or Medicare purchasing office, whichever is appropriate.

ITEM 28. Amend subrule 10.40(3) as follows:

10.40(3) The steps described in subrule 10.40(2) shall generally be followed in that order. However, if the member's violation is of an extreme nature and the member is not amenable to counseling, the commandant or designee shall choose to discharge the member after the expiration of a 30-day written notification period which begins when the notice is personally delivered. If the ~~IRCC~~ RCC, in conjunction with the medical provider and mental health personnel, deems that the member's behavior poses a threat of imminent danger, the commandant or designee may issue notice of an immediate involuntary discharge. In such an emergency situation, a written notice shall be given prior to or within 48 hours following the discharge.

The member's county commission of veterans affairs and the legal representative shall be informed in writing of the decision to discharge. Written notification shall also be issued to appropriate governmental agencies including the commission, the department of inspections and appeals, and the department on aging's long-term care ombudsman to ensure that the member's health, safety or welfare shall not be in danger upon the member's release.

ITEM 29. Amend subrule 10.43(1) as follows:

10.43(1) The commandant or designee shall, with the input and recommendation of the ~~IRCC~~ RCC, involuntarily discharge a member for any of the following reasons:

a. The member has been diagnosed with a substance use disorder but continues to abuse alcohol or an illegal drug in violation of the member's conditional or provisional agreement entered into at the time of admission or at any time thereafter, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and has been given the opportunity to correct the behavior through either of the following options:

1. Being given the opportunity to receive the appropriate level of treatment in accordance with best practices for standards of care.

2. By having been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1)“*a*,” if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the ~~IRCC~~ RCC and the commandant or designee may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged under paragraph 10.43(1)“*a*” if the member's actions or behavior jeopardizes the life or safety of other members or staff.

b. The member refuses to utilize the resources available to address issues identified in the member's collaborative care plan, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and the member has been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1)“*b*,” if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the ~~IRCC~~ RCC and the commandant or designee may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged if the member's actions or behavior jeopardizes the life or safety of other members or staff.

c. The member no longer meets the requirements for residential or nursing level of care, as determined by the ~~IRCC~~ RCC or medical provider.

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d. The member requires a level of licensed care not provided at IVH.

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[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.

ARC 5812C

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Adopted and Filed

Rule making related to veterans trust fund

The Iowa Department of Veterans Affairs hereby amends Chapter 14, "Veterans Trust Fund," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 35A.13.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 35A.13.

Purpose and Summary

This rule making amends Chapter 14 so the rules for the Veterans Trust Fund are not as restrictive to veterans, their spouses and their dependents.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5592C**. An informal hearing was held on June 8, 2021. No one attended the hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on June 10, 2021.

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.

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

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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 September 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 801—14.2(35A) as follows:

801—14.2(35A) Definition. For purposes of this chapter, “veteran” means the same as defined in Iowa Code section 35.1, ~~or~~ and federal VA regulations; a resident of Iowa who served in the armed forces of the United States, completed a minimum aggregate of 90 days of active federal service, other than training, and was discharged under honorable conditions; ~~;~~ or a former member of the national guard, reserve, or regular component of the armed forces of the United States who was honorably discharged due to injuries incurred while on active federal service that precluded completion of a minimum aggregate of 90 days of active federal service, other than training.

ITEM 2. Amend subrules 14.3(1) and 14.3(2) as follows:

14.3(1) Income. For the purposes of this chapter, an applicant’s household income, including VA pension benefits, service-connected disability income, and social security income, shall not exceed ~~200~~ 300 percent of the federal poverty guidelines for the number of family members living in the primary residence in effect on the date the application is received by the county director of veterans affairs. Federal poverty guidelines shall be those guidelines established by the Iowa department of human services for the veteran’s family size. The commission shall adjust the guidelines on July 1 of each year to reflect the most recent federal poverty guidelines. The commission may waive the income threshold if all income is from a fixed source and all other sources of assistance have been exhausted.

14.3(2) Resources. ~~The department may not pay benefits under this chapter if the available liquid assets of the veteran are in excess of \$15,000.~~ For the purposes of this chapter, “available liquid assets” means cash on hand, cash in a checking or savings account, stocks, bonds, certificates of deposit, treasury bills, money market funds and other liquid investments owned individually or jointly by the applicant and the applicant’s spouse, unless the applicant and spouse are separated or are in the process of obtaining a divorce, but does not include funds deposited in IRAs, Keogh plans or deferred compensation plans, unless the veteran is eligible to withdraw such funds without incurring a penalty. Cash surrender value of life insurance policies, real property, established burial account, or a personal vehicle shall not be included as available liquid assets.

ITEM 3. Amend subrule 14.4(1) as follows:

14.4(1) Travel expenses for wounded veterans, ~~and~~ their spouses and their dependents, directly related to ~~follow-up~~ medical care. Travel expenses under this subrule include the unreimbursed cost of airfare, lodging, and a per diem of ~~\$25~~ \$50 per day for required ~~out-of-state medical travel that exceeds 125 miles~~ medical appointments from the veteran’s home. Spouses may be reimbursed for in-state lodging and a per diem of ~~\$25~~ \$50 per day when visiting a veteran who is in a hospital for medical care related to a ~~service-connected~~ an injury or disability. ~~The distance from the veteran’s home to the hospital must exceed 100 miles.~~ The veteran or the veteran’s spouse shall provide such evidence as the commission may require, which includes but is not limited to evidence the injury or disability is service-connected, the necessity of treatment in a particular facility, and documentation of expenses. The maximum amount for lodging travel expense reimbursement shall be \$90. The maximum amount of aid payable in a consecutive 12-month period under this subrule is \$1,000. ~~The commission may waive the income threshold for this benefit.~~

ITEM 4. Amend paragraph **14.4(2)“a,”** introductory paragraph, as follows:

a. The commission may pay a veteran not more than ~~\$3,000~~ \$5,000 for retraining or postsecondary education and Internet connection to enable the veteran to obtain gainful employment. The commission may provide aid under this subrule if all of the following apply:

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 5. Amend subparagraph **14.4(2)“a”(4)** as follows:

(4) The veteran requesting aid has not received full reimbursement or payment from any other retraining or education scholarship programs and the veteran does not have other assets or income available to meet retraining or initial training expenses. Applicants requesting aid under this subrule will only be granted the unpaid portion of their tuition statement, and ~~the payment~~ a monthly Internet invoice. Payments will be made directly to the institution and Internet provider.

ITEM 6. Amend subrule 14.4(3) as follows:

14.4(3) *Unemployment or underemployment assistance during a period of unemployment or underemployment due to prolonged physical or mental illness resulting from military service or disability resulting from military service (must be physically and mentally able to return to work).* The commission may provide subsistence payments only to a veteran who has suffered a loss of income due to prolonged physical or mental illness resulting from military service or disability resulting from military service. The commission may provide subsistence payments of up to \$500 per month of unemployment or underemployment to a veteran. A veteran must provide documentation of assistance from Iowa workforce development and vocational rehabilitation, if eligible. No payment may be made under this subrule if the veteran has other assets or income available to meet basic subsistence needs. A period of unemployment implies that it is possible for the veteran to be employed in the future. A rating from the VA of 100 percent due to individual unemployability (IU) rated permanent and total indicates that a veteran is unemployable and will not qualify for assistance under this subrule. The veteran shall provide such evidence as the commission may require, which includes but is not limited to evidence ~~that the mental illness or disability is service-connected and evidence~~ that the veteran is unemployed or underemployed for the period of payments. To qualify as underemployed, the applicant must be currently working at an income that is below 150 percent of federal poverty guidelines ~~due to limitations caused by the applicant's service-connected disability or illness~~. The maximum amount of aid payable in a consecutive 12-month period under this subrule is \$3,000 and a lifetime maximum of \$6,000.

ITEM 7. Amend paragraphs **14.4(4)“b”** and **“c”** as follows:

b. The maximum amount that may be paid under this subrule for any consecutive 12-month period may not exceed \$10,000 for dental care, \$500 for vision care, \$1,500 per ear for hearing care, and \$1,500 for prescription drugs and prescribed over-the-counter drugs. Lifetime maximum benefit: \$10,000 per eligible family member.

c. The commission shall not provide health care aid under this subrule unless the aid recipient's health care provider agrees to accept, as full payment for the health care provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if any; and the amount that the commission determines the veteran is capable of paying. Payment under this subrule will be provided directly to the health care provider. ~~The commission shall not pay health care aid under this subrule if the available liquid assets of the veteran are in excess of \$15,000.~~

ITEM 8. Amend paragraph **14.4(5)“c”** as follows:

c. Assistance under this subrule cannot duplicate assistance from other entities, and the maximum amount that may be paid may not exceed ~~\$2,500~~ \$5,000.

ITEM 9. Rescind paragraph **14.4(5)“d.”**

ITEM 10. Amend paragraph **14.4(6)“d”** as follows:

d. The commission may provide up to \$150 per hour and \$75 per half-hour for outpatient counseling visits to providers who will accept as full payment for the counseling services the amount provided. Counseling and substance abuse services provided in a group setting may be paid up to \$40 per hour. Counseling and substance abuse services may also be provided in an inpatient setting, subject to the maximum amount eligible under paragraph 14.4(6)“f.”

ITEM 11. Amend paragraph **14.4(6)“f”** as follows:

f. The commission may not provide counseling under this subrule unless the aid recipient's counseling service provider agrees to accept, as full payment for the counseling services provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

any; and the amount that the commission determines the veteran is capable of paying. The commission will make payment directly to the entity providing counseling and substance abuse services. ~~The commission shall not pay for counseling under this subrule if the available liquid assets of the veteran are in excess of \$15,000.~~

ITEM 12. Amend paragraph **14.4(7)“c”** as follows:

c. The maximum amount that may be paid under this subrule may not exceed ~~\$7,500~~ \$10,000.

ITEM 13. Amend subrule 14.4(8) as follows:

14.4(8) *Emergency expenses related to vehicle repair or a one-time replacement vehicle, housing repair, or temporary housing assistance.*

a. No change.

b. Assistance for vehicle repair is limited to expenses that are required for continued use of the vehicle. This assistance will only be granted in cases where the vehicle is needed for travel to and from work-related activities, the applicant is over the age of 65, or substantial hardship will occur if the vehicle is not repaired. Assistance may be provided in situations where the applicant does not have sufficient means to pay an insurance deductible. Assistance may be paid directly to the entity performing the maintenance or the insurance company owed the deductible. In certain circumstances, reimbursement may be made to the veteran or to the unremarried spouse of a deceased veteran in order for the vehicle to be released from the entity providing the service. Assistance will not be provided for damage caused during the commission of a crime, for cosmetic needs, for damage resulting in an auto accident when automobile insurance has not been purchased, or for routine maintenance. Vehicle replacement is a one-time use not exceeding \$5,000.

c. and d. No change.

e. The maximum amount that may be paid under this subrule for any consecutive 12-month period may not exceed ~~\$2,500 for vehicle repair, \$3,000 for housing repair, and \$1,000 for transitional housing.~~ Lifetime maximum benefit for housing repair and vehicle repair: \$10,000 each.

~~f. The commission shall not pay a reimbursement under this subrule if the available liquid assets of the veteran are in excess of \$15,000.~~

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[Published 7/28/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/28/21.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER NINE

WHEREAS, the Governor's Economic Recovery Advisory Board recommended the launch of a carbon sequestration task force to "study [carbon sequestration] further, including its economic value and agronomic impact on row crop production in the state"; and

WHEREAS, Iowa is a recognized leader in agriculture and renewable fuels; and

WHEREAS, carbon sequestration can offer new revenue streams for Iowa farmers and renewable energy producers impacted by market price and profitability challenges; and

WHEREAS, "carbon markets" can provide opportunity for consumers of fossil fuels to compensate farmers and others who sequester carbon for the right to put carbon in the atmosphere; and

WHEREAS, the climate solutions market could double from \$1 trillion per year to \$2 trillion per year by 2025; and

WHEREAS, private partners have already begun participating in early-stage carbon management markets; and

WHEREAS, the State of Iowa would greatly benefit from an exploration and discussion on the future of carbon sequestration within our state and across the Midwest.

NOW THEREFORE, I, Kim Reynolds, Governor of the State of Iowa, do hereby order the establishment of the Carbon Sequestration Task Force to serve as the central point of coordination for efforts to study carbon sequestration, including its economic value and agronomic impact on row crop production in the State of Iowa.

PURPOSE AND DUTIES

- I. The Carbon Sequestration Task Force shall identify and examine opportunities for carbon sequestration strategies that can have a positive impact on Iowa's economy and our long-term sustainability efforts. The Task Force will take a comprehensive approach in working across multiple industries including but not limited to agriculture, natural resources, energy, and transportation.
- II. The duties of the Carbon Sequestration Task Force shall include, but are not limited to, advising the Governor on:
 - A. Reviewing the research on carbon sequestration, considering any gaps in current assessments, and determining whether new research, standards, or definitions should be developed;
 - B. Discussing the economic opportunities presented by carbon sequestration for Iowa's agriculture economy and renewable fuel sector and exploring how best to capitalize on them;

- C. Identifying the role, if any, of state government in carbon markets and exploring the need for carbon sequestration strategies to align or otherwise build upon current soil and water quality frameworks; and
- D. Determining whether Iowa should form a regional strategy for carbon sequestration with state partners.

III. The Carbon Sequestration Task Force shall also provide oversight and coordination of all working groups established by this Executive Order.

ORGANIZATION AND OPERATION

- IV. **Task Force Membership.** The Governor shall serve as a member and the chair of the Task Force. The Secretary of Agriculture shall serve as a member and the vice-chair of the Task Force. The Governor shall appoint additional members to the Task Force as deemed necessary by the Governor, which shall include two members of the Iowa Senate to serve as non-voting, ex officio members (one from the majority party and one from the minority party) and two members of the Iowa House of Representatives to serve as non-voting, ex officio members (one from the majority party and one from the minority party).
- V. **Working Groups.** The Governor shall appoint working groups to assist the Task Force in leveraging expertise and experience from interested stakeholders and community members beyond members of the Task Force, including a working group on Agriculture and a working group on Energy. The Governor shall appoint members for each working group.
- VI. **Meetings.** The Carbon Sequestration Task Force shall hold public meetings as scheduled by the chair of the Task Force.
- VII. **Service as members.** Each appointed member of the Task Force and working group members shall serve at the pleasure of the Governor and without compensation.
- VIII. **Staffing and Support.** Staffing and administrative assistance for the Carbon Sequestration Task Force and each subject-matter working group established in this Executive Order shall be provided by the Iowa Economic Development Authority, the Iowa Finance Authority, and by other agencies, persons, or organizations from time to time as deemed necessary or appropriate by the chair of the Task Force.

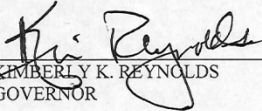
IMPLEMENTATION AND INTERPRETATION

- IX. All departments, agencies, boards, or other political subdivisions of any state and local governments shall cooperate fully with the Carbon Sequestration Task Force including but not limited to the Iowa Economic Development Authority, Iowa Finance Authority, Iowa Department of Agriculture and Land Stewardship, Iowa Department of Natural Resources, Iowa Department of Transportation, and Iowa Utilities Board. The Task Force 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.
- X. All work of the Carbon Sequestration Task Force 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.
- XI. This Executive Order shall be interpreted in accordance with all applicable laws and regulations and shall not supersede any laws or regulations in place as of its effective date. 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.

- XII. This Executive Order 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.
- XIII. 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 THE STATE
OF IOWA TO BE AFFIXED AT DES MOINES,
IOWA THIS TWENTY-SECOND DAY OF
JUNE IN THE YEAR OF OUR LORD TWO
THOUSAND TWENTY-ONE.


KIMBERLY K. REYNOLDS
GOVERNOR

ATTEST:


PAUL D. PATE
SECRETARY OF STATE