



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

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

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CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rulemaking 2024

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Wednesday, May 8, 2024	May 29, 2024
25	Friday, May 24, 2024	June 12, 2024
26	Friday, June 7, 2024	June 26, 2024

PLEASE NOTE:

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Monday, May 6, 2023, at 11 a.m. in Room 116, State Capitol, Des Moines, Iowa. For more information, contact Jack Ewing at jack.ewing@legis.iowa.gov. The following rules will be reviewed:

NOTE: See also Agenda published in the April 17, 2024, Iowa Administrative Bulletin.

BANKING DIVISION[187]

INSURANCE AND FINANCIAL SERVICES DEPARTMENT[181]"umbrella"

Required fees, 2.19 Filed **ARC 7916C**..... 5/1/24

HUMAN SERVICES DEPARTMENT[441]

Disability services management, amendments to ch 25 Notice **ARC 7885C**..... 5/1/24

INSPECTIONS AND APPEALS DEPARTMENT[481]

Ambulatory surgical centers, adopt ch 49 Filed **ARC 7886C**..... 5/1/24

Hospitals, ch 51 Filed **ARC 7887C**..... 5/1/24

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Operation of natural resource commission, ch 1 Filed **ARC 7888C**..... 5/1/24

Forfeited property, rescind ch 10 Filed **ARC 7889C**..... 5/1/24

Conservation education, ch 12 Filed **ARC 7890C**..... 5/1/24

Permits and easements for construction and other activities on public lands and waters, ch 13

Filed **ARC 7891C**..... 5/1/24

Concessions, ch 14 Filed **ARC 7892C**..... 5/1/24

General license regulations, ch 15 Filed **ARC 7893C**..... 5/1/24

Docks and other structures on public waters, ch 16 Filed **ARC 7894C**..... 5/1/24

Barge fleeting regulations; leases and permits, ch 17 Filed **ARC 7895C**..... 5/1/24

Rental fee schedule for state-owned property, riverbed, lakebed, and waterfront lands; sand

and gravel permits, rescind chs 18, 19 Filed **ARC 7896C**..... 5/1/24

Manufacturer's certificate of origin, ch 20 Filed **ARC 7897C**..... 5/1/24

Agricultural lease program; habitat lease program, ch 21 Filed **ARC 7898C**..... 5/1/24

Habitat and public access program, ch 22 Filed **ARC 7899C**..... 5/1/24

Wildlife habitat promotion with local entities program, ch 23 Filed **ARC 7900C**..... 5/1/24

Blufflands protection program and revolving loan fund, ch 24 Filed **ARC 7901C**..... 5/1/24

Certification of land as native prairie or wildlife habitat, ch 25 Filed **ARC 7902C**..... 5/1/24

Relocation assistance, rescind ch 26 Filed **ARC 7903C**..... 5/1/24

Land and water conservation fund program, ch 27 Filed **ARC 7904C**..... 5/1/24

All-terrain vehicle registration revenue grant program, ch 28 Filed **ARC 7905C**..... 5/1/24

Local recreation infrastructure grants program, rescind ch 29 Filed **ARC 7906C**..... 5/1/24

Waters cost-share and grant programs, ch 30 Filed **ARC 7907C**..... 5/1/24

Publicly owned lakes watershed program, ch 31 Filed **ARC 7908C**..... 5/1/24

Private open space lands, rescind ch 32 Filed **ARC 7909C**..... 5/1/24

Resources enhancement and protection program: county, city, private open spaces and

conservation education grant programs, ch 33 Filed **ARC 7910C**..... 5/1/24

Community forestry grant program (CFGF), rescind ch 34 Filed **ARC 7911C**..... 5/1/24

Fish habitat promotion for county conservation boards, ch 35 Filed **ARC 7912C**..... 5/1/24

State parks, recreation areas, and state forest camping, ch 61 Filed **ARC 7913C**..... 5/1/24

Waterfowl and coot hunting seasons, ch 91 Filed **ARC 7914C**..... 5/1/24

Deer hunting, rescind ch 94; adopt ch 106 Filed **ARC 7915C**..... 5/1/24

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Behavioral scientists—licensure of marital and family therapists, mental health counselors,

behavior analysts, and assistant behavior analysts, ch 31 Filed **ARC 7917C**..... 5/1/24

Behavioral scientists—continuing education for marital and family therapists and mental

health counselors, ch 32 Filed **ARC 7918C**..... 5/1/24

Behavioral scientists—discipline for marital and family therapists, mental health counselors,

behavior analysts, and assistant behavior analysts, ch 33 Filed **ARC 7919C**..... 5/1/24

Barbers and cosmetologists—licensure of barbers and cosmetologists, electrologists,

estheticians, nail technologists, and instructors of barbering cosmetology arts and

sciences, ch 60 Filed **ARC 7920C**..... 5/1/24

Barbers and cosmetologists—licensure of establishments and schools of barbering and

cosmetology arts and sciences, ch 61 Filed **ARC 7921C**..... 5/1/24

Barbers and cosmetologists—infection control for establishments and schools of barbering and cosmetology arts and sciences, ch 63 <u>Filed</u> ARC 7922C	5/1/24
Barbers and cosmetologists—continuing education for barbering and cosmetology arts and sciences, ch 64 <u>Filed</u> ARC 7923C	5/1/24
Barbers and cosmetologists—discipline for barbering and cosmetology arts and sciences licensees, instructors, establishments, and schools, ch 65 <u>Filed</u> ARC 7924C	5/1/24
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Dietitians—continuing education for dietitians, ch 82 <u>Filed</u> ARC 7926C	5/1/24
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PUBLIC HEALTH DEPARTMENT[641]

Certificate of need program, ch 202 <u>Filed</u> ARC 7932C	5/1/24
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REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Bureau[193]

INSURANCE AND FINANCIAL SERVICES DEPARTMENT[181]“umbrella”

Brokerage agreements; buyer’s representation agreements; compensation, 7.15, 11.1, 11.3, 11.6(2), 12.2 <u>Notice</u> ARC 7931C	5/1/24
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ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mike Klimesh
Chair
Senate District 32

Representative Megan Jones
Vice Chair
House District 6

Senator Nate Boulton
Senate District 20

Representative Amy Nielsen
House District 85

Senator Mike Bousset
Senate District 21

Representative Rick Olson
House District 39

Senator Waylon Brown
Senate District 30

Representative Mike Sexton
House District 7

Senator Cindy Winckler
Senate District 49

Representative David Young
House District 28

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Governor’s Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone: 515.281.5211

COLLEGE STUDENT AID COMMISSION[283]

All Iowa opportunity scholarship program, ch 8
IAB 4/17/24 ARC 7851C

State Board Room
Grimes State Office Bldg.
Des Moines, Iowa

May 7, 2024
4 to 4:30 p.m.

State Board Room
Grimes State Office Bldg.
Des Moines, Iowa

May 8, 2024
9 to 9:30 a.m.

HUMAN SERVICES DEPARTMENT[441]

Disability services management, amendments to ch 25
IAB 5/1/24 ARC 7885C

Microsoft Teams ID: 218 701 087 784
Passcode: nnfJbK

May 22, 2024
11:30 a.m. to 12 noon

Microsoft Teams ID: 262 230 051 90
Passcode: FFUvAN

May 24, 2024
11:30 a.m. to 12 noon

Optional 90-day supply for select medications, 78.2(6)
IAB 5/1/24
Regulatory Analysis

Microsoft Teams ID: 218 701 087 784
Passcode: nnfJbK

May 22, 2024
11:30 a.m. to 12 noon

INSURANCE DIVISION[191]

Property and casualty insurance, 20.11
IAB 4/17/24 ARC 7884C

1963 Bell Ave., Suite 100
Des Moines, Iowa

May 8, 2024
10 to 10:30 a.m.

1963 Bell Ave., Suite 100
Des Moines, Iowa

May 8, 2024
3 to 3:30 p.m.

REAL ESTATE COMMISSION[193E]

Brokerage agreements; buyer's representation agreements; compensation, 7.15, 11.1, 11.3, 11.6(2), 12.2
IAB 5/1/24 ARC 7931C

Ledges Conference Room
6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
us02web.zoom.us/j/85977907466?pwd=c0l6cER2OFJtS1MycDhINHUwMkMwdz09

May 21, 2024
3 p.m.

REVENUE DEPARTMENT[701]

Employer child care tax credit, 304.58, 501.51, 601.26
IAB 4/17/24
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Via video/conference call:
meet.google.com/vnw-pwiq-bhq

May 7, 2024
10 to 11 a.m.

TRANSPORTATION DEPARTMENT[761]

Real property acquisition and relocation assistance, ch 111
IAB 4/17/24
Regulatory Analysis

[Microsoft Teams link](#)
Or dial: 515.817.6093
Conference ID: 532 501 292#

May 9, 2024
10 to 10:30 a.m.

Holiday rest stops, ch 105
IAB 5/1/24
Regulatory Analysis

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 625 951 108

May 28, 2024
2 to 2:30 p.m.

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Primary highway access control, ch 112 IAB 5/1/24 Regulatory Analysis	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 331 823 204	May 23, 2024 10 to 10:30 a.m.
Junkyard control, ch 116 IAB 5/1/24 Regulatory Analysis	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 407 636 09	May 21, 2024 1 to 1:30 p.m.
Logo signing, ch 118 IAB 5/1/24 Regulatory Analysis	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 338 217 220	May 21, 2024 2 to 2:30 p.m.

UTILITIES DIVISION[199]

Restoration of agricultural lands during and after pipeline construction, ch 9; intrastate gas pipelines and underground gas storage, ch 10 IAB 4/3/24 Regulatory Analyses	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	May 7, 2024 9 a.m.
Cogeneration and small power production, ch 15; service supplied by gas utilities, ch 19 IAB 4/17/24 Regulatory Analyses	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	May 16, 2024 9 a.m.
Regulation of telecommunications service, ch 22; local exchange competition, ch 38; universal service, ch 39; certificates of franchise authority for cable and video service, ch 44 IAB 5/1/24 Regulatory Analyses	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	June 11, 2024 9 a.m.
Renewable energy percentage verification, rescind ch 30 IAB 5/1/24 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	May 21, 2024 9 a.m.
Reorganization, ch 32 IAB 4/3/24 ARC 7743C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	May 8, 2024 9 to 10 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Research and information services division, ch 10 IAB 5/1/24 Regulatory Analysis	1000 East Grand Ave. Des Moines, Iowa	May 21, 2024 8:30 a.m.
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The following list will be updated as changes occur.

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

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

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

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Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—subrule 78.2(6)
“Optional 90-Day Supply for Select Medications”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 249A.4
State or federal law(s) implemented by the rulemaking: None provided

Public Hearing

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

May 22, 2024
11:30 a.m. to 12 noon

Microsoft Teams meeting ID: 218 701 087 784
Passcode: nnfJbK

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Joe Campos
321 East 12th Street
Des Moines, Iowa 50319
Email: compliancerules@idph.iowa.gov

Purpose and Summary

Subrule 78.2(6) currently permits a one-month supply of covered prescription and nonprescription medications for Iowa Medicaid members, excluding contraceptives that can be prescribed in three-month quantities.

Iowa Medicaid temporarily allowed an optional 90-day supply on all medications from March 19, 2020, through May 12, 2023, due to the public health emergency (PHE). The only safeguards during the PHE were from the prescriber and pharmacist using their discretion and professional judgement. When the allowance was terminated in May 2023, the intent was always to reimplement with a Drug Utilization Review (DUR) recommendation (new safeguards) and rule change through the red tape review.

The proposed amendment would allow reimplementation of an optional 90-day supply on a continuing basis for select, cost-effective generic maintenance medications at the discretion of the prescriber while adhering to the guidelines provided by the Iowa Medicaid DUR Commission.

DUR Review and Recommendation

(1) DUR review.

1. The proposal was presented at two DUR meetings (February 1, 2023, and May 3, 2023), and public comment was sought from the medical and pharmacy associations on both dates.

2. No concerns were shared, and all DUR members were in favor.

(2) DUR recommendation: The 90-day supply drug selection process will include select, cost-effective, generic medications from Medi-Span maintenance drug categories.

1. Proposed initial categories (select, generic drugs).

- Blood pressure.
- Cholesterol-lowering agents.
- Antidepressants.
- Diabetes mellitus.

2. The list of medications will be reviewed annually by the DUR, and changes can be submitted to the DUR for review any time throughout the year.
3. Exclusion criteria.
 - Safety—e.g., risks associated with a particular class.
 - Controlled substances.
 - Narrow therapeutic index (NTI) drugs.
 - Drugs subject to frequent dose adjustments.
 - Over-the-counter (OTC) drugs.
 - Brand drugs.
 - Prior authorization drug categories (clinical PA).
 - Nonpreferred or nonrecommended drugs.
 - Other therapeutic categories—antibiotics, ophthalmic, otic, and topical products.
4. Dispensing fee—Medicaid would pay a pharmacy for one dispensing fee per 90-day supply billed rather than three fees (further cost-saving details in the sections below).
5. Copayment—a member gets charged one copay (if applicable) per 90-day supply billed.
6. Member exclusions—none.
7. Initial fill—quantity would be at the discretion of the prescriber, but consideration should be given to dispensing less than a 90-day supply with the initial fill when starting members on new medications or with dose adjustments to minimize waste.

Surrounding states that allow 90-day supply prescription quantities for Medicaid members include Nebraska, Missouri, Kansas, Minnesota, and Wisconsin.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Pharmacies may be affected by a decrease in revenue due to receiving only one dispensing fee vs. three over a three-month period, but the proposed change is only allowed for certain medications and is also not a requirement for members—it is optional.
 - Classes of persons that will benefit from the proposed rulemaking:
Pharmacies may benefit since a decrease in the number of prescriptions being dispensed would allow additional time to provide other revenue-generating services such as immunizations and point-of-care testing.
In addition, the following classes of persons would benefit:
 - (1) Iowa Medicaid and managed care organizations (MCOs).
 - (2) Iowa Medicaid fee-for-service (FFS) and managed care plan members.
 - (3) Providers treating Iowa Medicaid members.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
 - (1) Member/Patient.
 1. FFS members—when applicable, only paying one \$1 copay vs. three \$1 copays.
 2. May reduce patient transportation costs with fewer trips to the pharmacy.
 - (2) Iowa Medicaid.
 1. Dispensing fee savings = \$10.38. Medicaid would only pay one fee of \$10.38 for dispensing a 90-day supply vs. three fees for a total of \$31.14 over the span of three months. Cost savings = \$20.76.
 2. Estimated annual cost savings during PHE for Iowa Medicaid and MCOs (state and federal) = \$7,040,048.
 - (3) Pharmacy providers.

Dispensing fee loss = \$10.38. Providers would only receive one fee of \$10.38 for dispensing a 90-day supply vs. three fees for a total of \$31.14 over the span of three months. Fee difference = \$20.76.

 - Qualitative description of impact:

Member/patient: improve patient compliance, resulting in better health outcomes for chronic medical conditions.

3. Costs to the State:

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

Programming will need to be done for FFS and MCOs. There will not be a fiscal impact to get this done.

- Anticipated effect on state revenues:

Dispensing fee = \$10.38. Medicaid would only pay one fee of \$10.38 for dispensing a 90-day supply vs. three fees for a total of \$31.14 over the span of three months. Cost savings per prescription = \$20.76.

Estimated annual cost savings on dispensing fees during PHE for Iowa Medicaid and MCOs (state and federal) = \$7,040,048.

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

This information is described above in section 2 (impact of proposed rulemaking).

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

No alternative methods have been considered.

6. Alternative methods considered by the agency:

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

No alternative methods have been considered.

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

Not applicable.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

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

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

This change does not pose strict compliance with the amended subrule since the 90-day supply fill will be optional for the member. It does not require the member to fill a prescription as a 90-day supply. This change also only impacts certain classes or groupings of medications. Pharmacies will still gain a dispensing fee on every prescription filled, regardless of quantity dispensed.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 78.2(6) as follows:

78.2(6) *Quantity prescribed and dispensed.*

a. *Quantity prescribed.* When it is not therapeutically contraindicated, the legally qualified practitioner shall prescribe ~~not less than~~ a one-month supply of covered prescription and nonprescription

medication. ~~Contraceptives~~ Medications listed on the 90-day generic maintenance supply drug list published on the department's website and contraceptives may be prescribed in three-month quantities.

b. Quantity dispensed. A prescribed drug must be dispensed in the quantity specified on the prescription unless prohibited by the Medicaid pharmacy program requirements, the pharmacy is using unit dose dispensing, or the specified quantity is not available in the pharmacy when the prescription is dispensed or in a quantity permitted pursuant to Iowa Code section 155A.27.

~~*b. c.*~~ *Prescription refills.*

(1) Prescription refills shall be performed and recorded in a manner consistent with existent state and federal laws, rules and regulations.

(2) Automatic refills.

1. and 2. No change.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 105
“Holiday Rest Stops”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 314.27
State or federal law(s) implemented by the rulemaking: Iowa Code section 314.27

Public Hearing

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

May 28, 2024
2 to 2:30 p.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 625 951 108

Public Comment

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

Steve McMenamin
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1680
Email: steven.mcmenamin@iowadot.us

Purpose and Summary

The proposed rules provide necessary definitions and requirements to implement Iowa Code section 314.27. This law allows nonprofit organizations to provide free refreshments to motorists and to accept, without active solicitation, voluntary donations from motorists during holiday periods at rest areas.

Key definitions are added or amended in the chapter as follows: “free refreshments,” “holiday periods,” “holiday rest stop” and “sponsor.” Implementation of Iowa Code section 314.27 relies upon the use of these terms. Without these definitions, ambiguity will be present on whether a rest area sponsorship complies with the law. The rules also contain conditions for site selection, signage, acceptance of donations, and the procedures on how to request a sponsorship.

The statute defers to rules to be promulgated by the Department governing the provision of refreshments at rest areas. This chapter provides the criteria to ensure that the rest area sponsorship accomplishes the intended purpose of the law.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The persons who will bear the direct costs of the proposed rules are the nonprofit organizations that choose to participate. The Department will have some indirect costs from administering the program.

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

Nonprofit organizations benefit since the sponsorship acts as an awareness booster for their organizations. Members of the traveling public benefit from the free refreshments and a potentially interesting diversion in their travels across Iowa.

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

- Quantitative description of impact:

Nonprofit organizations bear all costs for refreshments, activity staff, and any signage. Participation in the activity described in the rules is completely voluntary. Travelers have no direct cost since the refreshments are to be provided for free.

- Qualitative description of impact:

Members of the traveling public benefit from a memorable Iowa rest area experience, enjoyment of the free refreshments, and perhaps learning about a nonprofit that interests them. The nonprofit organizations benefit by raising awareness and goodwill for their organizations.

3. Costs to the State:

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

The costs to the Department include the staff time associated with assisting potential applicants, the review of any applications, and the placing/removal of any signs provided by the sponsor.

- Anticipated effect on state revenues:

The Department for the Blind currently provides vending services at many interstate rest areas. It is possible that on the day of the holiday rest area, travelers may find the free refreshments sufficient and skip a snack purchase that they otherwise would have made from the vending machines. Therefore, there can be a reduction in Department for the Blind's revenues on holidays.

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

Since the direct costs under the proposed rules are borne by organizations that have a choice whether to participate, the costs versus benefits are likely positive or otherwise deemed a worthy risk by the nonprofit as compared to the case of inaction. If nonprofits choose not to participate, then the costs and benefits are the same as the case of inaction. The Department has little cost or benefit, so the case of inaction is very similar. The traveling public has a positive benefit under the proposed rules and is neutral under the case of inaction.

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

The activity proposed is voluntary, so inaction is also an equal option. Therefore, costs or intrusiveness is completely avoidable under the proposal. Only in the case when it makes sense for the nonprofit organization do they choose to exercise the ability granted in this proposed chapter.

6. Alternative methods considered by the agency:

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

None were considered. Iowa Code section 314.27 requires the Department to administer this program.

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

Alternative methods are not available after review of Iowa Code section 314.27, which requires the Department to administer this program and adopt rules.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

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

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

Small businesses are not allowed to participate, as described in Iowa Code section 314.27. Small businesses are also not directly impacted by the costs, benefits, or activities described in the proposed rules. Therefore, the impact to small businesses is neutral.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 105 and adopt the following **new** chapter in lieu thereof:

CHAPTER 105
HOLIDAY REST STOPS

761—105.1(314) Purpose. The purpose of this chapter is to establish the requirements and procedures for approving requests for rest stops on primary and interstate highways during holiday periods.

761—105.2(314) General.

105.2(1) Definitions.

“Free refreshments” means the same as defined in Iowa Code section 314.27.

“Holiday periods” means the same as defined in Iowa Code section 314.27.

“Holiday rest stop” means a location where a sponsor serves free refreshments to motorists during holiday periods to provide a break from driving monotony, promote safer driving, and reduce the potential for highway accidents.

“Sponsor” means the nonprofit organization that is providing the free refreshments and staffing the holiday rest stop.

105.2(2) Information. Information regarding this chapter is available from the Maintenance Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or the department’s website at www.iowadot.gov.

761—105.3(314) Conditions. The sponsor of a holiday rest stop shall comply with the following general conditions:

105.3(1) Not request or accept payment for the refreshments served. The sponsor may accept voluntary donations using containers clearly labeled with a sign stating “donations.” If the sponsor uses donation containers, the sponsor needs to place signs within the immediate area of the operation at locations designated by the department stating “free refreshments.”

105.3(2) Not distribute any literature or other promotional material.

105.3(3) Clean up the area and remove all signs the sponsor has erected promptly after the holiday rest stop is discontinued.

105.3(4) No permit parking on the highway shoulders.

105.3(5) Agree to indemnify, defend and hold the department of transportation and the state of Iowa harmless from any liability that may result from the directing of traffic to the holiday rest stop area, and as a result of changes of traffic patterns caused by the activities of the sponsor in or about the holiday rest stop area, and all other liability related to the operation of the special holiday rest stop and the refreshments provided.

761—105.4(314) Holiday rest stops.**105.4(1) Site.**

a. A holiday rest stop along an interstate highway shall be in an established interstate rest area. Running water is available at each rest area. The department will provide electricity if requested.

b. The proposed site of a holiday rest stop along a primary highway will be inspected by the department to ensure it meets the following requirements:

(1) The site is large enough to provide parking space for at least 15 vehicles and located so that all parked vehicles will be at least 50 feet from the edge of the traveled way of the primary highway.

(2) An access drive from the primary highway shoulder to the parking area has a top width of at least 20 feet and provides a clear view of the primary highway for at least 900 feet in each direction.

c. The department will designate an appropriate spot within the requested holiday rest stop location that will not include rest area restroom buildings or welcome center buildings. The sponsor may use the information kiosk where available. A tent or canopy may be used in areas without a kiosk during inclement weather.

105.4(2) Signs. The sponsor shall:

a. Not place any signs directing highway traffic to the holiday rest stop.

b. Not place any signs for an interstate holiday rest stop along the interstate highway or interchange ramps. The department will place signs stating “free refreshments” adjacent to the interstate highway and will remove these signs when the holiday rest stop is discontinued.

c. Provide two signs approximately four feet by four feet announcing the holiday rest stop, one for each highway approach to the site for holiday rest stops on primary highways. The department will install these signs and will remove them when the holiday rest stop is discontinued.

d. Take responsibility for any signs posted at the actual holiday rest stop site. Signs provided or placed by the sponsor shall not include any advertising but may include the sponsor’s name. Signs shall not be mounted on objects (including vehicles) that contain the name of any organization or individual except the sponsor. The sponsor is responsible for the removal of all signs the sponsor has erected promptly after the holiday rest stop is discontinued.

105.4(3) Request.

a. A request to sponsor a holiday rest stop will be made on Form 810023. This form is available from the maintenance bureau or the department’s website.

b. The request will include the name and address of the requesting sponsor, a detailed description of the proposed holiday rest stop location, and the requested hours of operation.

c. The request will be submitted to the maintenance bureau and must be submitted at least 90 days prior to the beginning date of the holiday period and may be accepted up to 12 months in advance.

105.4(4) Approval of request.

a. The maintenance bureau will notify the potential sponsor of approval or disapproval of the request within the time frame specified in Iowa Code section 314.27.

b. If there is more than one qualifying request for the same site and date, the sponsor will be selected by lottery.

These rules are intended to implement Iowa Code section 314.27.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 112
“Primary Highway Access Control”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A and sections 306.19,
306A.1 to 306A.8, 307.12, 318.3, 318.5, and 318.8

Public Hearing

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

May 23, 2024
10 to 10:30 a.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 331 823 204

Public Comment

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

Leilah Armstrong
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1623
Email: leilah.armstrong@iowadot.us

Purpose and Summary

The purpose of proposed Chapter 112 is to establish rules for the control of access for all primary highways in order to protect the safety of the traveling public, maintain efficient highway operations, and use the full potential of the highway investment. This chapter establishes necessary regulation based on access management studies, practices, and techniques. Some of the rules include the process for permitting an access connection, the terms and conditions of access permits, the process for appeal, the access types and their definitions, assigning the category classification of highway segments, the required amount of access rights to be acquired, the location and design requirements for access connections, construction requirements, temporary access requirements, drainage requirements, and the process for handling violations of the rules.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The proposed rules do not incur any cost that would not already be incurred if the proposed rules did not exist, such as the cost to construct an entrance. Property owners would have to bear the cost of constructing an entrance even if these rules did not exist. The proposed rules do not impose a cost on any class of persons.

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

The proposed rules improve safety along primary highways, so the rules benefit everyone and, specifically, the traveling public.

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

- Quantitative description of impact:

Safety: Every access connection reduces not only travel efficiency but also roadway safety to some degree. Access-related crashes are about 41 percent of all reported traffic crashes in Iowa (Iowa State University (ISU), 2017). This results in personal injury and a loss of lives, while costing Iowa about \$1 billion annually in property damage, medical expenditures, lost wages and other direct costs (ISU, 2017). The proposed rules regulate where access connections are allowed and provide processes related to managing accesses. According to the Federal Highway Administration's proven safety countermeasures, reducing driveway density can have a 5 percent to 23 percent reduction in total crashes along two-lane rural roads and a 25 percent to 31 percent reduction in fatal and injury crashes along urban/suburban arterials.

Business: Access management is one way to preserve the market area of retail businesses by maintaining the efficient flow of traffic. A 1997 study in Iowa examined business conditions on eight Iowa business corridors before and after access management improvements. Retail sales growth on corridors with completed access management projects was approximately twice that of communities in which the corridors were located. There was 48 percent growth on the corridor and 22 percent growth in the community. About 33 percent of businesses reported sales increases, 53 percent reported no change in sales and only 5 percent reported sales declines (source: Center for Transportation Research and Education, ISU access management research and awareness program).

- Qualitative description of impact:

Economic: The state primary highway system is essential to the movement of people and goods in Iowa, which is critical to the economy. Managing access supports efficient and reliable highway operations, thereby supporting commerce and avoiding unexpected costs and disruption of the supply chain due to deterioration of traffic conditions. Transportation costs are a key component that businesses, especially industry, consider when looking for locations to establish new production facilities. Transportation costs add to the price of commodities at the point-of-sale thereby affecting the ability to compete domestically and globally. The economy in Iowa depends on efficient transportation services. Access management adds economic value by maintaining or improving travel efficiency and safety. Access management improves the efficient operation of the roadway system in relation to the following measures of efficiency: fuel consumption and vehicle emissions, travel time and delay, speed differential between turning vehicles and through traffic, and roadway capacity. These measures of efficiency are interrelated.

3. Costs to the State:

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

There are no implementation or enforcement costs incurred by these proposed rules.

- Anticipated effect on state revenues:

These rules have no effect on state revenues.

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

The cost of inaction would be reduced public safety and the potential loss of lives. There is no benefit to inaction because inaction would mean no regulation for access management and a loss of access control. The proposed rules have no cost to implement and enforce, while the benefit is increased public safety. The costs and benefits of the proposed rules far outweigh the costs and benefits of inaction.

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

There are no other methods that are less intrusive or less costly for achieving the purpose of the proposed rules.

6. Alternative methods considered by the agency:

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

The only other option would be to have access management practices written up in Department policies/guidance.

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

Regulation is the most effective method for managing accesses on the primary highway system and protecting public safety.

Small Business Impact

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

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

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

This proposed chapter does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 112 and adopt the following **new** chapter in lieu thereof:

CHAPTER 112 PRIMARY HIGHWAY ACCESS CONTROL

761—112.1(306A,318) Scope and contact information.

112.1(1) *Statement of policy.* All primary highways are controlled access facilities. The efficiency and safety of a highway depend to a large extent upon the amount and character of interruptions to the movement of traffic. The primary cause of these interruptions is vehicular movement to and from public roadways, businesses, residences, and other developments along the highway. Regulation and overall control of highway access are necessary to provide efficient and safe highway operation and to utilize the full potential of the highway investment. Each highway access connection should be located and designed to achieve the least adverse impact to traffic operations and public safety. Accordingly, the department hereby establishes rules for control of access for all primary highways.

112.1(2) *Contact information.* Information regarding this chapter may be obtained from the department's website at: www.iowadot.gov/traffic/Access-Management/Access-Management-Resources; any of the department's six district offices; or the Traffic and Safety Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—112.2(306A,321) Definitions. As used in this chapter:

“*Access*” means a way or means of egress from or ingress to a highway.

“*Access connection*” means any point of motor vehicle ingress to or egress from a highway. It is the physical connection between the edge of the traveled way and the abutting property and is exclusive of the roadway and median.

“Average annual daily traffic” or *“AADT”* means the total volume of traffic passing a point or segment of a highway facility in both directions for one year divided by the number of days in the year.

“Functional area” includes any area upstream or downstream of an intersection where intersection operation and conflicts significantly influence driver behavior and vehicle operations. The functional area of an intersection is a calculated value based on the intersection’s geometrics, posted speed limit, traffic volume, type of traffic control used and perception-reaction-time values determined by the American Association of State Highway and Transportation Officials.

“Highway” means the same as “street” or “highway” as defined in Iowa Code section 321.1(78).

“Intersection” means the same as defined in Iowa Code section 321.1(33).

“Necessity” means the access is required or indispensable to the property because of circumstances that cannot be sufficiently mitigated by other means. Proof of necessity refers to documents, data, maps and other information submitted to illustrate and verify the claim of necessity.

“Primary highway” means a highway that is under department jurisdiction.

“Ramp” means a special lane, usually a short section of one-way roadway, that provides an access connection between two roads to enter or exit a major highway. The term “ramp” includes but is not limited to entrance ramps, roadway ramps, loop roads and collector-distributor roads.

“Roadway” means the same as defined in Iowa Code section 321.1(65). A divided highway has two or more roadways.

“Traveled way” means the portion of a roadway used for the through movement of vehicles, excluding shoulders, gutters and auxiliary turn lanes.

“Trip” means a single or one-directional vehicle movement. A vehicle leaving the highway and entering a property is one trip, and the vehicle leaving the property and entering the highway is a second trip.

761—112.3(306A) General provisions. The following provisions govern access encroachments onto a primary highway:

112.3(1) Access connection construction activity on a highway shall not begin until an access permit has been issued by the department.

112.3(2) A new access permit is required when there will be a change in use of the access connection. A change in access use includes but is not limited to:

- a. A change in the predominant vehicle types using the access.
- b. An increase in traffic volumes using the access.
- c. The original design and engineering limitations have been exceeded by the current use.
- d. The current use has not been authorized by the terms and conditions of the existing access permit.

112.3(3) A person shall not drive a motor vehicle to or from a highway at a location that is not an authorized access connection.

112.3(4) Access rights shall not accrue from, nor will additional access be provided upon, the splitting or dividing of existing parcels of land or contiguous parcels under the same ownership or controlling interest unless the proposed access complies with access category and design requirements and is permitted. Adjacent properties under common ownership or control, consolidated for development, or part of a phased development plan are considered one unit, and a unified access and circulation plan must be established for the site.

112.3(5) No rights of access are conveyed when the department provides a new access connection or modifies an existing access connection.

112.3(6) The terms and conditions of any permit are binding upon the applicant, the property owner and all assigns, successors-in-interest, heirs and occupants. If an assign, successor-in-interest, heir or occupant does not accept the terms and conditions of an existing permit, the assign, successor-in-interest, heir or occupant shall apply for a new access permit or a permit to close the access.

112.3(7) A property owner not wanting to assume responsibility for an access or the access’s requirements may apply for access removal at the property owner’s expense. An exception may be made for removals during highway projects.

112.3(8) A permit grants no property rights or interests in state right-of-way.

112.3(9) Where there are multiple accesses to the same parcel, the department may consolidate existing access connections during a highway project.

112.3(10) The department has the authority regarding operational modifications to the highway and all access connections.

761—112.4(17A,306A,318) Permitting process. An access permit is required for an encroachment onto a public right-of-way for the construction, reconstruction or modification of an access connection or any of its related appurtenances.

112.4(1) Application for an access permit.

a. To obtain an access permit, applicants will use the web-based system found at eps.iowadot.gov. If the applicant cannot use or connect to this electronic system, the applicant may contact the appropriate district office that is responsible for the area in which the proposed access is located. An applicant may be the property owner or the owner's authorized agent.

b. A separate access application and permit are required for each access connection.

c. Intentional misrepresentation of existing or future conditions or providing false information is considered sufficient grounds for denial or revocation of a permit.

d. The applicant is responsible for providing any location and design plans that describe the access.

e. The applicant is responsible for providing an estimate of the traffic volume of the access and the property as a whole. The estimate will include the anticipated average daily or hourly use and the anticipated access use upon the full development of the property.

f. For access types A and B as defined in subrule 112.5(2) and public intersections, the department requires a traffic impact analysis from the applicant during the processing of a permit request, except when the appropriate district engineer determines an analysis is not necessary. Such traffic impact analysis must be prepared by a professional engineer licensed in Iowa and at the cost of the applicant. The analysis will address a current and 20-year projection of traffic activity and impacts at and near the proposed access connection, including the full-development traffic volumes of the access connection.

g. It is the responsibility of the applicant to comply with all local ordinances and any other regulations.

112.4(2) Processing an access application.

a. Upon receipt of an application, the department will begin processing the application using the electronic permitting system. The department will apply the criteria as required by this chapter, including access type, access category, location, design, public safety and traffic operations.

b. The department may issue an access permit with terms and conditions or deny the application if it fails to meet this chapter's requirements. The department representative will notify the applicant of the determination.

c. The department will not act on an application it deems incomplete and will notify the applicant of additional information needed to complete the request.

d. Upon mutual agreement by the department and applicant, the department may suspend or extend the process period.

e. The applicant may withdraw the application.

112.4(3) Permit terms and conditions.

a. An access permit will include terms and conditions necessary to meet the requirements of this chapter and include consideration of the following:

- (1) Safety of the traveling public.
- (2) The access category pursuant to rule 761—112.5(306A).
- (3) The access location and design pursuant to rule 761—112.6(306A).
- (4) The traffic-carrying capacity of the highway.
- (5) Protection of the public investment in the highway.
- (6) Topography and geometric limitations and constraints.

b. The department may restrict turning movements as necessary to reduce adverse impacts. The department will consider the 20-year projection of traffic volumes on the roadway and the full-development traffic volumes of the access connection.

c. Access permits expire after one year if construction of the access is not initiated and no extension of time has been requested and granted by the department.

d. The property owner and the owner's authorized agent agree by accepting the permit to indemnify, defend and hold harmless the state of Iowa and its employees from all claims arising out of construction or use of the access.

e. The property owner and applicant assume liability for the construction and ongoing use of the access.

f. The permittee shall maintain the access in good repair at all times.

g. If the department has not received the signed copy of the permit within 60 days of the date of transmittal to the applicant, the permit is deemed withdrawn.

112.4(4) Permits where department owns access rights.

a. This subrule applies only where the department has determined there is no longer the necessity for the controlled access line at the proposed location. The department may issue an access permit if all design and location criteria are met.

b. If it becomes necessary to close the access, the property owner will be notified in advance and any permit will be revoked. The access application and permitting process do not include any rights of appeal where the department is the owner of the access rights.

112.4(5) Appeals.

a. An applicant or permittee who objects to any terms or conditions placed on an access permit, the denial of a permit, or the closure or revocation of an access may appeal the department's decision. If the department owns the access rights, this subrule does not apply.

(1) The appeal shall be submitted to the appropriate district engineer at the department.

(2) An appeal concerning the closure or revocation of an access or the denial of a permit must be submitted within 60 days of receipt of the department's notification.

(3) An appeal concerning the terms or conditions placed on an access permit must be submitted within 60 days of when the department sends the applicant the signed copy of the permit with terms or conditions for signature.

(4) The appeal must include reasons for the request and may include changes, revisions or conditions that would be acceptable to the applicant or permittee.

b. The district engineer will issue a written decision to the applicant or permittee within 60 days of receipt of the appeal or within 60 days after receipt of requested additional information.

c. Upon receipt of the written decision, the applicant or permittee may appeal the district engineer's decision by submitting the appeal along with background information to the director of transportation. The director will issue a written decision within 60 days of receipt of the appeal. The director's decision is final agency action.

112.4(6) Waivers. The director of transportation may, in response to a written petition, waive provisions of this chapter in accordance with 761—Chapter 11. The written petition must contain the information as required in 761—subrule 11.5(2) and shall be submitted to the rules administrator, either by mail to Rules Administrator, Government and Community Relations, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator's email address listed on the department's website at iowadot.gov/administrativerules.

112.4(7) Waivers involving interstate highways. The director of transportation shall not waive these rules in access situations involving the interstate highway system, including its ramps, without the approval of the Federal Highway Administration.

761—112.5(306A) Access types and the primary highway category system. This rule manages access connections according to highway function, design, traffic volumes, speed and roadside conditions.

112.5(1) General.

- a. The department will assign access categories to all highways according to the descriptions in subrule 112.5(3).
- b. There are no minimum or maximum distance criteria for the length of a category assignment.
- c. The department may assign a specific category to a segment of highway based on operational needs and to maintain consistency along a specific route.
- d. The department will maintain an access category assignment schedule for the highway system.
- e. Municipal access categories are for primary highway extensions within municipalities where concurrent jurisdiction applies pursuant to Iowa Code section 306.4(4).
- f. For all access categories, access connections should be kept to the minimum necessary to provide reasonable access. A second access to a parcel may be provided only if it meets spacing criteria, internal circulation is not feasible, and there is a necessity for the access.
- g. If the category allows type D access, an additional type D access may be granted to a parcel if the necessity due to topography problems or ongoing agricultural activities is demonstrated. A change in use of the parcel of land serviced by the type D access requires a new permit and may result in closure of the access if the location will not meet access category requirements for another type.
- h. A secondary access for emergency fire services needed to meet local fire safety regulations may be permitted on all categories except for the categories interstate and freeway (I/F), expressway (E), and municipal expressway (ME) and across controlled access lines. Such emergency access may be permitted only if it is not feasible to provide the emergency access to a secondary roadway. A written explanation with references to local standards from an appropriate government safety official must be included with the application. The access shall be maintained by the permittee as a closed access except during emergencies. Hidden pavement structures are acceptable.
- i. Access connections to government parcels will be treated the same as private access types based on volume with the exception of egress access connections used specifically for emergency response services such as fire stations.

112.5(2) Access types. Access connections are distinguished by the following four types of private access based on access connection traffic volume:

- a. Type A is a private access connection with traffic volumes equal to or greater than 100 trips in a peak hour. Traffic volume estimates are to be based on a 20-year projection or the build-out of the development, whichever is greater.
- b. Type B is a private access connection with traffic volumes between 11 and 99 trips in a peak hour. Traffic volume estimates are to be based on a 20-year projection or the build-out of the development, whichever is greater.
- c. Type C is a private access connection with traffic volumes between one and ten trips in a peak hour.
- d. Type D is a private access connection with an AADT of less than one per day.

112.5(3) Access categories for highways. Access categories are distinguished as follows:

- a. The interstate and freeway (I/F) category applies to highways with full access control. Access to the roadway, when allowed, shall be provided by ramps. Direct access to the main roadway and all ramps is prohibited.
- b. The expressway (E) category applies to nonfreeway multilane highways outside municipal boundaries where the department has acquired the associated access rights. Access that has not already been authorized shall not be permitted across existing access control lines. An access management plan is required to authorize a new public intersection. New direct access connections will not be permitted for utilities that have not been previously authorized.
- c. The rural-600 (R-600) category applies to two-lane and multilane highways outside municipal boundaries that are on the Iowa commercial industrial network as most recently approved by the commission or are where roadway traffic volume will be equal to or greater than 3,000 AADT within 20 years. Access types A, B and C may be permitted where the applicant can prove necessity and the access has a minimum spacing distance of 600 feet from other connections. Access type D must meet sight distance requirements. Private access connections should not be permitted within the functional area of any public intersection. Public intersections should be located at survey section lines when

feasible. Each full-movement access connection should serve as many properties and interests as possible to reduce the need for additional direct access to the highway.

d. The rural safety and need (R-S/N) category applies to two-lane highways outside municipal boundaries that will not exceed 3,000 AADT within 20 years. This category includes frontage roads, service roads and access ways. All private access types may be permitted where the applicant can prove necessity and meet sight distance requirements. Private access connections should not be permitted within the functional area of any public intersection. Public intersections should be located at land survey section lines when feasible.

e. The municipal expressway (ME) category applies to nonfreeway multilane highways inside municipal boundaries where arterial performance is necessary to provide high mobility and through traffic capacity. In the absence of an access management plan, private access shall not be permitted that has not already been authorized. An access management plan is required to authorize a new public intersection and may only be allowed if the public roadway is adopted by the city.

f. The municipal-1000 (M-1000) category applies to important regional and intracity highways that are within a municipality. Designation of M-1000 must include consideration of system continuity and preservation of a high level of mobility and through traffic capacity. The department recommends the installation of restrictive medians between full-movement intersections. Access to an M-1000 may be granted under the following conditions:

(1) All access types are eligible for a full-movement access connection at 1,320 feet (one-quarter mile) locations based on section lines where feasible, and these access connections may be restricted to right-in and right-out turns or directional left-in-only as access volumes increase. If there is a documented necessity to permit access connections at locations less than 1,320 feet, then a minimum access spacing interval of 1,000 feet may be used. No access connection should be allowed within the functional area of a public intersection.

(2) Each full-movement location should serve as many properties and interests as possible to reduce the need for additional direct access to the highway.

(3) All access types are eligible for limited movement connections at minimum spacing intervals of 600 feet if a restrictive median is present.

g. The municipal-600 (M-600) category applies to highways within municipalities that have been determined to have a need to maintain a moderate level of mobility and through traffic capacity. Minimum spacing for all access types is 600 feet.

h. The municipal-300 (M-300) category applies to highways within municipalities where a low level of mobility and through traffic capacity is acceptable. Minimum spacing for all access types is 300 feet.

i. The municipal safety and need (M-S/N) category applies to highways within municipalities where motor vehicle mobility and through traffic capacity are low priorities. The permitting of access and the determination of access connection locations is based only on safety and need.

112.5(4) Category revisions.

a. From time to time, it may be necessary for the department to change an assigned access category because of changes in roadway conditions, traffic growth or highway reconstruction. Reassignment must be consistent with subrule 112.5(3). A report will be prepared presenting why the current category should not be used and the reasons for and benefits of making the category revision.

b. If the highway is identified as a future freeway or expressway, the department may suspend the issuance of new access permits.

c. If a highway utilizing at-grade intersections is intended to be improved to accommodate traffic growth or safety considerations, the access category of the future improvement will be applied.

112.5(5) Interchange and intersection access control.

a. When it is necessary for an at-grade access connection to be near an interchange on an access category E or ME, the first access connection location will be determined by calculating the functional areas of the expressway ramp and the first at-grade access connection. The two functional areas shall not overlap. The functional area of the ramp shall be considered no less than 1,500 feet from the end of

the taper. The first access should be a public intersection. Access turning movements may be restricted for operational reasons.

b. Access is prohibited to all elevated structures and ramps on or connected to any highway.

c. When the interchange crossroad AADT will exceed 10,000 in the twentieth year, the first full-movement access connection should be at least 1,320 feet as measured from the ramp bifurcation point. A minimum of 1,000 feet may be allowed for a full-movement intersection if there is a proven necessity and no reasonable alternative. A restrictive median may be required between the ramps and the full-movement intersection. If the first full-movement intersection is at least 1,200 feet from the ramp bifurcation and a restrictive median is present, a right-in and right-out access may be permitted at a minimum of 600 feet from the ramp bifurcation. The ramp functional area should not overlap with the functional area of any access connection.

d. When the interchange crossroad AADT will be between 3,000 and 10,000 within 20 years, the first full movement should be at least 1,000 feet away from the ramp. All access types may have a restricted right-in and right-out access at a minimum of 600 feet from the ramp bifurcation point.

e. When the interchange crossroad AADT will not exceed 3,000 within 20 years, access public intersections and private access types A and B should be at least 600 feet away from the ramp bifurcation point. Types C and D should be at least 300 feet from the bifurcation point and may be subject to operational restrictions.

f. For any new interchange or interchange reconstruction, access rights should be acquired and extend a minimum of 600 feet away from the ramp bifurcation point. If the AADT will exceed 10,000 within 20 years, a minimum of 1,000 feet of access rights should be acquired.

g. Where a free-flow turning movement from a roadway or ramp merges onto another roadway, an analysis is to be completed to determine the functional area and the preferred placement of the first access connection. The functional area of the merge lane of the roadway and the functional area of the first access connection should not overlap. Access rights are to be acquired along the identified functional area length.

h. An at-grade intersection is defined by the determination of its functional area. Access should not be allowed within this functional area. Access beyond the functional area remains subject to the requirements of the access category location standards.

i. When acquiring access rights as part of a highway project, the department may acquire access rights along intersecting public roadways to protect the operation of the intersection at the highway. Acquisition of access rights should extend a distance of 150 feet from the near edge of the highway traveled way. If the intersecting public roadway AADT is predicted to exceed 3,000 within 20 years, the department should acquire access rights for a distance of 300 feet from the near edge of the highway traveled way. The department may lengthen or shorten the distance of access rights required after considering the intersection functional area, traffic volumes, traffic operations, acquisition costs and other factors.

112.5(6) *Access management plans and agreements.*

a. Access management plans may be developed to determine how access will be managed on select sections of high-priority corridors, around freeway interchanges, and within municipalities and high-growth corridors. Each plan will apply access management techniques, identify acceptable traffic control features, and establish the necessary operational restrictions to ensure the long-term functional performance and safety of the highway. The scope of each access plan may vary depending on what is determined necessary by the parties of the agreement to manage current and predicted future highway conditions and local land use.

b. To apply an access management plan within a municipality, it must be adopted by joint agreement in accordance with Iowa Code sections 306.4(4) and 306A.7.

c. Highway projects and corridor plans may include access management techniques and improvements to bring a section of highway into conformance with its current access category without adopting an access management plan and agreement.

761—112.6(306A) Location and design. This rule sets criteria for the location and design of access connections to primary highways.

112.6(1) Each access connection authorized must be located and designed in accordance with this rule. Terms and conditions for location, design, construction and use of the access connection shall be established by permit.

112.6(2) The priority of the primary highway system is to provide highway corridors with the goal of maintaining traffic capacity by limiting disruptions to through traffic. Direct access from abutting land is therefore subordinate. Where an adjacent lower traffic volume road is available, the access should connect to that roadway.

112.6(3) Private access connections may only be considered when there is a reasonable necessity for the access and should be separated from other private access connections at a minimum distance equal to the sight distance at the posted speed. The burden of proving necessity is on the applicant.

112.6(4) An access connection must be consistent with the requirements of the assigned access category.

112.6(5) Access location considerations must include traffic operations, public safety, sight distance, distance to other access locations, traffic speed and volumes, the design vehicle for the access, and turning movements.

112.6(6) Restrictive medians may be installed and access connection turning movements may be restricted to right turns or directional left turns for operational reasons when determined necessary and at the sole discretion of the department.

112.6(7) Minimum design criteria may be used only when there is a proven and documented necessity that higher standards are not feasible at the specific site.

112.6(8) When there are access connections on opposite sides of the highway and left turns are allowed from both directions, the access connections should be opposite each other or have sufficient offset distance so as to prevent overlapping left turn maneuvers.

112.6(9) If the access connection requires a turn lane, the access connection should be located so the turn lane can be installed and no other access connections occur along the turn lane. An access should not be installed along a turn lane or taper.

112.6(10) Private access connections should not be located within the functional area of a public intersection.

112.6(11) All access connections must meet sight distance.

112.6(12) The access must be designed to facilitate the movement of vehicles from the highway to prevent the queuing of vehicles on the roadway.

112.6(13) If a proposed access location does not comply with this chapter, the access permit shall be denied.

112.6(14) If the department determines that the literal application of these rules to a specific situation will create or result in an unsafe situation or an unreasonable design, the department will use sound engineering practices to determine the appropriate location and design for the specific situation. The department will include justification for the design in the permit or the highway project file, as applicable.

761—112.7(306A) Access construction. This rule sets criteria for the construction of access connections.

112.7(1) Overall stipulations.

a. Unless part of a public construction project, the construction of the access and its appurtenances as stated in the terms and conditions of the permit shall be completed at the expense of the permittee.

b. The access connection must be constructed according to the department's standards and specifications. The applicant will be provided with the necessary standards and specifications with the issued permit.

c. The access shall be completed in an expeditious and safe manner and must be finished within 30 days from initiation of construction within the highway right-of-way unless otherwise stated on the access permit.

d. The department may restrict work within the highway right-of-way, restrict lane closure periods and require preapproval of all aspects of construction phasing and traffic control. The permittee shall provide work zone traffic control at all times during access construction. Work in the highway right-of-way is not allowed on legal holidays, at night, during peak traffic hours or during adverse weather conditions without specific department permission.

e. Any damage to the primary highway, appurtenances or any utility or any permitted private encroachment shall be repaired immediately at the direction of the affected owner. All costs associated with repair or relocation are to be borne by the permittee. If a survey monument is modified or damaged, repair and replacement shall be done at the direction of the owner of the monument.

f. The relocation, removal or modification of any traffic control device or public or private utilities shall be accomplished by the permittee without cost to the department or utility and at the direction of the department or utility owner.

g. An access permit may require installation of traffic control features or devices, but such requirements do not create any type of private interest in such features. Traffic control features and devices in the right-of-way, such as traffic signals, channelizing islands, medians, median openings, and turn lanes, are operational and safety characteristics of the highway and are not means of private access. The department may install, remove or modify any traffic control feature or device in the right-of-way to promote traffic safety or efficient traffic operations.

h. The department is not obligated to permit or approve any connection, traffic control feature or device or any other site-related improvement that has been specified in a development approval process separate from the permitting criteria and approval process described in this chapter.

i. If any construction element of the permitted access fails within three years following construction, the permittee shall be responsible for all repairs. Failure to make such repairs may result in suspension of the permit and closure of the access.

j. The property owner or occupants are responsible for maintaining the access. Where the access connection has a paved surface, the property owner or occupants are responsible for maintaining the access connection from the paved edge of the roadway to the right-of-way line. Where the access connection does not have a paved surface, the property owner or occupants are responsible for maintaining the access from the outer shoulder line of the roadway to the right-of-way line. The department is not responsible for the removal of debris, snow or ice on the access, including debris deposited by the department during maintenance operations.

k. Drainage structures located along the highway are maintained by the department except for concrete box culverts and bridges constructed by the property owner for access to the property, which shall be maintained by the property owner or occupants.

112.7(2) Temporary access.

a. When an access is needed in temporary situations for a limited period of time, a temporary access connection may be allowed, but it is subject to special stipulations as determined by the department.

b. The location of the temporary access shall comply with all safety and sight distance requirements.

c. Temporary access, if authorized, may be permitted up to but not exceeding 24 consecutive months.

d. The permittee is responsible for all costs incurred, including removal of the access and restoration of the right-of-way at the end of the permit period.

e. An application for temporary access is not needed if the temporary access is for department purposes and has been approved in department internal documents and, when required, by the Federal Highway Administration.

761—112.8(306A) Drainage requirements for access connection approvals.

112.8(1) The permittee shall provide, at the permittee's expense, drainage structures for access connections that will become an integral part of the existing drainage system.

112.8(2) The type, size and condition of the drainage structures provided by the permittee must meet the requirements of the department in unincorporated areas and the requirements of both the department and the municipality in incorporated areas. The design and construction of drainage structures for access shall not adversely impact the highway right-of-way, a storm sewer system or a drainage-way.

112.8(3) The construction of an access shall not impair the drainage or stability of the highway subgrade, nor shall it cause water to flow across the roadway pavement or pond on the shoulders or in the ditch or result in erosion within the highway right-of-way.

112.8(4) Drainage systems designed and constructed by the department within the highway right-of-way are designed to serve the drainage needs of the highway and adjoining properties based on the basin conditions at the time of the design of the highway.

761—112.9(306A,318) Violations at access connections.

112.9(1) It is the responsibility of the property owner and permittee to ensure that the access is not in violation of this chapter or the terms and conditions of the permit.

112.9(2) When an authorized access is constructed or used in violation of this chapter or the terms and conditions of the permit, the department may suspend the access permit and may order the immediate closure of the access. Notwithstanding the preceding sentence or any other provision of this chapter, the department may proceed as authorized under Iowa Code chapter 318 at any time.

These rules are intended to implement Iowa Code chapter 17A and sections 306.19, 306A.1 to 306A.8, 307.12, 318.3, 318.5 and 318.8.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 116
“Junkyard Control”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 306C.2, 306C.3, 306C.4, and 306C.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 306C and 23 U.S.C.
Section 136

Public Hearing

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

May 21, 2024
1 to 1:30 p.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 407 636 09

Public Comment

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

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

Purpose and Summary

This proposed chapter provides some necessary definitions and screening requirements to implement Iowa Code chapter 306C, subchapter I, which restricts the development of junkyards adjacent to major routes in Iowa unless the site is in an industrial area or has effective screening so that motorists are not able to view the contents from the highway.

Key definitions included in the proposed rules are “adjacent area,” “automobile graveyard,” “inoperative motor vehicle,” and “nonconforming junkyard.” Implementation of the law relies upon the use of these terms. Without these definitions, ambiguity will be present on whether a site complies with the law.

The statute defers to rules to be promulgated by the Department concerning the installation of screens that will effectively block the view of the site from the highway. This chapter provides the criteria to ensure that the screens accomplish the intended purpose of the law.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The persons who will bear the costs of the proposed rules are the owners of junkyards located adjacent to the National Highway System in areas that are not zoned industrial and owners of junkyards located adjacent to the National Highway System in areas that are not subject to a zoning ordinance and are not used for industrial purposes. In these areas, screens are necessary to protect the roadside views. The cost of a screen is the responsibility of the owner unless the site pre-exists the law and federal and state funds are available for screening.

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

The general traveling public benefits from improved roadside views in nonindustrial areas and from the receipt of federal highway funds to construct and maintain road systems in Iowa. As an added benefit, local officials are able to rely on the Department for assistance in controlling a junkyard located within the local officials' jurisdiction that is also under the purview of the Department.

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

- Quantitative description of impact:

Owners of sites that qualify under the definition of a junkyard that are located adjacent to and visible from the National Highway System in areas that are not zoned industrial are required to install a screen that effectively obscures the site from view of the highway. This has affected less than one site per year in the state.

The costs of screening vary greatly, depending upon the size of the site and whether contents of the site can be relocated behind existing buildings, fences, or foliage. The elevation of the site in relation to the highway can also be a factor in determining how high the screen needs to be for complete obscurement. The state has not generally been advised of the amounts paid by operators to purchase the materials or plantings.

- Qualitative description of impact:

Impacts in the form of a cost obligation to an operator are generally quantitative rather than qualitative. However, for the general traveling public, a positive qualitative impact occurs when a developing site is screened from view from the highway. Indirectly, all Iowans benefit from the annual federal highway apportionment that is used to improve the quality of the state's road systems.

3. Costs to the State:

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

The junkyard control program is administered by the Advertising Management section of the Department. This section is self-supporting through the permit fees that are charged for various sign permits. The junkyard control program utilizes about 5 percent of a full-time employee in the section, with the other duties being the review of outdoor advertising signs. There are no additional costs to the State at this time. The use of State funds with matching federal funds to screen pre-existing nonconforming junkyards has not been and is not expected to be approved by the Department in the foreseeable future

- Anticipated effect on state revenues:

This regulatory program does not affect State revenues. Junkyards subject to the purview of the Department do not pay any license fees, at least not associated with the Highway Beautification Act. Junkyards in the business of recycling are required to have a recycler's license, but that requirement is unrelated to this regulatory program and not covered by this proposed chapter.

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

The program is not very active currently, with an occasional site being required to install a screen when needed. The costs are borne by the operator of the site and should be considered part of the development costs of the site. Many local jurisdictions prohibit the development of junkyards unless they are located in an industrial zone or similar heavy classification. State law does not restrict such development but does require a screen, if not located in an industrial zone. The costs are very slight as compared to a 7 percent penalty calculated at \$43.7 million. The federal law, 23 U.S.C. Section 136, contains a 7 percent reduction penalty on annual federal-aid highway apportionments for states that do not meet the federal requirements.

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

The cost of an effective screen will depend upon the size of the junkyard, existing vegetation and buildings, and the elevation differences in relation to the highway. The Department welcomes cost-saving ideas, provided they still yield year-round obscurement from the highway. The Department strives for flexibility when working with site owners regarding options and time frames.

While some states regulate all routes under state jurisdiction, the Iowa Department only regulates the routes that are required to be controlled under federal law. These routes consist of the National Highway System, which includes the interstates and major highways in Iowa as shown on this webpage: [National Highway System | Iowa Department of Transportation - Open Data \(iowadot.gov\)](#).

6. Alternative methods considered by the agency:

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

Alternative methods for avoiding a 7 percent penalty on federal highway funds are not available. The only method for avoiding a 7 percent penalty is to satisfy the minimum requirements in the federal law. The Department's objective is to meet, but not exceed, the minimum federal requirements necessary for receipt of the full annual apportionment.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
Alternative methods are not available after review of federal law.

Small Business Impact

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

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

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

The existing chapter has not had a substantial impact on small business. The number of sites that have been required to install a screen are less than one per year. These sites were developed by operators in nonindustrial areas adjacent to interstates or major routes without forethought that screening may be necessary or with knowledge that screening would be necessary to comply with state law and, often, local ordinances.

The Department does not pressure operators into quick decisions or installing screens in a 30-day period. Rather, the Department informs operators of the law and allows time for the operator to research options to achieve compliance. This may include construction of buildings, relocation of contents to areas not visible from the highway, installation of screens, planting of trees, creation of berms, and other measures to obscure the junkyard contents, with flexible time frames.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 116 and adopt the following **new** chapter in lieu thereof:

CHAPTER 116 JUNKYARD CONTROL

761—116.1(306C) Definitions. The definitions in Iowa Code section 306C.1 apply to this chapter. In addition:

“*Adjacent area*” means an area that is contiguous to and within 1,000 feet of the nearest edge of the right-of-way of any highway on the national highway system.

“*Automobile graveyard*,” as used in Iowa Code section 306C.1, means any site that is maintained, used, or operated for storing, keeping, buying, or selling ten or more wrecked, scrapped, ruined, dismantled or inoperative motor vehicles, but does not include any location where motor vehicle bodies are placed along stream banks for purposes of bank stabilization and soil erosion control, if such placement conforms with guidelines established by the department of natural resources.

“*Industrial activities*” means activities that are generally permitted only in industrial or heavier zone classifications by zoning authorities within the state, except that none of the following are considered to be industrial activities:

1. Outdoor advertising structures.
2. Agricultural, forestry, ranching, grazing, farming and related activities, including but not limited to wayside fresh produce stands.
3. Activities normally and regularly in operation less than three months of the year.
4. Transient or temporary activities.
5. Activities not visible from the main traveled way.
6. Activities more than 300 feet from the nearest edge of the main traveled way within the corporate limits of cities.
7. Activities more than 1,000 feet from the nearest edge of the main traveled way outside the corporate limits of cities.
8. Activities conducted in a building principally used as a residence.
9. Railroad tracks, minor sidings, and passenger depots.
10. Junkyards.

“*Industrial zone*” means a zone established by zoning authorities as being most appropriate for industry or manufacturing. A zone that simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone.

“*Inoperative motor vehicle*” means any of the following:

1. A motor vehicle that does not have a valid title.
2. A motor vehicle that does not have a current registration unless the motor vehicle is in the inventory of a motor vehicle dealer licensed under Iowa Code chapter 322.
3. A motor vehicle with one or more of the following items missing or in need of substantial repair: windshield, driver’s seat, steering wheel or steering system, battery, ignition system, fuel tank or fuel supply system, engine, transmission, drive shaft, differential, axle, suspension system, brake system, or frame.
4. A motor vehicle that is not immediately capable of legal operation on a public road or street.

However, any one of the following by itself does not render a motor vehicle inoperative: a battery that can be recharged, one tire and wheel missing or in need of repair, or lack of fuel.

“*Main traveled way*” means the portion of the roadway for movement of vehicles on which through traffic is carried, exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main traveled way includes each of the separated roadways for traffic moving in opposite directions, exclusive of shoulders, auxiliary lanes, frontage roads, turning roadways, and parking areas.

“*Nonconforming junkyard*” means a junkyard located in an area not exempted by Iowa Code section 306C.2 and that was lawfully established:

1. Prior to July 1, 1972, and is located within the adjacent area of an interstate highway.
2. Prior to May 6, 2015, and is located within the adjacent area of a noninterstate highway on the national highway system.
3. Prior to the effective date of a zoning change that caused nonconformity with these rules.
4. Prior to the departure or closure of an industrial activity that caused nonconformity with these rules.
5. Prior to the establishment of a highway as part of the national highway system.

“*Right-of-way*” means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes but does not include temporary easements or rights for supplementary highway appurtenances.

“*Unzoned industrial area,*” as used in Iowa Code sections 306C.2 and 306C.3, means land occupied by a regularly used building, parking lot, storage area or processing area of an industrial activity, and land within 1,000 feet thereof that is:

1. Located on the same side of the highway as the activity,
2. Not predominantly used for residential or commercial purposes, and
3. Not zoned by state or local law, regulation, or ordinance.

This rule is intended to implement Iowa Code sections 306C.1 to 306C.9 and Title 23 U.S.C. Section 136, as implemented through 23 CFR 751.

761—116.2(306C) Screening or removal costs. Screening or removal shall be paid for and provided by the following:

116.2(1) The department, only for nonconforming junkyards and subject to Iowa Code sections 306C.3 and 306C.5.

116.2(2) The owner, for junkyards established within the adjacent area of a highway on the national highway system in an area not exempted by Iowa Code section 306C.2, or for nonconforming junkyards that have expanded in size since becoming nonconforming.

This rule is intended to implement Iowa Code sections 306C.3 and 306C.5.

761—116.3(306C) Screening standards.

116.3(1) *Composition.* Screens may be natural or manmade, but all screens shall be of a height and type to provide year-round obscurement of the contents.

a. Natural screens may consist of non-deciduous plantings, provided the variety, size, and growth rate will obscure the site within a reasonable time period. Earthen berms or existing natural features on the site may also be incorporated into the screening solution.

b. Manmade screens may consist of any variety of materials, provided the screen is constructed in a sturdy, permanent manner and blends with the natural surroundings. Buildings may be incorporated into the screening solution, but inoperative motor vehicles may not be stacked or arranged as a component of the screening feature.

116.3(2) *Screening plan.* For junkyards that are not exempted by Iowa Code section 306C.2, a screening plan should be submitted to the department for review before investing in plants, materials, and labor. This allows for the department to review the plan to ensure that the proposed screen will completely obscure the contents of the site from view, will be structurally sound, and will blend in with the natural surroundings for the area. While submitting a screening plan is not required, doing so adds confidence that investments made will yield the desired result.

This rule is intended to implement Iowa Code sections 306C.3 and 306C.4, and Title 23 U.S.C. Section 136, as implemented through 23 CFR 751.

761—116.4(306C) Removal. Removal or relocation of contents to areas not viewable from the highway may be necessary for the following reasons:

116.4(1) The difference in elevation between the highway and junkyard is such that a screen tall enough to completely obscure the site is not cost effective.

116.4(2) The owner is financially unwilling or otherwise unable to complete the installation of or maintain a screen that can pass review by the department.

116.4(3) Local regulations do not permit the construction of screening of such type that would provide complete obscurement.

This rule is intended to implement Iowa Code sections 306C.2, 306C.3 and 306C.5.

761—116.5(306C) Notice and enforcement.

116.5(1) Notice. The department may provide a 30-day written notice by certified mail to the owner of a junkyard and, if not the same person or entity, the owner of the property, demanding that steps be taken to bring a site into compliance. Steps may include but are not limited to the submission of a screening plan, completion of a screen, and extending or repairing a screen.

116.5(2) Enforcement. If the junkyard remains out of compliance after notice is served and steps toward compliance are not accomplished within the time frames prescribed by the department, the department may apply for an injunction to abate the public nuisance as provided in Iowa Code section 306C.6.

This rule is intended to implement Iowa Code sections 306C.4 and 306C.6.

761—116.6(17A) Hearings and appeals. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision pursuant to 761—Chapter 13.

This rule is intended to implement Iowa Code chapter 17A.

761—116.7(306C) Contact information. Inquiries regarding this chapter may be directed to the Advertising Management Section, Traffic and Safety Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1255.

This rule is intended to implement Iowa Code sections 306C.1 to 306C.9.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 118
“Logo Signing”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 306C.11
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 306C

Public Hearing

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

May 21, 2024
2 to 2:30 p.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 338 217 220

Public Comment

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

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

Purpose and Summary

The purpose of proposed Chapter 118 is to establish standards and conditions for the placement of logo signs along the interstate system in Iowa, implementing Iowa Code section 306C.11. The design of these signs and the qualifying standards for businesses must conform to the Manual on Uniform Traffic Control Devices as adopted pursuant to Iowa Code section 321.252.

The proposed repromulgated chapter omits unnecessarily restrictive language and redundancies and is less than three-fifths of the volume of the former chapter, yet retains the essential elements needed for delivering a successful program to the traveling public and participating businesses.

There are no significant changes to the standards for the program. A few minor changes are made, including the following:

1. The limit of two trailblazer signs (the smaller wayfinding types that help direct motorists when the service is not located on the roadway that intersects with the interstate highway) is eliminated, leaving no limit in place. In addition, a local jurisdiction will be given the opportunity to review whether the placement of a trailblazer sign, if on the local jurisdiction’s system, is appropriate and conforms to the local jurisdiction’s ordinances.

2. The system of issuing exceptions for distance and 24-hour card-operated fueling centers is eliminated. The Department can simply approve such applications when space is available on the service signs for more logos, rather than adding red tape to track which logo is on by exception or by creating complicated two-tiered lottery drawings.

3. The condition that sites of attraction must be “of significant interest to the traveling public” is eliminated due to the subjectivity in making such a decision. The list of the types of attractions that can be approved is retained, but the requirement that applications for attractions be reviewed by the tourist signing committee is eliminated to shorten the approval process by up to 30 days. Applications for attractions are rare, averaging only about three per year.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Business owner participation in the logo signing program is voluntary, but a cost is associated with participation. The participating business owners are responsible for the fabrication of their signs that will be attached to the Department blue background panels. The cost varies, but a standard 36- by 60-inch logo sign can be sourced, for example, from Interstate Logos LLC for about \$400. The cost for participation in the Department's program is \$230 per sign, per year, a figure lower than the national average for participation in a logo signing program. The Department has held fees at this level since 1996, aiming to keep the program affordable for small businesses in Iowa.

The fees are deposited into the Highway Beautification Fund in accordance with Iowa Code section 306C.11. This fund has historically covered the program costs, with the program not drawing from other highway funding mechanisms.

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

This program provides essential motorist service information along the interstate system. Both business owners and the traveling public benefit from this program. The business owners report boosts in gross sales figures due to the public exposure they receive along the highway where tens of thousands of vehicles pass on a daily basis, while motorists are informed about service-oriented businesses available at the next interchange. The program enjoys a 97 percent retention rate with business owners without being actively marketed by the Department.

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

- Quantitative description of impact:

Business owner participation in the logo signing program is voluntary, but a cost is associated with participation. The participating business owners are responsible for the fabrication of their signs that will be attached to the Department blue background panels. The cost varies, but a standard 36- by 60-inch logo sign can be sourced, for example, from Interstate Logos LLC for about \$400. The annual cost for participation in the Department's program is \$920 (for a set of four signs), a figure much lower than the \$1,880 national average. The Department has held fees at this level since 1996, aiming to keep the program affordable for small businesses in Iowa.

Business owners report that the signs boost overall gross sales as compared to not having the signs in place. Too many factors exist to calculate a precise expectation, including brand recognition, message legibility, color contrast, service type, competition on the sign, and distance from the interchange. The food service has been the most popular type of service, with some owners reporting a ten-point boost in sales.

- Qualitative description of impact:

Motorists across the nation rely on the system of logo signs installed in advance of interchanges to inform them of available gas, food, lodging and other necessary services. Without this system, motorists would be relying on billboards, on-site signs, and the Internet. Billboards along the interstate and freeway systems are heavily restricted by federal, state, and local laws. On-site signs are only effective if the business has adequate highway frontage. Relying on mobile data may be the preferred choice for most drivers, but not all drivers are connected nor want to be while performing the driving task. The logo signs remain an important tool for drivers to have when making exiting decisions for necessary motorist services.

3. Costs to the State:

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

The logo signing program is already in place, so there are no new implementation costs with the promulgation of this chapter. The Advertising Management Section of the Department monitors the

fund balance of the Highway Beautification Fund. This fund was established by the Iowa legislature in the early 1970s so that the program could be self-sustaining, rather than drawing from other general highway funding sources. The participation fees along with other permit fees from sign programs managed by the Section have been generally sufficient to cover the costs of administering the logo signing program. The fund balance, as of April 1, 2023, was \$2,034,491. Program costs for 2022 were determined as follows:

2022 Logo Program (Estimation)

Program Administrator (2,080 hours: \$60/hour*)	\$124,800
Supervisor (52 hours: \$75/hour*)	3,900
Billing Agent (520 hours: \$45/hour*)	23,400
Six Traffic Engineering Staff (700 hours: \$75/hour*)	52,500
Design Engineering Consultant (110 hours: \$54/hour*)	6,000
Service work; district equipment and labor: 101 requests x \$636	64,200
Sign Contractor; labor and materials	654,700
Program administrator vehicle expense	3,200
IDOT Sign Shop Staff (36 hours: \$26/hour*)	900
<hr/>	
Total Costs	\$933,600
Revenue: 3,662 signs: \$230/year	\$842,300

*Includes benefits package

- Anticipated effect on state revenues:

This program operates in an intended net-neutral fashion with the handling of revenue and expenses. There is no anticipated effect on state revenues outside of the Highway Beautification Fund.

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

This program is a win-win-win because the business owners want this medium for advertising, the motorists use it for informational purposes while traveling, and the Department uses the revenue to cover the expenses associated with administering the program, as well as billboard control in general. Without this program, and with the continued statutory restrictions on the placement of advertising signs on private property (due to federal laws), motorists would be left with inadequate information about available services in remote areas and businesses that do not enjoy highway frontage would have few alternatives for capturing the attention of the traveling public.

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

The program is patterned after the established and federally approved criteria found in the Manual on Uniform Traffic Control Devices. These criteria should be followed so that the Department does not risk any reduction in federal highway funding. The existing and repromulgated versions of the chapter have essentially the same basic standards since the existing version was about as liberal as the Manual permitted.

Privatizing the program would require amending Iowa Code section 306C.11 and would introduce a question of how to fund the advertising control programs, which are supported by the revenue from the program as intended by the Iowa legislature. As evidenced in other states, the bid-winning firm would presumably hike the participation fees to make the return-on-investment more attractive, leading to less local independent variety represented on the signs and more national chains with robust marketing budgets. Keeping the program state-run has benefits; for example, following Governor Reynolds'

Disaster Proclamation Order in early 2020, the Department quickly partnered with the Travel Federation of Iowa to get a fee-waiver issued for all participating businesses. This was greatly appreciated by small businesses and the hospitality industry in particular during the early days of the pandemic with public health restrictions in effect and very little travel occurring.

6. Alternative methods considered by the agency:

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

No viable alternatives for the provision of a system of service-oriented signs along the interstate system are known.

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

There are no other known alternatives to logo signing. States may not develop alternatives that do not comply with the federally approved Manual on Uniform Traffic Control Devices unless they want to forfeit some portion of federal highway funding.

Small Business Impact

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

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

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

There is no anticipated negative effect on small business. This repromulgation will continue a popular program that small business owners rely on to increase exposure to highway traffic. The Department operates the program in a low-cost, self-sustaining or near self-sustaining manner to benefit small business, as well as the traveling public.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 118 and adopt the following **new** chapter in lieu thereof:

CHAPTER 118 LOGO SIGNING

761—118.1(306C) Introduction. Logo signing consists of individual business signs attached to specific service signs erected by the department within the right-of-way of interstate and freeway-primary highways. The purpose of logo signing is to provide specific motorist service information of interest to the traveling public in accordance with the “Manual on Uniform Traffic Control Devices,” (MUTCD) as adopted in rule 761—130.1(321). The department will perform all installation, maintenance, removal and replacement services for business signs within the right-of-way. The business signs are provided by the applicants.

761—118.2(306C) Definitions.

“*Business*” means an entity that provides a gas, food, lodging, or camping service or that is an attraction site.

“*Business sign*” means a separate sign attached to a specific service sign; the business sign shows the name, symbol or trademark of a business that provides the type of motorist service identified on the specific service sign.

“*General service sign*” means an official guide sign that identifies general road user services, such as gas, food, lodging and camping. This sign does not provide for the placement of business signs.

“*Main line*” means the main-traveled way of an interstate or a freeway-primary highway.

“*Meal*” means the service of food entrees and beverages between the hours of 8 a.m. to 10 a.m., 11 a.m. to 1 p.m., or 5 p.m. to 7 p.m.

“*Motorist service*” means one of the following five types of services: gas, food, lodging, camping or attraction.

“*Ramp*” means the exit lane that carries decelerating traffic away from the main line of an interstate or a freeway-primary highway.

“*Specific service sign*” means an official guide sign that identifies one or more types of motorist services, provides directional information, and has spaces for the attachment of business signs to identify businesses providing those services.

“*Trailblazing sign*” means a specific service sign erected on the road network accessed from an interchange that has logo signing; the sign directs motorists to a particular business signed on the main line and has spaces for the attachment of business signs.

“*Visible*” means able to be identified or comprehended by a person of visual acuity sufficient to be issued an Iowa driver’s license.

761—118.3(306C) Erection and location of specific service signs and placement of business signs.

118.3(1) General.

a. The department may erect specific service signs at rural interchanges if the requirements of this chapter are met and sufficient space is available. The department may also erect specific service signs at urban or nonrural interchanges if the requirements of this chapter are met and sufficient space is available. If sufficient space is not available for more than one specific service sign, the department may install a general service sign in lieu of a specific service sign.

b. Specific service signs may be erected at an interchange only when the motorist can conveniently reenter the interstate or freeway-primary highway and continue in the same direction of travel.

118.3(2) Main line specific service signs and placement of business signs. Following are the requirements for main line specific service signs erected in advance of an interchange, in a single direction of travel, and limitations regarding the number and types of business signs attached to these service signs:

a. A maximum of four main line specific service signs may be erected in advance of an interchange from which motorist services are available.

b. On the main line, the minimum spacing between specific service signs and between specific service signs and other official guide or destination signs is 800 feet.

c. If spacing limitations exist, preference may be given to available gas, food, lodging, camping or attraction services, in that order.

d. If services are displayed, the order of display of services in the direction of travel on successive main line specific service signs is as follows: attraction, camping, lodging, food, and gas.

e. Depending upon factors such as limited space for the placement of signs, limited interest from businesses, or limited availability of businesses, the department may combine up to three service types on one sign as provided in the MUTCD.

f. A maximum of six business signs may be displayed on a specific service sign, regardless of whether it displays a single service type or multiple service types.

118.3(3) Specific service signs erected along interchange ramps.

a. The department may erect specific service signs along interchange ramps to accommodate the placement of business signs similar to but smaller than the business signs used along the main lines,

along with arrows and mileage indicators. Specific service signs along interchange ramps are available for the participating businesses that are not visible or that are only marginally visible from the traveled portion of the interchange area.

b. The department may opt to erect general service signs in lieu of specific service signs along interchange ramps, or not erect any service signs at all in cases where insufficient spacing exists for signs or where the ramps are directional with no turning decision to be made at a terminal.

118.3(4) Trailblazing signs.

a. Businesses that are not visible from the intersecting roadway will need to provide additional smaller versions of their business signs for installation on trailblazer service signs erected in advance of intersections where turns would be necessary.

b. If the proposed placement of a trailblazer service sign is not on the primary road system, the appropriate local jurisdiction will be provided with an opportunity to review the placement before the department proceeds with any specific service signing for the business. If the placement is approved, the department will route the appropriate signs to the local authority for installation.

c. If a trailblazer service sign is necessary, but the location is not conducive for placement or the local ordinance prevents such placement, an official traffic control device from another sign program or a lawfully placed outdoor advertising device may be used as a substitute, provided the sign is positioned to be effective at the intersection where it is needed.

d. If signing at the intersections where turns are necessary cannot be accomplished, the business does not qualify for participation in the logo program.

761—118.4(306C) Eligibility for placement of business signs on specific service signs. Participation in the logo program is limited to businesses that meet the following conditions:

118.4(1) The business is open to the general public; does not restrict entrance based on age; and conforms to all applicable laws concerning discrimination based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, and disability.

118.4(2) The business is located within three driving miles of the beginning of the exit ramp for the interchange. In commercially developed areas, the department may reduce the qualifying distance to one mile. In areas where services are limited, the department may increase the qualifying distance to 15 miles.

118.4(3) Service types. The business provides one of the following types of services in accordance with the associated criteria:

a. Gas. Provision for the sale of gasoline, oil, and potable water; the use of restroom facilities; and access to a public telephone or a cell phone. The business' operating times should be at least 16 hours per day, seven days per week. For 24-hour fuel dispensers, operable with the use of a widely accepted credit card, the provision of gas or alternative fuels is considered sufficient for qualification purposes.

b. Food. A restaurant or food service that provides all of the following: at least two meals per day, six days per week; employees, menu, cash register or point-of-sale, seating for at least ten customers, and an exterior sign, all of which are designated exclusively for the business being represented on the service sign; and the display of a state food service establishment license or, if operating within tribal lands, compliance with food service standards established by the local authority.

c. Lodging. A lodging facility, appropriately licensed, with bathrooms and telephones for each unit.

d. Camping. A campground with at least 20 available camping spaces, with a 24-hour contact for staff, and for which all state and local health and sanitation standards are met.

e. Attractions. One of the following attraction sites providing public restrooms and parking spaces for at least 30 customers, and being open at least five days per week totaling 40 hours or more per week, except if otherwise specified below:

- (1) Area of natural beauty or phenomena.
- (2) Historic site.
- (3) Cultural site or museum.
- (4) Scientific site.

- (5) Four-year accredited college or university.
- (6) Religious site.
- (7) Area of outdoor recreation.
- (8) Winery, brewery or distillery with on-site production, tours, gift shop, and tasting room.
- (9) Amusement park.
- (10) Botanical park or zoological facility.
- (11) Casino.
- (12) Stadium, coliseum, arena or racetrack with a seating capacity of at least 5,000 and open during scheduled events.
- (13) Antique mall with at least 20,000 square feet devoted to retail sales.
- (14) Area containing eight or more antique shops within a three-block radius.
- (15) Shopping mall or retail outlet with a minimum, active store count of 50, excluding kiosks and temporary booths within the common areas, and including only those stores that occupy owned or leased areas whose boundaries are defined by permanent walls with doors or gates.
- (16) Sporting goods store or recreational retail outlet with at least 100,000 square feet devoted to retail sales.
- (17) Cultural and entertainment district as officially designated by the department responsible for state economic development provided that the local jurisdiction implements a signing plan to direct motorists to the various cultural and entertainment sites within the district.

118.4(4) The business maintains all outdoor advertising signs in a manner that conforms to Iowa Code sections 306C.11 and 306C.13.

118.4(5) The business premises includes a sign identifying the business in a manner visible to traffic approaching the entrance from a public roadway.

118.4(6) The business remains eligible to participate in the signing program in accordance with this chapter. If it is determined that a business is no longer eligible, the department may remove the business sign immediately or provide notice allowing for a 30-day period for the business to make the necessary adjustments to restore eligibility.

761—118.5(306C) Application, drawing, and fees.

118.5(1) Application.

a. A business may request placement of a business sign upon a main line specific service sign by submitting a completed application form, provided by the department, along with the application fee, to the Advertising Management Section, Traffic and Safety Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. The department will review the application and site for compliance with this chapter. If the application is approved, the department will advise on how many business signs will be needed to fulfill the request.

c. The business signs will be provided by the business or applicant in accordance with rule 761—118.6(306C). The department may offer a noncomprehensive list of known sign fabricators as a courtesy to the applicant.

d. Approved applications are valid for the fiscal year (July 1 to June 30) and expire on June 30. If the fees, as billed by the department, are paid by the business in accordance with subrule 118.5(4), the application is renewed on July 1.

118.5(2) Drawing to select applicants. If the number of applicants for businesses exceeds the number of vacant spaces on a main line specific service sign, the department will hold a lottery drawing among these applicants to select the applicants to fill the vacant spaces.

118.5(3) New application required for business name change. If a business participating in the logo signing program changes its name or franchise affiliation from that which appears on its business sign, a new application is required. If the new application is received by the department prior to the change on the business premises, the business will retain its position on the specific service sign, the department will approve the application, and no application fee is due.

118.5(4) Fees.

a. *Application fee.* A fee of \$100 is required for an application submitted in accordance with subrule 118.5(3). The application fee is a one-time fee and is nonrefundable once the department has performed an on-site review to verify compliance with the requirements of this chapter.

b. *Annual fee.* The annual fee is \$230 for each business sign posted on a specific service sign and is due on or before July 1 of each fiscal year. However, for a new application, the annual fee will be prorated based on the remaining months left in the fiscal year.

c. *Service fee.* If business signs are replaced for any reason, including at the request of the business to reflect an updated design or at the request of the department in accordance with rule 761—118.7(306C), a service fee of \$50 per sign is due upon completion of the work by the department. If business signs need to be replaced, the department recommends supplying new business signs for replacement rather than refurbishing existing signs. If existing signs are to be removed, refurbished, and then reinstalled, the \$50 service fee is applied per sign, per service trip.

118.5(5) Failure to pay annual fee or service fee. Applications terminate when annual fees are not paid in full by July 1 of each year or when service fees are not paid within 30 days of receiving the invoice from the department. In the event of termination, the business signs may be removed by the department, although such removal may occur at some point after the date of termination, depending upon the department's schedule and work priorities. If the termination was not voluntary, the business may reapply, subject to the requirements of this chapter, including payment of the application fee and a lottery drawing, where applicable.

118.5(6) Fee options for seasonal operations. Subject to subrule 118.5(5), a business that operates on a seasonal basis and is permitted to do so by this chapter has the following payment options:

a. Pay the annual fee for a full year. The department removes and reinstalls each business sign once each year, free of additional charge, coinciding with the dates of operation, if possible.

b. Pay the annual fee for a prorated year, based on the calendar months in which the business is in operation, plus a \$50 annual service fee per business sign for removal and reinstallation services performed. The department removes and reinstalls each business sign once each year, coinciding with the dates of operation, if possible.

c. Pay the annual fee for a prorated year, based on the calendar months in which the business is in operation, and provide business signs that contain a supplemental message indicating the dates of operation.

118.5(7) Fees for temporary specific service signs. In cases where the specific service sign is lacking or insufficient in size, and the projected date for installation or enlargement of the specific service sign by the department's contractor is undesirable for the applicant, the applicant may pay a special fee to expedite the installation of the business sign by having a small temporary specific service sign erected to provide a surface for the mounting of the business sign. The fee for the performance of this work is \$700 per main line specific service sign if none exists for that service type, \$400 per main line specific service sign if the existing sign is full, and \$300 per ramp specific service sign if similar work is needed along the ramp. The business signs furnished by the applicant will be the standard size and reused for placement on the primary specific service sign when it is available. Subject to availability of department resources, small temporary specific service signs will be installed within three months.

761—118.6(306C) Business sign fabrication. Upon approval of an application, the department will supply the necessary specifications for fabrication of the business signs to the applicant or applicant's sign fabricator. The applicant or applicant's sign fabricator shall submit a design proof to the department for approval before creating the business signs. If the department approves the submitted design, the sign fabricator may proceed to fabricate the signs and deliver them to the department's sign shop for inspection. All installation services are performed by the department or contractor on behalf of the department.

761—118.7(306C) Business sign replacement.

118.7(1) Damaged business signs. If a business sign is destroyed due to an errant vehicle or act of nature, the business, at its own expense, will need to furnish a replacement business sign. The

department, due to an errant vehicle or act of nature, will waive any service fee associated in the work to replace the sign. If the specific service sign for which the business sign is attached can safely be repaired or re-erected while permanent repairs are on order through a contractor, the department will perform this work.

118.7(2) *Faded business signs.* The department may remove business signs that are faded or peeling after providing 60 days' notice to the business. If the business furnishes replacement business signs to the department in advance, the department may remove and replace business signs in the same service trip. This ensures continuity of signing and reduces department expenses.

118.7(3) *Updating a design.* If a business wants to update the design of a business sign, the process described in rule 761—118.6(306C) applies. The business will be billed in accordance with paragraph 118.5(4)“c.”

These rules are intended to implement Iowa Code section 306C.11.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 22
“Regulation of Telecommunications Service”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 476.1D, 476.2, 476.19, 476.95, 476.95A, 476.95B, 476.100, 476.103

State or federal law(s) implemented by the rulemaking: None provided

Public Hearing

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

June 11, 2024
9 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

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

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITsupport@iub.iowa.gov

Purpose and Summary

The purpose of proposed Chapter 22 is to regulate telecommunication utility services, to establish the Board’s powers and duties related to telecommunications services, and to establish procedures for governing telecommunications tariffs and other documents.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The costs of the proposed rules will be borne by telecommunications service providers operating within the state of Iowa.
 - Classes of persons that will benefit from the proposed rulemaking:
The benefits of the proposed rules will be to telecommunications service customers.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The benefit of the proposed rules is to create efficiency for telecommunications services by establishing the powers and duties of the Board in relation to the industry.
 - Qualitative description of impact:
This chapter ensures that telecommunications service providers are regulated efficiently.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

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

- Anticipated effect on state revenues:
There are no anticipated effects on state revenues.

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

The costs of action do not differ significantly from the costs of inaction, but the benefits would promote future efficiency.

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

The Board does not believe that there are any less costly methods of achieving the purpose of the rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
The Board considered inaction.

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

The alternative methods were rejected because the proposed rules removed duplicative text and restrictive terms, which better aligns the rules with current state policy.

Small Business Impact

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

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

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

The rules reduce the impact on small business by consolidating and simplifying the rules' compliance requirements.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22 REGULATION OF TELECOMMUNICATIONS SERVICE

199—22.1(476) General information.

22.1(1) Application and purpose of rules. These rules shall apply to any telecommunications service provider operating within the state of Iowa subject to Iowa Code chapter 476. These rules are intended to govern the exercise of the board's powers and duties relating to the provision of telecommunications

service in the state of Iowa, and to govern the form, contents, and filing of registrations, tariffs, and other documents necessary to carry out the board's powers and duties.

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

"47 CFR §64.1120" means 47 CFR §64.1120, "Verification of Orders for Telecommunications Service," effective August 16, 2018.

"Alternative operator services company" or "AOS company" means the same as defined in Iowa Code section 476.91(1)"a."

"Board" means the Iowa utilities board.

"Calls" means telephone messages attempted by customers or users.

"Competitive local exchange carrier" or "CLEC" means a telecommunications service provider, other than an incumbent local exchange telecommunications service provider, that provides local exchange service.

"Customer" means any person as defined in Iowa Code section 4.1(20) responsible by law for payment for communications service from the telecommunications service provider.

"Exchange" means a unit established by a telecommunications service provider for the administration of communications services.

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

"Exchange service area" or "exchange area" means the general area in which the telecommunications service provider holds itself out to furnish local exchange telephone service.

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

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

"Interexchange service" means the provision of intrastate telecommunications services and facilities between local exchanges.

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

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

"Internet protocol-enabled service" means the same as defined in Iowa Code section 476.95(1)"a."

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

"Intrastate access services" means services of telecommunications service providers that provide the capability to deliver intrastate telecommunications services that originate from end users to interexchange telecommunications service providers and the capability to deliver intrastate telecommunications services from interexchange telecommunications service providers to end users.

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

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

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

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

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

“*Tariff*” means such rates, classifications, rules, procedures, policies, etc., adopted and filed with the board by a telecommunications service provider to the extent required by state or federal law.

“*Telecommunications Act*” or “*federal Telecommunications Act*” means the Telecommunications Act of 1996, as of October 17, 2020.

“*Telecommunications service provider*” or “*service provider*” means the same as defined in Iowa Code section 476.103. “Telecommunications service provider” includes alternative operator service companies; providers of wholesale service; companies formerly included in the definition of “telephone utility” or “utility”; and any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing communications service to the public for compensation.

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

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

“*Voice over Internet protocol service*” means the same as defined in Iowa Code section 476.95(1)“c.”

“*Wholesale services*” means those communications services furnished by one telecommunications service provider to another provider of communications services. The terms and conditions of wholesale services may be addressed in a telecommunications service provider’s approved intrastate access tariff, local interconnection tariff, interconnection agreement reached under Sections 251 and 252 of the federal Telecommunications Act (2020), or in a commercial agreement reached between the providers. Nothing in this chapter affects, limits, modifies, or expands an entity’s obligations under Sections 251 and 252 of the federal Telecommunications Act (2020); any board authority over wholesale telecommunications rates, services, agreements, interconnection, providers, or tariffs; or any board authority addressing or affecting the resolution of disputes regarding compensation between telecommunications service providers.

199—22.2(476) Tariffs.

22.2(1) *Tariffs to be filed with the board.* Telecommunications service providers that are required to file tariffs with the board shall maintain tariffs in a current status. The tariffs shall be classified, designated, arranged, and submitted so as to conform to the requirements of this chapter or board order. Provisions in the tariffs shall be definite and stated so as to minimize ambiguity or the possibility of misinterpretation. The form, identification, and content of tariffs shall be in accordance with these rules unless otherwise provided.

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

a. The tariff shall be formatted so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side. In the case of telecommunications service providers subject to regulation by any federal agency, the format of the sheets of the tariff filed with the board may be the same format as is required by the federal agency, provided that the requirements

of the board as to title page; identity of superseding, replacing, or revising sheets; identity of amending sheets; identity of the filing telecommunications service provider, issuing official, date of issue, and effective date;

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

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

Name of Telecommunications Service Provider

Telecommunications Tariff

Filed with Iowa Utilities Board

Date

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

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

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

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

<u>Symbol</u>	<u>Meaning</u>
(C)	A change in regulation.
(D)	A discontinued rate or regulation.
(I)	An increased rate.
(N)	A new rate, treatment or regulation.
(R)	A reduced rate or new treatment resulting in a reduced rate.
(T)	A change in the text that does not include a change in rate, treatment, or regulation.

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

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

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

(3) The effective date.

199—22.3(476) Customer complaints. Complaints from customers about telecommunications service shall be processed pursuant to the board’s rules in 199—Chapter 6. Unless a customer agrees to an alternative form of notice, local exchange telecommunications service providers shall notify customers by bill insert or notice on the bill form of the address and telephone number where a telecommunications service provider representative can be reached. The bill insert or notice shall also include a statement: “If (telecommunications service provider name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by writing to the Iowa Utilities Board, 1375 E. Court Avenue, Des Moines, Iowa 50319; by calling 515-725-7321 or toll-free 877-565-4450; or by email to

customer@iub.iowa.gov.” The bill insert or notice on the bill shall be provided no less than annually. Service providers should attempt to resolve customer complaints regarding unauthorized changes in service without involvement of the board.

199—22.4(476) Intrastate access charge application, tariff procedures, and rates.

22.4(1) Application of intrastate access charges.

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

(1) The interexchange telecommunications service provider shall be billed as if no resale were involved.

(2) The resale telecommunications service provider shall be billed only for access services not already billed to the underlying interexchange telecommunications service provider.

(3) Specific billing treatment and administration shall be provided pursuant to tariff.

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

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

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

(3) This rule shall be inapplicable to administrative communications made by or to a telecommunications service provider.

22.4(2) Filing of intrastate access service tariffs.

a. Tariffs providing for intrastate switched access services shall be filed with the board by a local exchange telecommunications service provider that provides such services. Except in situations involving HVAS, a local exchange telecommunications service provider may concur in the intrastate access tariff filed by another local exchange telecommunications service provider serving the same exchange area. However, a competitive local exchange carrier may not concur in the intrastate access tariff of an incumbent local exchange carrier that qualifies as a rural telephone company pursuant to 47 U.S.C. §153(44), as amended through January 5, 2023, unless the competitive local exchange carrier is also a rural CLEC pursuant to 47 CFR 61.26(a)(6), as of October 28, 2019.

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

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

b. All intrastate access service tariffs shall incorporate the following:

(1) Carrier common line charge. The rate for the intrastate carrier common line charge shall be three cents per access minute or fraction thereof for the originating segments of the communication unless a lower rate is required by the transitional intrastate access service reductions or if numbered paragraphs 22.4(2)“b”(1)“1,” “2,” and “3” are applicable. The carrier common line charge shall be assessed to exchange access made by an interexchange telecommunications service provider, including resale telecommunications service providers. In lieu of this charge, interconnected private systems shall pay for access as provided in paragraph 22.4(1)“b.”

1. Incumbent local exchange telecommunications service provider intrastate access service tariffs shall include the carrier common line charges approved by the board.

2. A competitive local exchange telecommunications service provider that concurs in or mirrors the rates in the access services tariff of the Iowa Communications Alliance, or its successor, shall deduct the originating and terminating carrier common line charges from its intrastate access service tariff.

3. Carrier common line charge for originating segments of the communication may be stepped down in compliance with requirements established by the Federal Communications Commission for originating access.

(2) End-user charge. No intrastate end-user charge shall be assessed.

(3) Universal service fund. No universal service fund shall be established.

(4) Transitional and premium rates. There shall be no discounted transitional rate elements applied in Iowa except as otherwise specifically set forth in these rules.

(5) A telecommunications service provider may, pursuant to tariff, bill for access on the basis of assumed minutes of use where measurement is not practical. However, if the interexchange telecommunications service provider provides actual minutes of use to the billing telecommunications service provider, the actual minutes shall be used.

(6) In the absence of a waiver granted by the board, local exchange telecommunications service providers shall allow any interexchange telecommunications service provider the option to use its own facilities that were in service on March 19, 1992, to provide local access transport service to terminate its own traffic to the local exchange telecommunications service provider. The interexchange telecommunications service provider may use its facilities in the manner and to a meet point agreed upon by the local exchange telecommunications service provider and the interexchange telecommunications service provider as of March 19, 1992. Changes mutually agreeable to the local exchange telecommunications service provider and the interexchange telecommunications service provider after that date also shall be recognized in allowing the interexchange telecommunications service provider to use its own local access transport facilities to terminate its own traffic. Recognition under this rule will also be extended to improvements by an interexchange telecommunications service provider that provided all the transport facilities to an exchange on March 19, 1992, whether the improvements were mutually agreeable or not, unless the improvements are inconsistent with an agreement between the interexchange telecommunications service provider and the local exchange telecommunications service provider.

(7) A provision prohibiting the application of association access service rates to HVAS traffic.

c. A local exchange telecommunications service provider that is adding a new HVAS customer or otherwise reasonably anticipates an HVAS situation shall provide notice of the situation, the telephone numbers that will be assigned to the HVAS customer (if applicable), and the expected date service to the HVAS customer will be initiated, if applicable. Notice may be sent to each interexchange telecommunications service provider that paid for intrastate access services from the local exchange telecommunications service provider in the preceding 12 months; to any telecommunications service provider with whom the local exchange telecommunications service provider exchanged traffic in the preceding 12 months; and to all other local exchange telecommunications service providers authorized to provide service in the subject exchange, by a method calculated to provide adequate notice. Any interexchange telecommunications service provider may request negotiations concerning the access rates applicable to calls to or from the HVAS customer.

(1) Any interexchange telecommunications service provider that believes a situation has occurred or is occurring that does not specifically meet the HVAS threshold requirements defined in subrule 22.1(2), but which raises the same general concerns and issues as an HVAS situation, may file a complaint with the board.

(2) A local exchange telecommunications service provider that experiences an increase in intrastate access billings that qualifies as an HVAS situation, but did not add a new HVAS customer or otherwise anticipate the situation, shall notify interexchange telecommunications service providers of the HVAS situation at the earliest reasonable opportunity as described in the preceding paragraph. Any interexchange telecommunications service provider may request negotiations concerning whether the local exchange telecommunications service provider's access rates, as a whole or for HVAS only, should be changed to reflect the increased access traffic. When a telecommunications service provider requests negotiations concerning intrastate access services, the companies shall negotiate in good faith to achieve reasonable terms and procedures for the exchange of traffic. No access charges shall apply to the HVAS traffic until an access tariff for HVAS has been approved by the board. At any time that any telecommunications service provider believes negotiations will not be successful, the telecommunications service provider may file a written complaint with the board. In any such proceeding, the board will consider setting the rate for access services for HVAS traffic based upon the incremental cost of providing HVAS, although any other relevant evidence may also be considered. The incremental cost will not include marketing or other payments made to HVAS customers. The resulting rates for access services may include a range of rates based upon the volume of access traffic or other relevant factors. Any negotiations pursuant to this subparagraph shall conclude within 60 days. After 60 days, a telecommunications service provider may petition the board to extend the period of negotiations or may petition the board to establish a procedural schedule and hearing date.

22.4(3) Notice of intrastate access service tariffs.

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

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

22.4(4) Resistance to intrastate access service tariffs.

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

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

(1) Deny the resistance if it does not on its face present a material issue of adjudicative fact or the board determines the resistance to be frivolous or otherwise without merit and approve the tariff; or

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

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

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

c. The interexchange telecommunications service provider or the consumer advocate shall have the burden to support its resistance.

d. If contested case proceedings are initiated upon resistance filed by an interexchange telecommunications service provider, the interexchange telecommunications service provider may be required to pay the expenses reasonably attributable to the proceedings. The board will assess the costs of the proceeding on a case-by-case basis.

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

199—22.5(476) Interexchange telecommunications service provider service and access.

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

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

199—22.6(476) Alternative operator services.

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

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

22.6(3) *Posting.*

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

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

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

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

22.6(5) *Billing.*

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

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

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

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

22.6(7) *Service to inmates in correctional facilities.* AOS companies that provide local or intrastate calling services to inmates housed in correctional facilities may provide service that is not consistent with the requirements in this rule by including a statement of noncompliance in the AOS company's tariffs, which tariffs are required to be approved by the board before service is provided. AOS companies providing inmate calling services shall file a copy of each contract in support of the statement of noncompliance.

199—22.7(476) Local exchanges.

22.7(1) *Map availability.* Local exchanges are defined by the telephone exchange area boundary maps on file with the board and available on the board's website.

22.7(2) *Map specifications.* All ILECs shall have on file with the board maps that identify their exchanges and both the internal exchange boundaries where the telecommunications service provider's own exchanges abut, and the ultimate boundaries where the telecommunications service provider's exchanges abut the exchanges of other telecommunications service providers. A CLEC shall either file its own exchange boundary map or adopt the exchange boundary map filed by the ILEC serving that exchange. Maps shall be filed in electronic format as approved by the board. ILECs and CLECs shall file updated exchange maps with the board when the company adds service to an exchange or when the company ceases providing service to an exchange.

199—22.8(476) Registration of telecommunications service providers. Each telecommunications service provider required to register with the board pursuant to Iowa Code section 476.95A shall register with the board annually thereafter. Registration shall be completed electronically as provided by the board. If a telecommunications service provider is not required to register, the telecommunications service provider shall file an annual report in compliance with 199—Chapter 23.

22.8(1) The board shall issue an acknowledgment of registration within five business days of receipt of a provider's completed application for registration. Such acknowledgment shall authorize the applicant to obtain telephone numbers, interconnect with other telecommunications service providers, cross railroad rights-of-way pursuant to Iowa Code section 476.27, and provide telecommunications services within the state.

22.8(2) Registration may be transferred to another telecommunications service provider by filing a new or updated registration form. The board shall serve an acknowledgment of the new registration within five business days of receipt.

22.8(3) Telecommunications service providers that have not previously provided telecommunications service in Iowa shall register with the board prior to providing telecommunications service in Iowa.

22.8(4) Telecommunications service providers shall include with the registration a list of the exchanges where the telecommunications service provider offers telecommunications service, if applicable. A telecommunications service provider shall file an amended registration prior to expanding service to an exchange not listed on the registration or when exiting an exchange listed on the registration.

22.8(5) Updated registrations are required when the contact information on the registration changes.

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

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

“*Change in service*” means the same as defined in Iowa Code section 476.103(2)“a.”

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

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

“*Customer*” means the person other than a service provider whose name appears on the account, others authorized by that named person to make changes or charge services to the account, or any person contractually or otherwise lawfully authorized to represent such party.

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

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

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

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

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

“*Submitting service provider*” means the same as defined in Iowa Code section 476.103(2) “e.”

“*Telecommunications service*” means the same as defined in Iowa Code section 476.103(2) “f.”

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

22.9(2) Prohibition of unauthorized changes in telecommunications service. Unauthorized changes in telecommunications service, including but not limited to cramming and slamming, are prohibited. Telecommunications service providers shall comply with Federal Communications Commission requirements regarding verification of customer authentication of a change in service and change in service provider as provided for in 47 CFR 64.1120 (2018) and 47 CFR 64.2401 (2018).

a. Verification of authorization required.

(1) No submitting service provider shall submit a change on behalf of customer in the customer’s selection of a provider of telecommunications service prior to obtaining:

1. Authorization from the customer, subject to subparagraph 22.9(2) “a”(2).

2. Verification of that authorization in accordance with the procedures prescribed in paragraph 22.9(2) “a.”

(2) Material misrepresentation on the sales call is prohibited. Upon a consumer’s credible allegation of a sales call misrepresentation, the burden shifts to the carrier making the sales call to provide persuasive evidence to rebut the claim. Upon a finding that such a material misrepresentation has occurred on a sales call, the customer’s authorization to switch carriers is deemed invalid.

(3) An executing service provider shall not verify the submission of a change in a customer’s selection of a provider of telecommunications service received from a submitting service provider. For an executing service provider, compliance with the procedures prescribed in subrule 22.9(2) shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting service provider.

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

1. The service provider has obtained the customer's written authorization in a form that meets the requirements of paragraph 22.9(2) "b."

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

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

- Methods of third-party verification. Automated third-party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of this bulleted list are satisfied.

- Carrier initiation of third-party verification. A carrier or a carrier's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection has been established.

- Requirements for content and format of third-party verification. Any description of the carrier change transaction by a third-party verifier must not be misleading, and all third-party verification methods shall elicit, at a minimum, the information as set forth by 47 CFR 64.1120(c)(3)(iii) (2018).

- Other requirements for third-party verification. All third-party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. In accordance with the procedures set forth in numbered paragraph 22.9(2) "a"(1) "2," submitting carriers shall maintain and preserve audio records of verification of subscriber authorization for a minimum period of two years after obtaining such verification. Automated systems must provide consumers with an option to speak with a live person at any time during the call.

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

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

(6) For other changes in service resulting in additional charges to existing accounts only, a service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification under the circumstances of the identification of the person requesting the change in service. Any of the three verification methods in numbered paragraphs

22.9(2) “a”(4) “1” to “3” are also acceptable. The burden will be on the telecommunications service provider to show that its internal records are adequate to verify the customer’s request for the change in service. Where the additional charge is for one or more specific telephone calls, examples of internal records a telecommunications service provider may submit include call records showing the origin, date, time, destination, and duration of the calls, and any other data the telecommunications service provider relies on to show the calls were made or accepted by the customer, along with an explanation of the records and data.

b. Letter of agency form and content. A service provider may use a letter of agency to obtain written authorization or verification of a customer’s request to change the customer’s preferred service provider selection. A letter of agency that does not conform with the requirements of 47 CFR 64.1130 (2008) is invalid for purposes of this rule.

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

d. Preferred telecommunications service provider freezes.

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

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

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

(4) Solicitation and imposition of preferred telecommunications service provider freezes.

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

- An explanation, in clear and neutral language, of what a preferred telecommunications service provider freeze is and what services may be subject to a freeze;
- A description of the specific procedures necessary to lift a preferred telecommunications service provider freeze; an explanation that these steps are in addition to the verification requirements in this rule for changing a customer’s preferred service provider selections; and an explanation that the customer will be unable to make a change in service provider selection unless the freeze is lifted; and
- An explanation of any charges associated with the preferred telecommunications service provider freeze.

2. No local exchange telecommunications service provider shall implement a preferred telecommunications service provider freeze unless the customer’s request to impose a freeze has first been confirmed in accordance with one of the following procedures:

- The local exchange telecommunications service provider has obtained the customer’s written or electronically signed authorization in a form that meets the requirements of this rule; or
- The local exchange telecommunications service provider has obtained the customer’s electronic authorization, placed from the telephone number(s) on which the preferred telecommunications service provider freeze is to be imposed, to impose a preferred telecommunications service provider freeze. The electronic authorization shall confirm appropriate verification data. Service providers electing to confirm

preferred telecommunications service provider freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit or to a similar mechanism that records the required information regarding the preferred telecommunications service provider freeze request, including automatically recording the originating automatic numbering identification; or

- An appropriately qualified independent third party has obtained the customer's oral authorization to submit the preferred telecommunications service provider freeze and confirmed the appropriate verification data and the information required in this rule. The independent third party must not be owned, managed, or directly controlled by the service provider or the service provider's marketing agent; must not have any financial incentive to confirm preferred telecommunications service provider freeze requests for the service provider or the service provider's marketing agent; and must operate in a location physically separate from the service provider or the service provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred telecommunications service provider freeze.

3. A local exchange service provider may accept a written and signed authorization to impose a freeze on the customer's preferred service provider selection. Written authorization that does not conform with this subrule is invalid and may not be used to impose a preferred telecommunications service provider freeze.

- The written authorization shall comply with this rule concerning the form and content for letters of agency.

- At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

- The customer's billing name and address and the telephone number(s) to be covered by the preferred telecommunications service provider freeze;

- The decision to place a preferred telecommunications service provider freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred telecommunications service provider freezes on additional preferred service provider selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

- That the customer understands that the customer will be unable to make a change in telecommunications service provider selection unless the preferred telecommunications service provider freeze is lifted; and

- That the customer understands that any preferred telecommunications service provider freeze may involve a charge to the customer.

(5) All local exchange telecommunications service providers that offer preferred telecommunications service provider freezes must, at a minimum, offer customers the following procedures for lifting a preferred telecommunications service provider freeze:

1. A local exchange service provider administering a preferred telecommunications service provider freeze must accept a customer's written or electronically signed authorization stating the intention to lift a preferred telecommunications service provider freeze; and

2. A local exchange service provider administering a preferred telecommunications service provider freeze must accept a customer's oral authorization stating the intention to lift a preferred telecommunications service provider freeze and must offer a mechanism that allows a submitting service provider to conduct a three-way conference call with the service provider administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a preferred telecommunications service provider freeze, the service provider administering the freeze shall confirm appropriate verification data and the customer's intent to lift the particular freeze.

e. Procedures in the event of sale or transfer of customer base. A telecommunications service provider may acquire, through a sale or transfer, either part or all of another telecommunications

service provider's customer base without obtaining each customer's authorization if the acquiring telecommunications service provider complies with 47 CFR 64.1120(e) (2018).

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

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 30
“Renewable Energy Percentage Verification”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 476.44A
State or federal law(s) implemented by the rulemaking: Iowa Code section 476.44A

Public Hearing

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

May 21, 2024
9 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

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

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITsupport@iub.iowa.gov

Purpose and Summary

This chapter is proposed to be rescinded.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Chapter 30 is proposed to be rescinded and therefore will not impose a cost.
 - Classes of persons that will benefit from the proposed rulemaking:
Chapter 30 is proposed to be rescinded and therefore will not provide a benefit to any class of people.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There is no cost.
 - Anticipated effect on state revenues:
There is not an anticipated effect on state revenues.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This chapter is proposed to be rescinded and therefore would not impose a cost to the State.

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

The Board does not believe there are any less costly methods of addressing the purpose of this chapter.

6. Alternative methods considered by the agency:

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

The Board considered inaction.

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

The Board has instead chosen to rescind the chapter since the chapter has not realized the intended benefit.

Small Business Impact

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

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

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

The agency does not believe that rescinding Chapter 30 will have an adverse impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **199—Chapter 30**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 38
“Local Exchange Competition”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 476
State or federal law(s) implemented by the rulemaking: 47 U.S.C. Sections 251 and 252

Public Hearing

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

June 11, 2024
9 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

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

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITsupport@iub.iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to further the development of competition in the local exchange services market.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Telecommunications utilities will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Customers of telecommunications utilities will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is a benefit to the public by ensuring that the telecommunication utilities market maintains effective competition.
 - Qualitative description of impact:
This chapter ensures that the public will not bear undue costs related to noncompetitive practices.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
There are no additional costs to any agency other than the normal everyday costs of operation of the Board.
 - Anticipated effect on state revenues:
There are no anticipated effects on state revenues.

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

The costs of action do not differ significantly from the costs of inaction, but the benefits would promote future efficiency.

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

The Board does not believe that there are any less costly methods of addressing the purpose of this rulemaking.

6. Alternative methods considered by the agency:

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

The Board considered inaction.

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

The alternative method was rejected because the proposed rulemaking removes duplicative text and restrictive terms, which better aligns the rules with current state policy.

Small Business Impact

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

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

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

The chapter reduces the impact on small business by consolidating and simplifying the chapter's compliance requirements.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 38 and adopt the following **new** chapter in lieu thereof:

CHAPTER 38 LOCAL EXCHANGE COMPETITION

199—38.1(476) General information.

38.1(1) Application and purpose of rules. This chapter applies to local utilities. The purpose of these rules is to further the development of competition in the local exchange services market.

38.1(2) Definitions. For the administration and interpretation of this chapter, the following words and terms have the meaning indicated below, unless the context indicates otherwise:

“Act” means the Telecommunications Act of 1996, effective February 8, 1996.

“Arbitration” means the investigative process whereby a dispute is submitted to the board for resolution.

“*Bona fide request*” means a request to a local utility that demonstrates a good faith showing that the requesting party intends to purchase the services requested within six months of the date of the request.

“*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.

“*Local exchange carrier*” means any person that was the incumbent and historical rate-regulated wireline provider of local exchange services or any successor to such person that provides 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.

“*Local utility*” means any entity that provides wireline local exchange services, including local exchange carriers, competitive local exchange service providers, and other non-rate-regulated wireline providers of local exchange services.

“*Mediation*” means the process in which a neutral party assists the parties in reaching their own settlement but does not have the authority to make a binding decision.

199—38.2(476) Interconnection requirements. A local utility that originates local telecommunications traffic and desires to terminate that traffic on the network of another local utility may choose the point(s) of interconnection between the two networks for the exchange of that originating local telecommunications traffic at any technically feasible point within the terminating carrier’s network. Interconnection must be equal in quality to that provided by the local utility to itself, any affiliate, or any other party to which the local utility provides interconnection. Interconnection must be on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

199—38.3(476) Unbundled facilities, services, features, functions, and capabilities.

38.3(1) Tariff filings.

a. Filing schedule. Each local exchange carrier shall file tariffs implementing unbundling for the facilities enumerated in paragraph 38.3(1)“*b.*” The obligation to file a tariff does not apply to a rural telephone company until the conditions specified in 47 U.S.C. Section 251(f)(1), effective October 17, 2020, have been met.

b. List of unbundled essential facilities. Each local exchange carrier’s tariff filing shall, at a minimum, unbundle the following essential facilities, services, features, functions, and capabilities: loops, ports, signaling links, signal transfer points, facilities to interconnect unbundled links at the central office, interoffice transmission facilities, listings in the directory assistance database, inbound operator services including busy-line verification and call interrupt, interconnection to the 911 system, and interconnection to the tandem switch for routing to other carriers.

38.3(2) Requests for unbundled facilities. Except as allowed in subrule 38.3(3), requests to unbundle facilities, services, features, functions, and capabilities shall be processed as follows:

a. A competitive local exchange service provider may make a bona fide request of a local exchange carrier to make additional unbundled essential facilities available. After receiving a request for additional unbundled essential facilities, the local exchange carrier shall respond within 30 days of the request either by agreeing to the request or by denying the request. If the local exchange carrier agrees to fulfill the request, the carrier shall file a tariff unbundling the essential facility within 60 days of the initial request.

b. If the local exchange carrier denies the request, a competitive local exchange service provider may petition the board to classify the requested facility as essential, as defined by Iowa Code section 476.100(2), and to require the local exchange carrier to make the requested facility available on an unbundled basis by filing a tariff. In such a petition, the competitive local exchange service provider shall provide information to the board showing how the requested facility meets the definition of essential facility found in Iowa Code section 476.100(2). The petitioning party under this subrule may state a preference for proceeding by rulemaking or contested case, but the board will select the process to be used.

38.3(3) *Alternative procedures.* As an alternative to the procedures in subrule 38.3(2), a competitive local exchange service provider may elect the negotiation, mediation, and arbitration procedures available under 47 U.S.C. Section 252, effective February 8, 1996, by notifying the local exchange carrier and the board in writing at the time additional unbundled facilities are requested.

38.3(4) *Reclassifying essential facilities.* A local exchange carrier may, at any time, petition the board with a request to reclassify a facility classified as essential. With its petition, the local exchange carrier shall provide information to the board showing why the facility no longer meets the definition of essential found in Iowa Code section 476.100(2). The board will determine the procedure to be used in reviewing the petition.

38.3(5) *Interconnection to essential facilities.* The terms and conditions under which competitive local exchange service providers shall be able to interconnect with a local exchange carrier's unbundled facilities shall be technically and economically equivalent to those under which the local exchange carrier provides those facilities to itself or its affiliates. If it believes such terms and conditions are not technically or economically feasible, the local exchange carrier may petition the board for a waiver of this provision.

199—38.4(476) *Terminating access charge complaints.* No local utility shall deliver traffic to another local utility as local service or extended area service terminating traffic if the terminating traffic is long distance or some other type of traffic for which terminating switched access charges would otherwise have been payable. Any local utility may bring a complaint to the board if another local utility has violated this requirement or taken insufficient measures to determine whether switched access charges would otherwise have been payable. The board may order payment or refund of compensation withheld from or received by a local utility in violation of this rule, with appropriate interest or tariffed late payment penalties.

199—38.5(476) *Mediation and arbitration.* This rule applies to all local utilities, except for rural telephone companies as defined in Section 3(47) of the Telecommunications Act of 1996. The board may make all or part of this rule applicable to a rural telephone company or companies in proceedings relating to Section 251(f) of the Act.

38.5(1) *Voluntary negotiations.*

a. Initiation of negotiations. A telecommunications carrier initiates the negotiation process by requesting interconnection, services, or network elements as defined in the Act from an incumbent local utility pursuant to Section 252(a)(1) of the Act. The day the request is received by the local utility is day one of the schedule set for resolution of all issues. Within five days of receipt of the request, the local utility shall file with the board a copy of the request and a statement of the date the request was received.

b. Duty to negotiate. All negotiations shall be made in good faith for the requested interconnection, services, or network elements. Good faith negotiations require that the parties meet and confer at reasonable times and places, remain open to the arguments and proposals, and work toward the goal of reaching agreement on terms and conditions for the requested interconnections and services. Refusal of any party to give information about its costs or other pertinent data upon request of another party may be considered by the board as a failure to negotiate in good faith.

38.5(2) *Mediation.*

a. Initiation of mediation. At any time during the negotiations, any party to the negotiations may request mediation. The request shall be filed with the board and simultaneously served on the other parties. Alternatively, parties may file a joint request for mediation with the board. A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone and fax numbers of the parties or their representatives.

b. Appointment of mediator. The board may appoint any competent, impartial person of character and ability to act as mediator. The board will immediately convene a meeting of the parties to discuss appointment of a mutually acceptable mediator.

c. Parties. Only parties to the negotiations will be permitted to participate as parties to the mediation.

d. Assessment of costs. The cost of mediation shall be shared equally by the parties and paid directly to the mediator.

38.5(3) Arbitration.

a. Initiation of arbitration. Any party to the negotiation may petition the board to arbitrate all open issues. The petition requesting arbitration must be filed during the period from the 135th day through the 160th day after the date on which the request for negotiation was received by the local utility. Simultaneously with filing the petition with the board, the petitioning party shall provide a copy of the petition and accompanying documentation to the other parties.

b. Supporting documentation. On the same day of the filing of the request for arbitration, the petitioning party shall provide to the board the date upon which the request for negotiation for the interconnection, services, or network elements in dispute was made to the local utility, a list of unresolved issues, the position of each party on each of the unresolved issues, how the parties' positions meet or fail to meet the requirements of Section 251 of the Act or other regulations, any supporting documents for positions taken by the parties on unresolved issues including all relevant cost studies where prices are in dispute, whether a hearing is requested, a list of issues discussed and resolved prior to the petition for arbitration, any requests for confidentiality, and any other documents relevant to the dispute.

c. Response to the request for arbitration. A nonpetitioning party to the negotiation may respond to the petitioning party's position and provide additional information within 25 days after the petition for arbitration was received by the board.

d. Parties. Only parties to the negotiations will be permitted to participate as parties to the arbitration, unless the board consolidates proceedings. However, the office of consumer advocate will also be considered a party to the arbitration proceeding.

e. Docketing of the arbitration request. Upon receipt of a timely and complete petition for arbitration, the board shall docket the request for consideration by the board.

f. Arbitration schedule and procedures. Within 15 days of the receipt of the petition for arbitration, the board will schedule a conference in order to plan an arbitration hearing date, clarify the issues to be resolved, identify additional information needed to reach a decision on the issues, schedule production of documents and other information, discuss or rule on any other procedural matters, and consider any other matters that will expedite the arbitration process.

g. Decision. Following the hearing, the board will issue its preliminary written decision on the unresolved issues. All exceptions to the decision must be filed by the parties within ten days of issuance of the preliminary decisions. All replies to exceptions shall be filed within five days of the filing of the exceptions. A final written decision regarding all issues offered in arbitration shall be issued by the board within the nine-month deadline in the Act.

38.5(4) Board review of agreements.

a. Filing of agreements. All interconnection agreements shall be filed with the board for approval within 15 days after the issuance of a final decision on the arbitrated issues, or, in the case of negotiated agreements, after the execution of the agreement.

b. Comments on arbitrated agreements. Within ten days following the filing of the arbitrated agreement with the board for review, the parties involved in the arbitration, and any other interested party, may submit written comments to the board supporting either approval or rejection of the agreement. If the board does not approve or reject the agreement within 30 days after submission by the parties of an agreement adopted by arbitration, the agreement shall be deemed approved.

c. Comments on negotiated agreements and amendments to agreements. Within 30 days of the filing date of the negotiated agreement or amendment, the parties involved in the negotiations and any other interested party may submit written comments with the board supporting either acceptance or rejection of the agreement or amendment. If the board does not issue a decision within 90 days after the filing date, the agreement or amendment shall be deemed approved.

d. Comments on adoption of agreements. No board approval is necessary when there is an adoption of the terms, conditions, and rates from an approved interconnection agreement. The adoption is effective upon filing. If there are terms, conditions, or rates in the filing that are not from an adopted agreement, then the filing is subject to the provisions of paragraph 38.5(4) "c."

e. Indefinite terms, conditions, or rates. When the agreement or amendment contains terms, conditions, or rates that are not yet agreed to, the parties shall file an amendment to the agreement once they have reached agreement on the terms, conditions, or rates.

These rules are intended to implement U.S.C. Sections 251 and 252.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 39
“Universal Service”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.4, 476.2, 476.15 and 476.102
State or federal law(s) implemented by the rulemaking: Iowa Code sections 17A.4, 476.2, 476.15
and 476.102 and 47 U.S.C. Sections 214(e) and 254

Public Hearing

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

June 11, 2024
9 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

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

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITsupport@iub.iowa.gov

Purpose and Summary

The purpose of proposed Chapter 39 is to provide regulation over telecommunications carriers eligible to receive support from the federal Universal Service Fund due to the carrier’s involvement in providing universal telecommunications service.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Carriers providing universal service will bear the costs of the proposed rules.
 - Classes of persons that will benefit from the proposed rulemaking:
Those that utilize universal service will benefit from the proposed rules.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The only economic impact to the Board is that of the salaries paid to employees that work on reviewing carriers’ filings that provide universal service. The carrier would have costs related to the filing requirements, such as staff to prepare the filing and answer any questions related to such a filing.
 - Qualitative description of impact:
This chapter ensures carriers are properly designated as an eligible telecommunications carrier and provides such carriers with access to universal service funds as necessary.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:

The only cost to the Board is the cost of daily operation of the Board and the salary of employees working in this specific area. There are no additional costs to other agencies.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

There is a benefit in ensuring universal service is provided to areas of the state that would otherwise not have access to necessary services. There are minimal costs involved in administering these rules. Inaction by the State would likely lead to federal government regulators regulating this area of the industry.

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

The Board does not believe there are any less costly methods of addressing the purpose of this chapter.

6. Alternative methods considered by the agency:

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

The Board considered inaction as an alternative method.

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

Inaction is not feasible because the implementation of universal service has been delegated to the State.

Small Business Impact

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

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

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

There is not a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 39 and adopt the following **new** chapter in lieu thereof:

CHAPTER 39 UNIVERSAL SERVICE

199—39.1(476) Authority and purpose. These rules relate to the board's designation of common carriers as eligible to receive support from the federal universal service fund and are prescribed by the board pursuant to Iowa Code sections 17A.4, 476.2, 476.15, and 476.102 and 47 U.S.C.

§214(e), effective December 1, 1997, and 254, effective October 1, 2016. These rules are intended to preserve and advance universal service by implementing the board's authority to designate eligible telecommunications carriers (ETCs). These rules establish procedures for applying for designation as an ETC, as well as modifying and relinquishing such designation; adopt service standards for ETCs; and establish state record, certification, and reporting requirements consistent with federal requirements.

199—39.2(476) Definitions. For the purposes of the board's implementation of federal universal service fund requirements, the following definitions apply. Whenever a reference in this chapter is made to provisions found in 47 CFR Part 36, 51, or 54, that reference includes any amendment through February 20, 2019.

"Broadband service" means the broadband Internet access service (defined in 47 CFR §54.400(l)) designated by the Federal Communications Commission (FCC) in 47 CFR §54.101 as eligible for support by the federal universal service support mechanisms.

"Competitive eligible telecommunications carrier" means a carrier that meets the definition of an "eligible telecommunications carrier" below and does not meet the definition of an "incumbent local exchange carrier" in 47 CFR §51.5.

"Common carrier" means the same as is defined in 47 U.S.C. §153(11), as of January 5, 2023.

"Eligible telecommunications carrier," "eligible carrier," or *"ETC"* means a carrier designated by the board as eligible to receive universal service support pursuant to 47 U.S.C. §214(e) (1997).

"Facilities" means any physical components of the telecommunications network that are used in the transmission or routing of the services designated for universal service fund support, as expressed in 47 CFR §54.201(e).

"High-cost support" means the same as defined in 47 CFR Subchapter B, Part 54, to include those support mechanisms provided pursuant to subpart D (universal service support for high-cost areas), subpart J (rural digital opportunity fund support), subpart K (interstate common line support), subpart L (mobility fund support), subpart M (high-cost loop support), and subpart O (Uniendo a Puerto Rico Fund).

"Lifeline program" means the federal universal service program providing support for low-income consumers that is defined in 47 CFR §54.401.

"Services designated for support" means voice telephone service and broadband service.

"Tribal Link Up" means an assistance program for eligible residents of tribal lands seeking telecommunications service from a telecommunications carrier that is defined in 47 CFR §54.413(a).

"Voice telephony service" means the service (defined in 47 CFR §54.400(m)) designated by the FCC in 47 CFR §54.101 as eligible for support by the federal universal service support mechanisms.

199—39.3(476) Applying for designation as an eligible telecommunications carrier.

39.3(1) A common carrier must be designated as an ETC to qualify for support from the federal universal service fund. The board reviews applications for designation as an ETC for compliance with 47 U.S.C. §214(e)(1) (1997) and grants ETC designations to qualified applicants for a service area designated by the board. If an applicant requests an expedited ruling from the board on an application to be designated as an ETC or on an amendment to an existing ETC designation, the applicant shall specify why an expedited process is necessary and why an expedited review would not be contrary to the public interest.

39.3(2) An application for an ETC designation must contain the following:

a. Where an applicant offers more than one type of communications service, a clear statement of which entity is requesting the designation.

b. A clear statement of the purposes for which the designation is sought, and a statement of financial and technical qualification to provide the supported service. An applicant shall specify whether designation is sought for purposes of receiving support from the high-cost fund or mobility fund; for Lifeline purposes only; or other specified purpose recognized by the FCC.

c. A certification that the applicant offers or intends to offer all services designated for support, as identified in 47 CFR §54.101, throughout the applicant's approved service area.

- d.* An explanation of how the carrier will provide voice telephony service and broadband service.
- e.* A certification that the applicant offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services. "Own facilities" includes unbundled network elements, in whole or in part. The facilities providing the services supported by the universal service fund need not be physically located in the area served. Wireless resellers shall provide the name of the facilities-based wireless carrier(s) whose services they are reselling and demonstrate they have an agreement with the carrier(s) in Iowa that will cover the applicant's proposed designated service area. The board will not designate as an eligible telecommunications carrier a carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services unless the carrier obtains FCC approval of a compliance plan and commits to certain 911 conditions.
- f.* A description of how the applicant advertises the availability of supported services and the charges therefor using media of general distribution.
- g.* A detailed description, including a map or maps, of the geographic service area for which the applicant requests an ETC designation from the board. An applicant seeking designation in connection with the connect America fund Phase II auction or other similar conditional support mechanism shall file a list of the census blocks in which the applicant will serve as an ETC, in addition to the map included with the description required by this paragraph. Wireless telecommunications carriers, defined as commercial mobile radio service providers in 47 CFR Parts 20 (2021) and 24 (1994), shall file coverage area maps and maps that depict signal strength. Requests to withhold from public inspection maps depicting signal strength will be deemed granted as provided in 199—Chapter 1.
- h.* Where the application is from a carrier seeking a designation as an ETC for an area served by a rural telephone company as defined in 47 CFR §51.5, a demonstration that the requested designation is in the public interest.
- i.* An affirmative statement that the applicant will use the support only for the provision, maintenance, and upgrading of facilities to deploy, improve, and support services to consumers in the applicant's designated service area. Applicants seeking designation only for purposes of receiving support from the Lifeline program need not include an affirmative statement or other information concerning network improvements planned for the designated service area.
- j.* An affirmative statement explaining how the applicant will remain functional in emergency situations. The statement shall include examples illustrating that the applicant has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
- k.* A certification that the applicant will comply with the service requirements applicable to the support that it seeks to receive.
- l.* A certification that the applicant will contribute to the dual party relay service as provided in Iowa Code section 477C.7(1).
- m.* For applications from carriers seeking designation as an ETC for any part of tribal lands, a copy of the applicant's application to the affected tribal government and tribal regulatory authority at the time the applicant files the application with the board.
- n.* A certification that the applicant will satisfy applicable consumer protection and service quality standards. Wireless ETC applicants shall commit to complying with the consumer protection standards established by the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service (2020), including a certification to abide by the following specified standards:
- (1) Provide ready access to customer service. Customers will be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet, or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries, and on carriers' websites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier's customer service departments.

(2) Promptly respond to consumer inquiries and complaints received from government agencies. Inquiries for information or complaints to a wireless ETC shall be resolved promptly and courteously. If a wireless ETC cannot resolve a dispute with the applicant or customer, the wireless ETC shall inform the applicant or customer of the right to file a complaint with the board. The wireless ETC shall provide the following board address and toll-free telephone number: Iowa Utilities Board, Customer Service, 1375 E. Court Avenue, Des Moines, Iowa 50319-0069; 877.565.4450. When the board receives a complaint, the board shall follow the procedures set out in 199—Chapter 6. In any complaint proceeding pursuant to this subparagraph, if the wireless ETC asserts that the complainant is located in an area where the wireless ETC is not designated as an ETC, the wireless ETC must submit evidence in support of its assertion.

39.3(3) Amendments, assignments and transfers of control. Except as otherwise provided in this subrule, a carrier's ETC designation may be amended or assigned, or control of such designation may be transferred by the transfer of control of the carrier, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the board.

a. Assignment. For purposes of this subrule, an assignment of a designation is a transaction in which a board-issued ETC designation is assigned from one carrier to another carrier. Following an assignment, the designation is held by a carrier other than the carrier to which it was originally granted.

b. Transfers of control. For purposes of this subrule, a transfer of control is a transaction in which a board-issued designation remains held by the same carrier, but there is a change in the individuals or entities that control the carrier. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. A change from 50 percent or more ownership to less than 50 percent ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis. The factors relevant to a determination of control in addition to equity ownership include but are not limited to the following:

- (1) Power to constitute or appoint more than 50 percent of the board of directors or partnership management committee;
- (2) Authority to appoint, promote, demote, and fire senior executives who control the day-to-day activities of the carrier;
- (3) Ability to play an integral role in major management decisions of the carrier;
- (4) Authority to pay financial obligations, including expenses arising out of operations;
- (5) Ability to receive moneys and profits from the carrier's operations; and
- (6) Unfettered use of all of the carrier's facilities and equipment.

c. Pro forma assignments and transfers of control. Assignments or transfers of control that do not result in a change in the actual controlling party are considered nonsubstantial or pro forma. If a transaction is one of the types listed below, the transaction is presumptively pro forma and prior board approval need not be sought:

- (1) Assignment from an individual or individuals to an entity owned and controlled by such individuals without any substantial change in their relative interests;
- (2) Assignment from an entity to its individual equity holders without effecting any substantial change in the disposition of their interests;
- (3) Assignment or transfer by which certain equity holders retire and the interest transferred is not a controlling one;
- (4) Entity reorganization that involves no substantial change in the beneficial ownership of the carrier (including reincorporation or reorganization in a different jurisdiction or change in form of the business entity);
- (5) Assignment or transfer from a carrier to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a carrier to an entity owned or controlled by the same equity holders without substantial change in their interests; or
- (6) Assignment of less than a controlling interest in a carrier.

d. Applications for substantial transactions. In the case of an assignment or transfer of control of board-designated ETC that is not pro forma, the parties to such a transaction must file a joint application

with the board prior to consummation of the proposed assignment or transfer of control. The application shall include the following information:

(1) A brief narrative of the means by which the proposed transfer or assignment will take place. This narrative should include a statement concerning how the transaction will be classified for the purposes of any filings required to be made by the parties with the Universal Service Administrative Company (USAC).

(2) Identification of each applicant, including the legal name and state or other governmental authority under the laws of which each entity applicant is incorporated or organized.

(3) The name, title, mailing address, telephone number, and email contact information for each applicant.

(4) The name, title, mailing address, telephone number, and email contact information for an application contact point, such as an executive officer, legal counsel, or regulatory consultant, to whom correspondence concerning the application should be addressed.

(5) A statement identifying the date on which the applicants are asking for the transfer of the ETC designation to be effective. Where the timing of a transaction is dependent on facts objectively ascertainable outside of the filing (i.e., regulatory, lender, or other third-party approval), the parties should include a statement concerning the manner in which such facts will operate on the effective date or other terms of the transaction.

(6) A certification as to whether the assignee/transferee is a board-designated ETC. If the assignee/transferee is not a board-designated ETC, the assignee/transferee shall separately file with the board an application for designation as an ETC as provided in subrule 39.3(2). If the assignee/transferee is a board-designated ETC, the joint application shall include a certification from the assignee/transferee that (a) the assignee/transferee is a board-designated ETC in good standing and (b) the assignee/transferee will comply with the state and federal requirements for eligibility as an ETC, including the use of support to provide designated services within the assigned or transferred service area.

(7) Whether as part of the transaction, the assignor/transferor is requesting to relinquish its ETC status in whole or in part. If the assignor/transferor is requesting to relinquish its ETC status, the joint application shall be deemed to be the assignor/transferor's request for relinquishment of ETC designation under rule 199—39.8(476); provided that such relinquishment shall be conditioned on consummation of the transaction described in the application. If the assignor/transferor is for any reason seeking the unconditional relinquishment of its ETC status, such request should be filed separately under rule 199—39.8(476).

e. Board approval. Where an assignment or transfer of control involves a transferee/assignee that is already a board-designated ETC, such application shall be granted by the board 30 days after the date the complete application seeking approval of the assignment or transfer of control is accepted for filing, unless the board, for good cause, docket the application for further investigation. Where an assignment or transfer of control involves a transferee/assignee that is not already a board-designated ETC, such application shall be granted by the board at the same time as the board grants the assignee/transferee's application for ETC designation in accordance with the timelines and procedures set forth in subrule 39.3(2).

f. Notification of pro forma transactions. In the case of a pro forma assignment or transfer of control, the designated ETC is not required to seek prior board approval. Instead, a pro forma assignee or a carrier that is subject to a pro forma transfer of control must file a notification with the board no later than 30 days after the assignment or transfer is completed. The notification must contain the following:

(1) The information requested in subparagraphs 39.3(3)“d”(1) through (4) for the transferee/assignee.

(2) A certification that the transfer of control or assignment was pro forma and that, together with all previous pro forma transactions, the transfer of control or assignment does not result in a change in the actual control of the carrier.

(3) A certification from the assignee/transferee that the assignee/transferee will comply with the state and federal requirements for eligibility as an ETC, including the use of support to provide designated services within the assigned or transferred service area.

g. Involuntary assignments or transfers of control. In the case of an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy; to an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; or in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved, the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

h. Notification of consummation. An assignee or transferee must notify the board no later than 30 days after either consummation of the proposed assignment or transfer of control or a decision not to consummate the proposed assignment or transfer of control. The notification shall identify the docket number(s) under which the authorization of the assignment or transfer of control was granted.

i. Amendments other than transactions. Where a carrier that has been designated by the board as an ETC intends to serve as an ETC in a new service area for the purpose of receiving federal high-cost support, the carrier shall file a request to amend its designation with a notice of expansion at least 30 days in advance of the expansion and shall certify that the carrier intends to amend its designation to serve as an ETC in the expanded service area.

199—39.4(476) Lifeline-only applicants. Where an applicant is seeking designation only for purposes of receiving support from the Lifeline program, the following requirements apply in addition to those specified in rule 199—39.3(476):

39.4(1) *Approved compliance plan required.* The applicant shall submit a copy of a compliance plan submitted to the FCC and a copy of the FCC's notice of approval. An applicant offering service utilizing its own facilities or a combination of its own facilities and the resale of another carrier's facilities need not provide a compliance plan.

39.4(2) *Terms and conditions of voice telephony service offered to Lifeline subscribers.* The applicant shall submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for such plan. To the extent the applicant offers to Lifeline subscribers plans that are generally available to the public, the applicant may provide summary information regarding such plans, such as a link to a public website outlining the terms and conditions of such plans.

39.4(3) *Terms and conditions of broadband internet access service offered to Lifeline subscribers.* The applicant shall submit information describing the terms and conditions of any broadband internet access service plans offered to Lifeline subscribers, including details on the speeds offered; data usage allotments; additional charges for particular uses, if any; and rates for each such plan. To the extent the applicant offers to Lifeline subscribers plans that are generally available to the public, the applicant may provide summary information regarding those plans, such as a link to a public website outlining the terms and conditions of the plans.

39.4(4) *Demonstration of financial and technical capability to provide supported services.* The applicant shall demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with 47 CFR Subchapter B, Part 54, Subpart E, as required by 47 CFR §54.201(h). Relevant considerations include but are not limited to how long the carrier has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives or will receive revenue from other sources, whether the applicant has been subject to enforcement action or ETC revocation proceedings in any state, and whether the applicant has defaulted on previous universal service fund commitments.

199—39.5(476) Service area.

39.5(1) Unless otherwise ordered by the board, the approved service area for universal service fund support calculations will be the same as the service area currently approved for local service by the board.

Those carriers not currently approved to provide local service are required to provide documentation showing their service area.

39.5(2) In the case of a service area served by a rural telephone company, “service area” means such company’s “study area” unless and until the FCC and the states, after taking into account recommendations of a federal-state joint board instituted under 47 U.S.C. §410(c) (1994), establish a different definition of service area for such company.

39.5(3) In the case of a wireless telecommunications carrier, “service area” means that area where the wireless company has been licensed by the FCC to provide service.

199—39.6(476) Universal service support for low-income consumers (Lifeline program and Tribal Link Up program).

39.6(1) *Carrier obligation to offer Lifeline.* Pursuant to 47 CFR §54.405, all ETCs must make Lifeline service available, as defined in 47 CFR §54.401, to qualifying low-income consumers, defined as consumers who meet the qualifications for Lifeline as specified in 47 CFR §54.409. ETCs must comply with the minimum service standards specified in 47 CFR §54.408.

39.6(2) *Customer notification.* ETCs shall include a description of their Lifeline offerings or discounts in their residential service agreements. ETCs shall provide the board with information about their residential service agreements upon request. ETCs shall publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for service as required by 47 CFR §54.405(b).

39.6(3) *Consumer qualification for Lifeline.* To qualify for Lifeline, a consumer must meet the qualifications for Lifeline as specified in 47 CFR §54.409. A consumer may only receive one Lifeline service per household.

39.6(4) *Determination of subscriber eligibility.* ETCs shall ensure that their Lifeline subscribers are eligible to receive Lifeline services in accordance with 47 CFR §54.410. ETCs shall:

a. Implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services;

b. Confirm a subscriber’s income-based or program-based eligibility according to 47 CFR §54.410(b) or (c);

c. Provide prospective subscribers Lifeline certification forms that comply with 47 CFR §54.410(d); and

d. Recertify all subscribers’ Lifeline eligibility in accordance with 47 CFR §54.410(f) and (g).

39.6(5) *Annual certifications by ETCs.* ETCs shall make and submit to the USAC annual certifications relating to the Lifeline program as required by 47 CFR §54.416. ETCs shall file their annual Lifeline certifications with the board as provided in paragraph 39.7(1)“a” and, if applicable, with the relevant tribal governments.

39.6(6) *Tribal Link Up.* A telecommunications carrier receiving high-cost support on tribal lands that is offering the Tribal Link Up assistance program to eligible residents of tribal lands, as defined in 47 CFR §54.400(e), must provide (1) a 100 percent reduction of the customary connection charge for commencing service at a subscriber’s residence, and (2) a deferred schedule of interest-free payments for the connection charge, pursuant to 47 CFR §54.413. Prior to enrolling an eligible resident of tribal lands in the Tribal Link Up program, an ETC must obtain from the resident a certification form that complies with 47 CFR §54.410.

39.6(7) *Audits.* ETCs shall file with the board finalized reports of audits involving the audited ETC’s operations in Iowa conducted pursuant to 47 CFR §54.420 requiring low-income program audits. The audit reports will not be considered or deemed confidential. The audit reports shall be filed with the board within 30 days of issuance of the final audit report.

199—39.7(476) Annual reporting requirements.

39.7(1) *Annual certifications from carriers seeking to continue to receive high-cost support.* Any carrier seeking to continue to receive federal high-cost support shall file with the board no later than July 1 of each year an affidavit titled “Certification of [Company Name].” The company name shall be the

name used on the carrier's initial application for ETC designation and its current name, if its name has changed.

a. Contents of affidavit:

(1) The affidavit shall include the study area code (SAC) number associated with the company, as well as the carrier's Company Number (CoNo) as granted by the Iowa utilities board.

(2) The affidavit shall be sworn and notarized and shall be executed by an authorized corporate officer.

(3) The affidavit shall certify that the carrier has used all federal high-cost support provided in the preceding calendar year and will use all federal high-cost support provided to the carrier in the coming calendar year received pursuant to 47 CFR Subchapter B, Part 54, Subparts D, J, K, L, M, and O as defined in 47 CFR §54.5, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

(4) The affidavit shall certify to the following: as an eligible telecommunications carrier, the carrier agrees to provide timely responses to board requests for information related to the status of local markets for supported services, including local markets for supported voice and broadband services.

b. Any certification filed by a carrier shall be subject to complaint or investigation by the board.

c. An ETC's certification shall be the basis of the board's certification to the FCC and USAC pursuant to 47 CFR §54.314 that the ETC has used and will use the support for the purposes intended.

39.7(2) Filing instructions. The affidavit certifying compliance shall be filed using the board's electronic filing system in accordance with 199—Chapter 14, unless the board directs otherwise by order issued in advance of the filing deadline. The filing shall be titled "Annual Eligible Telecommunications Carrier Reporting Requirements," with a reference to the year for which the report is filed. The document title for the affidavit certifying compliance shall be "Carrier Certification."

199—39.8(476) Relinquishment of ETC designation.

39.8(1) The board may permit an ETC to relinquish its designation as such a carrier in any area served by more than one ETC. An ETC that seeks to relinquish its designation for an area served by more than one ETC shall give 30 days' advance notice to the board of such relinquishment. A carrier that is granted ETC status in connection with a federal universal support program but that ultimately does not receive the support shall, within 30 days after the FCC issues a public notice regarding the award of support, file a notice of relinquishment of the carrier's designation for any service areas where the carrier is not awarded funds and does not plan to offer service.

39.8(2) Prior to permitting a telecommunications carrier designated as an ETC to cease providing universal service in an area served by more than one ETC, the board shall require the remaining ETCs to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining ETC. The board shall establish a time, not to exceed one year after the board approves such relinquishment under this rule, within which such purchase or construction shall be completed.

These rules are intended to implement Iowa Code sections 17A.4, 476.2, 476.15, and 476.102 and 47 U.S.C. §214(e) and 254.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 199—Chapter 44
“Certificates of Franchise Authority for Cable and Video Service”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.4, 476.10 and 477A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 476 and 477A

Public Hearing

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

June 11, 2024
9 a.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Public Comment

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

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITsupport@iub.iowa.gov

Purpose and Summary

The purpose of proposed Chapter 44 is to implement Iowa Code chapter 477A regarding certificates of franchise for cable service or video service. This chapter provides an outline for those wishing to obtain or maintain such a certificate.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Entities wishing to hold a franchise certificate for cable or video service in the state will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Those that utilize cable or video service will benefit.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
The economic impact to the Board is that of the salaries paid to employees that work on ensuring compliance with these rules. The entity wishing to obtain or maintain a franchise certificate may incur costs due to the filing requirements. An interested person may have an economic impact if the person chooses to utilize the cable or video service provided by an entity holding such a certificate.
 - Qualitative description of impact:
This chapter ensures that entities are properly following the guidelines to become a certificate-holding franchisee to provide cable or video service within the state.
3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The only costs to this agency are the cost of daily operation of the Board and the salaries of employees working in this specific area. There are no additional costs imposed on other agencies.

- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

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

There is a benefit in ensuring that entities wishing to obtain or maintain a franchise certificate for providing video or cable service within the state follow the necessary rules in providing such a service. There are minimal costs involved in administering these rules. Inaction by the State would lead to noncompliance with the law by such entities.

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

The Board does not believe there are any less costly methods of addressing the purpose of this rulemaking.

6. Alternative methods considered by the agency:

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

The Board considered inaction.

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

Inaction is not feasible because the power to develop, maintain, and enforce rules and regulations surrounding the granting and maintenance of franchise certificates to entities wanting to provide video or cable service within the state has been delegated to the Board.

Small Business Impact

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

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

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

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

There is not a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 199—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44 CERTIFICATES OF FRANCHISE AUTHORITY FOR CABLE AND VIDEO SERVICE

199—44.1(17A,476,477A) Authority and purpose. These rules are intended to implement Iowa Code chapter 477A relating to certificates of franchise authority issued by the board for the provision of cable service or video service. The purpose of these rules is to establish procedures for initial applications for and subsequent modifications, transfers, terminations, or updates of certificates of franchise authority issued by the board.

199—44.2(17A,476,477A) Definitions. The following words and terms, when used in this chapter, shall mean the same as defined in 47 U.S.C. Section 522, effective February 8, 1996, and Iowa Code section 477A.1, unless defined below:

“*Board*” means the Iowa utilities board.

“*Certificate of franchise authority*” means the certificate issued by the board authorizing the construction and operation of a cable or video service provider’s network in a public right-of-way.

“*Competitive cable or video service provider*” means a person who provides cable service over a cable system or video system in an area other than the incumbent cable provider providing service in the same area.

199—44.3(17A,476,477A) Certificate of franchise authority. After July 1, 2007, a person shall not provide cable or video service in Iowa without a franchise. The franchise may be issued by either the board pursuant to this chapter or by a municipality pursuant to Iowa Code section 364.2.

44.3(1) Existing franchise agreements. A franchise in effect before July 1, 2007, is subject to the exemptions and requirements of Iowa Code section 477A.2.

44.3(2) Municipal utilities. A municipal utility that provides cable or video service in Iowa is exempt from this chapter pursuant to Iowa Code section 477A.2(2) “c.”

44.3(3) Initial application. The requirements and procedures for obtaining a cable or video service franchise are set forth in Iowa Code section 477A.3. Applications are to be submitted using a form developed by and available from the board.

44.3(4) Content of certificate. A certificate of franchise authority issued by the board shall conform to the requirements set forth in Iowa Code section 477A.3(5).

44.3(5) Modification of service area. At least 14 days before expanding cable or video service to a previously undesignated service area or making any other change to its previously designated service area, the holder of a certificate of franchise authority shall update the description of its service area on file with the board and notify the board of the effective date of the expansion or other change in service area in a manner prescribed by the board. The board will acknowledge receipt of a notice of service area modification by letter.

44.3(6) Transfer of certificate of franchise authority. The holder of a certificate of franchise authority may transfer the certificate to any successor by filing a notice of transfer with the board and each affected municipality pursuant to Iowa Code section 477A.3(8). The board will acknowledge receipt of a notice of transfer by letter.

44.3(7) Termination of certificate of franchise authority. The holder of a certificate of franchise authority may terminate the certificate by providing written notice of the effective date of termination to the board and to each affected municipality using a form prescribed by the board. The board will acknowledge receipt of a notice of termination by letter.

44.3(8) Updates. The holder of a certificate of franchise authority shall notify the board of any change in the name of the entity holding the certificate, contact personnel, principal executive officers, address of principal place of business, telephone number, and customer service contact information by updating such information in the board’s IUB 24/7 electronic system. The updates shall be completed within 14 days after the effective date of the change.

199—44.4(17A,476,477A) Notice to municipality and incumbent cable provider.

44.4(1) Notice of intent to provide service. At least 30 days before providing service in any part of a competitive cable or video service provider’s service area in which the provider has not yet offered service pursuant to a board-issued certificate of franchise authority, a competitive cable or video service

provider shall notify each municipality and incumbent cable provider pursuant to Iowa Code section 477A.2(4).

44.4(2) *Notice of application.* In addition to the notice of intent to provide service, an applicant shall notify each municipality with authority to grant a franchise in the applicant's proposed service area that the applicant has filed an application with the board for a certificate of franchise authority. This notice shall be mailed by certified mail on the date the application is filed with the board.

199—44.5(17A,476,477A) Conversion of municipal franchise by incumbent cable provider. If a competitive cable or video service provider applies for a certificate of franchise authority to operate within a municipality, the incumbent cable provider in that municipality may apply for a certificate of franchise authority for that same municipality pursuant to Iowa Code section 477A.2(6).

199—44.6(17A,476,477A) Renewal of certificate of franchise authority.

44.6(1) Thirty days prior to the tenth anniversary of the issuance of the original certificate and every ten years thereafter, the certificate holder shall file with the board a notice of renewal containing the following:

- a. An acknowledgment that the certificate holder continues to hold the certificate;
- b. A statement that the certificate holder continues to provide cable or video service in all or a portion of its approved service territory;
- c. Any necessary updates to the address of the principal place of business, the telephone number for customer service, and the names and titles of the principal executive officers with direct authority over and responsibility for the cable or video operations;
- d. A list of the approved areas the certificate holder currently is serving; and
- e. A list of the areas in which the certificate holder was previously authorized to offer service but where service has ceased or never commenced.

44.6(2) The notice of renewal shall be filed using the VCA docket number in which the initial certificate was issued. The board will acknowledge the renewal by letter.

These rules are intended to implement Iowa Code sections 17A.4 and 476.10 and chapter 477A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 10
“Research and Information Services Division”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 84A.1B
State or federal law(s) implemented by the rulemaking: Iowa Code section 84A.1B

Public Hearing

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

May 21, 2024
8:30 a.m.

1000 East Grand Avenue
Des Moines, Iowa

Public Comment

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

Rebecca Stonawski
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: rebecca.stonawski@iwd.iowa.gov

Purpose and Summary

Proposed Chapter 10 provides administrative rules for the Research and Information Services Division of the Department of Workforce Development. The chapter offers guidance on the Department’s mission and organization as well as the responsibilities of its two bureaus, the Research and Reporting Bureau and the Labor Statistics Bureau.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Not applicable.
 - Classes of persons that will benefit from the proposed rulemaking:
Iowa businesses, employers, and educational institutions will benefit from the proposed rulemaking. The State of Iowa’s Legislature and fiscal decision-makers will also benefit.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
Not applicable.
 - Anticipated effect on state revenues:

Not applicable.

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

Not applicable.

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

None.

6. Alternative methods considered by the agency:

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

None.

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

Not applicable.

Small Business Impact

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 871—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10 RESEARCH AND INFORMATION SERVICES DIVISION

871—10.1(84A) Mission and organization.

10.1(1) Mission. The labor market information division conducts research, develops labor market information, and provides information services in support of the department of workforce development's mission.

10.1(2) Operation and administration. The division is under the direction of a division administrator who reports to the deputy director. The division functions include planning, researching, analyzing, and reporting labor market information. The division administrator directs and leads labor market research, workforce data collection, and related projects.

871—10.2(84A) Research and reporting bureau. The bureau is under the direction of the division administrator and is responsible for research and reporting functions of the unemployment compensation program in Iowa. The bureau is responsible for:

1. Calculating the financial impact of proposed changes to Iowa's unemployment compensation system with regard to the unemployment compensation fund, employer tax rates, and claimant benefits.
2. Monitoring the unemployment compensation fund solvency and writing legislative proposals recommending revisions to the tax and benefits sections in Iowa Code chapter 96.
3. Producing required and special reports analyzing and reporting the unemployment compensation system workload activities, employer compensation payments, and claimant benefit payments.
4. Calculating the contribution rate tables for private employers and the base rate for nonprofit and government employers.
5. Preparing, analyzing and distributing projected industry and occupational employment information for the state and service delivery areas.
6. Preparing and distributing economic analyses of the Iowa labor market in hard copy and electronic formats and by in-person presentations.
7. Conducting labor market research using surveys and secondary and administrative data to provide understanding of the labor supply and demand.
8. Collecting and reporting workplace injury, illness, and fatality statistics.
9. Providing training in the uses of occupational and labor market information to school counselors, teachers and labor market intermediaries.

871—10.3(84A) Labor statistics bureau. The bureau is under the direction of a chief who assists the division administrator in planning, directing and coordinating the production of employment data for Iowa and the counties. The bureau is responsible for:

1. Collecting, analyzing and summarizing data and producing monthly employment and earnings estimates for Iowa, metropolitan statistical areas (MSAs) in Iowa, and counties in Iowa.
2. Collecting, analyzing and summarizing employment and wage data from Iowa employers subject to the unemployment insurance law to produce statewide and county data by industrial groups.
3. Providing occupational and training information to planners of vocational and other training programs.
4. Paying special attention to the career development and labor market information needs of Iowans.
5. Providing training in the uses of occupational and labor market information to school counselors, teachers and labor market intermediaries.
6. Collecting, preparing, analyzing and distributing labor force, unemployment, unemployment rate and total employment information for the state, metropolitan statistical areas, counties and selected cities in Iowa.
7. Collecting, preparing, analyzing and distributing occupational employment and occupational wage information for the state, metropolitan statistical areas and the balance of state.
8. Developing and maintaining a national reporting system for the Current Employment Statistics program.

These rules are intended to implement Iowa Code chapter 84A.

ARC 7885C

HUMAN SERVICES DEPARTMENT[441]**Notice of Intended Action****Proposing rulemaking related to disability services management
and providing an opportunity for public comment**

The Department of Health and Human Services (HHS) hereby proposes to amend Chapter 25, “Disability Services Management,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 225C.55 and 225C.69.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 471.

Purpose and Summary

The proposed amendments are designed to provide oversight and establish standards for the regional mental health and disability services system. Chapter 25 needs to be updated to reflect changes made in 2023 Iowa Acts, House File 471, which changed the governance structure for Mental Health and Disability Services (MHDS) regions. Other amendments are designed to clarify a new core (required) service of competency restoration, specifically, that “community” means “outpatient” so it is clear for the courts, attorneys, practitioners, and the public.

A Regulatory Analysis, including the proposed chapter text, was published on January 10, 2024. A public hearing was held on January 31, 2024. HHS received no public comments. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on February 5, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by HHS no later than 4:30 p.m. on May 24, 2024. Comments should be directed to:

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

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Public Hearing

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

May 22, 2024 11:30 a.m. to 12 noon	Microsoft Teams meeting ID: 218 701 087 784 Passcode: nnfJbK
May 24, 2024 11:30 a.m. to 12 noon	Microsoft Teams meeting ID: 262 230 051 90 Passcode: FFUvAN

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Amend rule 441—25.1(331), parenthetical implementation statute, as follows:

441—25.1(~~331~~ 225C) Definitions.

ITEM 2. Amend rule **441—25.1(331)**, definitions of “Region” and “Severe and persistent mental illness,” as follows:

“*Region*” means a mental health and disability service region that operates as the “regional administrator” or “regional administrative entity” as defined in rule 441—25.11(~~331~~) 441—25.11(225C).

“*Severe and persistent mental illness*” or “*SPMI*” means a documented primary mental health disorder diagnosed by a mental health professional that causes symptoms and impairments in basic mental and behavioral processes that produce distress and major functional disability in adult role functioning inclusive of social, personal, family, educational or vocational roles. The individual has a degree of impairment arising from a psychiatric disorder such that: (1) the individual does not have the resources or skills necessary to maintain function in the home or community environment without assistance or support; (2) the individual’s judgment, impulse control, or cognitive perceptual abilities are compromised; (3) the individual exhibits significant impairment in social, interpersonal, or familial functioning; and (4) the individual has a documented mental health diagnosis. For this purpose, a “mental health diagnosis” means a disorder, dysfunction, or dysphoria diagnosed pursuant to the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association (published 2013, with all changes and updates approved by the American Psychiatric Association through September 2023 incorporated herein), excluding neurodevelopmental disorders, substance use disorders, personality disorders, medication-induced movement disorders and other adverse effects of medication, and other conditions that may be a focus of clinical attention as defined in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association (published 2013, with all changes and updates approved by the American Psychiatric Association through September 2023 incorporated herein).

ITEM 3. Adopt the following **new** definition of “Outpatient competency restoration” in rule **441—25.1(331)**:

“*Outpatient competency restoration*” means a community-based service to restore competency for individuals found by a court not to pose a danger to the public but to be incompetent to stand trial. The

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service includes components such as psychiatric prescribing and medication management, mental health and substance use disorder treatment services, competency education, and service coordination.

ITEM 4. Amend rule 441—25.2(331) as follows:

441—25.2(~~331~~ 225C) Core service domains.

25.2(1) The region shall ensure that core service domains are available in regions as determined in Iowa Code sections ~~331.397 and 331.397A~~ 225C.65 and 225C.66.

25.2(2) No change.

25.2(3) The region shall ensure that the following services are available for adults in the region:

a. to r. No change.

s. Outpatient competency restoration.

~~*t.*~~ Peer support.

~~*u.*~~ Personal emergency response system.

~~*v.*~~ Prevocational services.

~~*w.*~~ Respite.

~~*x.*~~ Subacute mental health services.

~~*y.*~~ Supported employment.

~~*z.*~~ Supportive community living.

~~*aa.*~~ Twenty-four-hour access to crisis response.

~~*ab.*~~ Twenty-three-hour crisis observation and holding.

Regions may fund or provide other services in addition to the required core services consistent with requirements set forth in subrules 25.2(5) and 25.2(6).

25.2(4) The region shall ensure that the following services are available for children in the region:

a. to j. No change.

k. Outpatient competency restoration.

~~*l.*~~ Prevention.

25.2(5) and 25.2(6) No change.

ITEM 5. Amend rule 441—25.4(331) as follows:

441—25.4(~~331~~ 225C) Access standards. Regions shall meet the following access standards:

25.4(1) to 25.4(12) No change.

ITEM 6. Amend rule 441—25.5(331) as follows:

441—25.5(~~331~~ 225C) Practices. A region shall ensure that access is available to providers of core services that demonstrate the following competencies:

25.5(1) to 25.5(3) No change.

ITEM 7. Amend rule 441—25.6(331) as follows:

441—25.6(~~331~~ 225C) Intensive mental health services. The purpose of intensive mental health services is to provide a continuum of services and supports to adults with complex mental health and multi-occurring conditions who need a high level of intensive and specialized support to attain stability in health, housing, and employment and to work toward recovery.

25.6(1) to 25.6(7) No change.

25.6(8) Intensive residential services. The purpose of intensive residential services is to serve adults with the most intensive severe and persistent mental illness conditions who have functional impairments and may also have multi-occurring conditions. Intensive residential services provide intensive 24-hour supervision, behavioral health services, and other supportive services in a community-based residential setting.

a. and b. No change.

c. Eligibility criteria for admission to intensive residential services. To be eligible to receive intensive residential services, an individual shall meet all of the following criteria:

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(1) No change.

(2) The individual has had a standardized functional assessment and screening for multi-occurring conditions completed 30 days or less prior to application for intensive residential services, and the functional assessment and screening demonstrates that the individual:

1. Has a diagnosis that meets the criteria of severe and persistent mental illness as defined in rule ~~441—25.1(331)~~ 441—25.1(225C);

2. to 6. No change.

ITEM 8. Amend rule ~~441—25.7(331)~~ as follows:

~~441—25.7(331)~~ 225C Non-core services. When a mental health and disability services region chooses to make the following non-core services available, the region shall ensure that such services meet the requirements of this rule.

25.7(1) and 25.7(2) No change.

ITEM 9. Amend ~~441—Chapter 25~~, Division I implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter ~~331~~ 225C.

ITEM 10. Amend ~~441—Chapter 25~~, Division II preamble, as follows:

These rules define the standards for a regional service system. The mental health and disability services and children's behavioral health services shall be delivered in accordance with a regional service system management plan approved by the region's governing board and implemented by the regional administrator (Iowa Code section ~~331.393~~ 225C.60). It is the intent of the Iowa general assembly that the adult residents of this state should have access to needed mental health and disability services and that Iowa children should have access to needed behavioral health services regardless of the location of their residence.

ITEM 11. Amend rule ~~441—25.11(331)~~ as follows:

~~441—25.11(331)~~ 225C Definitions.

"Access point" means a provider, public or private institution, advocacy organization, legal representative, or educational institution with staff trained to complete applications and guide individuals with a disability to needed services.

"Assessment and evaluation" means the same as defined in rule ~~441—25.1(331)~~ 441—25.1(225C).

"Assistive technology account" means funds in contracts, savings, trust or other financial accounts, financial instruments, or other arrangements with a definite cash value that are set aside and designated for the purchase, lease, or acquisition of assistive technology, assistive technology services, or assistive technology devices. Assistive technology accounts must be held separately from other accounts. Funds must be used to purchase, lease, or otherwise acquire assistive technology services or devices for a working individual with a disability. Any withdrawal from an assistive technology account other than for the designated purpose becomes a countable resource.

"Authorized representative" means a person designated by the individual or by Iowa law to act on the individual's behalf in specified affairs to the extent prescribed by law.

"Cash flow" means the same as "ending fund balance."

"Chief executive officer" means the person chosen and supervised by the governing board who serves as the single point of accountability for the mental health and disability services region and whose responsibilities include, but are not limited to, planning, budgeting, monitoring county and regional expenditures, and ensuring the delivery of quality services that achieve expected outcomes for the individuals served.

"Choice" means the individual or authorized representative chooses the services, supports, and goods needed to best meet the individual's goals and accepts the responsibility and consequences of those choices.

"Clear lines of accountability" means the structure of the governing board's organization makes it evident that the ultimate responsibility for the administration of the non-Medicaid-funded mental health

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and disability services lies with the governing board and that the governing board directly and solely supervises the organization's chief executive officer.

"Community" means an integrated setting of an individual's choice.

"Conflict-free case management" means there is no real or seeming incompatibility between the case manager's other interests and the case manager's duties to the individual served and includes case management separate from direct service provision; eligibility determination for services; establishment of funding levels for the individual's services; and requirements that prohibit the case manager from performing evaluations, assessments, and plans of care if the case manager is related by blood or marriage to the individual or any of the individual's paid caregivers or persons financially responsible for the individual or empowered to make financial or health-related decisions on behalf of the individual.

"Coordinator of children's behavioral health services" means a member of the regional administrative entity staff who meets the requirements described in Iowa Code section ~~331.390(3)~~ *"b"* 225C.57(3) *"b"* and is responsible for coordinating behavioral health services for children.

"Coordinator of mental health and disability services" means a member of the regional administrative entity staff who meets the requirements described in Iowa Code section ~~331.390(3)~~ *"b"* 225C.57(3) *"b"* and is responsible for coordinating mental health and disability services for adults.

"Countable household income" means earned and unearned income of the family of a child according to the modified adjusted gross income methodology.

"Countable resource" means real or personal property that has a cash value that is available to the owner upon disposition and is capable of being liquidated.

"Countable value" means the equity value of a resource, which is the current fair market value minus any legal debt on the item.

"County of residence" means the same as defined in Iowa Code section ~~331.394~~ 225C.61.

"Department" means the department of health and human services.

"Director" means the director of health and human services.

"Disability services" means the same as defined in Iowa Code section 225C.2.

"Emergency services" means the same as defined in 441—subrule 24.4(15).

"Empowerment" means that the service system ensures the rights, dignity, and ability of individuals and their families to exercise choices, take risks, provide input, and accept responsibility.

"Encumbered" or *"encumbrances"* means regional commitments related to obligations or contracts as defined in subrule 25.13(6).

"Ending balance limitation" means the percentage limit allowable by state law that a region's ending fund balance can exceed actual expenditures for the previous fiscal year.

"Ending balance threshold" means the same as defined in Iowa Code section 225C.7A.

"Ending fund balance" means the amount of residual funds remaining in a region's combined account at the conclusion of a fiscal year after the region has met the financial obligations for implementation of its regional service system management plan.

"Exempt resource" means a resource that is disregarded in the determination of eligibility for public funding assistance and in the calculation of client participation amounts.

"Federal poverty level" means the most recently revised annual poverty income guidelines published in the Federal Register by the United States Department of Health and Human Services.

"Homeless person" means the same as defined in Iowa Code section 48A.2.

"Household" means, for an individual who is 18 years of age or over, the individual, the individual's spouse or domestic partner, and any children, stepchildren, or wards under the age of 18 who reside with the individual. For an individual under the age of 18, "household" means the individual, the individual's parents (or parent and domestic partner), stepparents or guardians, and any children, stepchildren, or wards under the age of 18 of the individual's parents (or parent and domestic partner), stepparents, or guardians who reside with the individual.

"Income" means all gross income received by the individual's household, including but not limited to wages, income from self-employment, retirement benefits, disability benefits, dividends, annuities, public assistance, unemployment compensation, alimony, child support, investment income, rental income, and income from trust funds.

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“Individual” means any person seeking or receiving services in a regional service system.

“Individualized services” means services and supports that are tailored to meet the personalized needs of the individual.

“Judicial system” means the same as described in Iowa Code section 602.1102.

“Law enforcement” or *“law enforcement representative”* means the same as “law enforcement officer” as defined in Iowa Code section 80B.3(3), or state and local correctional officers, and community-based corrections personnel.

“Liquid assets” means assets that can be converted to cash in 20 days. Liquid assets include but are not limited to cash on hand, checking accounts, savings accounts, stocks, bonds, cash value of life insurance, individual retirement accounts, certificates of deposit, and other investments.

“Managed care” means a system that provides the coordinated delivery of services and supports that are necessary and appropriate, delivered in the least restrictive settings and in the least intrusive manner. Managed care seeks to balance three factors: achieving high-quality outcomes for participants, coordinating access, and containing costs.

“Managed system” means a system that integrates planning, administration, financing, and service delivery. The system consists of the financing or governing organization, the entity responsible for care management, and the network of service providers.

“Management organization” means an organization contracted to manage part or all of the service system for a region.

“Medical savings account” means an account that is exempt from federal income taxation pursuant to Section 223 of the U.S. Internal Revenue Code (26 U.S.C. §223) (January 5, 2023) as supported by documentation provided by the bank or other financial institution. Any withdrawal from a medical savings account other than for the designated purpose becomes a countable resource.

“Mental health professional” means the same as defined in Iowa Code section 228.1(7).

“Modified adjusted gross income” means the methodology prescribed in 42 U.S.C. Section 1396a(e)(14) and 42 CFR 435.603 (October 1, 2022).

“Non-liquid assets” means assets that cannot be converted to cash in 20 days. Non-liquid assets include, but are not limited to, real estate, motor vehicles, motor vessels, livestock, tools, machinery, and personal property.

“Population” means the same as defined in Iowa Code section ~~331.388~~ 225C.55.

“Provider” means an individual, firm, corporation, association, or institution which is providing or has been approved to provide medical assistance, is accredited under 441—Chapter 24, holds a professional license to provide the service, is accredited by a national insurance panel, or holds other national accreditation or certification.

“Region incentive fund” means the same as defined in Iowa Code section 225C.7A.

“Regional administrator” or *“regional administrative entity”* means the administrative office or organization formed by agreement of the counties participating in a mental health and disability services region to function on behalf of those counties.

“Regional service growth factor” means the same as defined in Iowa Code section 225C.7A.

“Regional service fund” means the mental health and disability regional service fund created in Iowa Code section 225C.7A.

“Regional service system management plan” means the regional service system plan developed pursuant to Iowa Code section ~~331.393~~ 225C.60 for the funding and administration of non-Medicaid-funded mental health and disability services and includes an annual service and budget plan, a policies and procedures manual, and an annual report and how the region will coordinate with the department in the provision of mental health and disability services funded under the medical assistance program.

“Resources” means all liquid and non-liquid assets that are owned in part or in whole by the individual household, that could be converted to cash to use for support and maintenance, and that the individual household is not legally restricted from using for support and maintenance.

“Retirement account” means any retirement or pension fund or account listed in Iowa Code section 627.6(8)“f.”

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“*Retirement account in the accumulation stage*” means a retirement account into which a deposit was made in the previous tax year. Any withdrawal from a retirement account becomes a countable resource.

“*Service system*” refers to the mental health and disability services and supports administered by the regional administrative entity and paid from the regional services fund.

“*State case status*” means the standing of an individual who has no county of residence.

“*State commission*” means the same as defined in Iowa Code section 225C.5.

“*System of care*” means the coordination of a system of services and supports to individuals and their families that ensures they optimally live, work, and recreate in integrated communities of their choice.

“*System principles*” means practices that include individual choice, community and empowerment.

ITEM 12. Amend rule 441—25.12(331) as follows:

441—25.12(331 225C) Regional governance structure. The counties comprising a mental health and disability services region shall enter into an agreement to form a regional administrator under the control of a governing board to function on behalf of those counties as defined in Iowa Code chapter 28E and sections 331.388, 331.390, 331.392 and 331.399 225C.55, 225C.57, 225C.59 and 225C.68.

25.12(1) Governing board. The governing board shall comply with the provisions of Iowa Code section 331.390 225C.57, Iowa Code chapter 69 and other applicable laws relating to boards and commissions, including but not limited to the following:

a. The governing board shall include the following ~~voting~~ members:

(1) ~~At least one board~~ Board of supervisors member from each county members' counties comprising the region or their designees. Members representing boards of supervisors shall not exceed 49 percent of the total membership of the governing board.

(2) No change.

~~(3) Members designated by the regional children's behavioral health services advisory committee as follows:~~

~~1. One member representing the education system in the region.~~

~~2. One member who is a parent of a child who utilizes children's behavioral health services or is an actively involved relative of a child who utilizes such services.~~

~~(3) One member representing the education system in the region.~~

~~(4) One member who is a parent of a child who utilizes children's behavioral health services or is an actively involved relative of a child who utilizes such services.~~

~~(5) One member representing an adult service provider in the region, designated by the regional adult mental health and disability services advisory committee.~~

~~(6) One member representing a children's behavioral health service provider in the region, designated by the regional children's behavioral health services advisory committee.~~

~~(7) One member representing law enforcement in the region.~~

~~(8) One member representing the judicial system in the region.~~

~~b. The governing board shall include the following nonvoting members in an ex officio capacity:~~

~~(1) One member representing an adult service provider in the region, designated by the regional adult mental health and disability services advisory committee.~~

~~(2) One member representing a children's behavioral health service provider in the region, designated by the regional children's behavioral health services advisory committee.~~

~~b. Each member of the governing board shall have one vote.~~

c. The governing board shall create a regional adult mental health and disability services advisory committee, which shall designate members to the governing board as defined in Iowa Code section 331.390(2) 225C.57(2).

d. The governing board shall create a regional children's behavioral health services advisory committee, which shall designate members to the governing board as defined in Iowa Code section 331.390(2) 225C.57(2).

e. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

25.12(2) Regional administrator. The formation of the regional administrator shall be as defined in Iowa Code sections ~~331.388, 331.390, and 331.399~~ 225C.55, 225C.57, and 225C.68.

a. to f. No change.

25.12(3) Regional service system management. The region may either directly implement a system of service management and contract with service providers, or contract with a private entity to manage the regional service system, provided all requirements of Iowa Code section ~~331.393~~ 225C.60 are met by the private entity.

ITEM 13. Amend rule 441—25.13(331) as follows:

441—25.13(~~331~~ 225C) Regional finances.

25.13(1) No change.

25.13(2) Funding. Funding for non-Medicaid mental health and disability services and children's behavioral health services is under the control of the governing board and shall:

a. to c. No change.

d. Be maintained in a county mental health and disability services fund for the deposit of regional service payments for those counties exempted under Iowa Code section ~~331.389~~ 225C.56. Expenditures to be made from the county mental health and disability services fund will not be made from any other fund of the county. The exempted county mental health and disability services fund is considered to be the same as a region combined account and is subject to the same requirements as a region combined account.

25.13(3) Accounting system and financial reporting. The accounting system and financial reporting to the department shall conform to Iowa Code section ~~331.391~~ 225C.58 and include all non-Medicaid mental health and disability expenditures. Information shall be separated and identified in a uniform chart of accounts, including but not limited to the following: expenses for administration; purchase of services; and enterprise costs for which the region is a service provider or is directly billing and collecting payments.

25.13(4) to 25.13(7) No change.

ITEM 14. Amend rule 441—25.14(331) as follows:

441—25.14(~~331~~ 225C) Regional governance agreement. The expectations for regional governance agreements entered into by the counties comprising a mental health and disability services region are defined in Iowa Code sections 28E.1, ~~331.388, 331.390 and 331.392~~ 225C.55, 225C.57, and 225C.59.

25.14(1) Organizational provisions. The organizational provisions of the regional governance agreement shall include the following:

a. to e. No change.

f. Provisions for joining a region. Additional counties may join the region. The agreement shall not prohibit a county from being assigned by the department to a region according to Iowa Code section ~~331.389(4)“e.”~~ 225C.56(4)“c.”

g. to k. No change.

25.14(2) Administrative provisions. The administrative provisions of the regional governance agreement shall include all of the following:

a. Identification of whether the region will either directly implement a system of service management or contract with a private entity to manage the regional service system as defined in Iowa Code section ~~331.393(7)~~ 225C.60(7).

b. to d. No change.

25.14(3) No change.

ITEM 15. Amend rule 441—25.15(331) as follows:

441—25.15(~~331~~ 225C) Eligibility, diagnosis, and functional assessment criteria.

25.15(1) Eligibility for mental health services. An individual must comply with all of the following requirements to be eligible for mental health services under the regional service system:

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. The individual complies with the financial eligibility requirements in rule 441—25.16(331) 441—25.16(225C).

b. and c. No change.

d. The individual has had at any time during the preceding 12-month period a mental health, behavioral, or emotional disorder or, in the opinion of a mental health professional, may now have such a diagnosable disorder. The diagnosis shall be made in accordance with the criteria provided in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association (published 2013, with all changes and updates approved by the American Psychiatric Association through September 2023 incorporated herein) and shall not include the manual's "V" codes identifying conditions other than a disease or injury. The diagnosis shall also not include substance-related disorders, dementia, antisocial personality, or developmental disabilities, unless co-occurring with another diagnosable mental illness.

e. The results of a standardized functional assessment support the need for mental health services of the type and frequency identified in the individual's case plan. The standardized functional assessment methodology shall be designated for mental health services by the director of ~~human services~~ in consultation with the state commission. A functional assessment must be completed within 90 days of application for services.

25.15(2) Eligibility for children's behavioral health services. An individual must comply with all of the following requirements to be eligible for children's behavioral health services under the regional service system:

a. and b. No change.

c. The child's family meets the financial eligibility requirements in rule 441—25.16(331) 441—25.16(225C).

d. The child has been diagnosed with a serious emotional disturbance. A serious emotional disturbance diagnosis is not required to access comprehensive facility and community-based crisis services according to Iowa Code section ~~331.397A(4)~~ "b." 225C.66(4) "b."

25.15(3) Eligibility for intellectual disability services. An individual must comply with all of the following requirements to be eligible for intellectual disability services under the regional service system:

a. The individual complies with the financial eligibility requirements in rule 441—25.16(331) 441—25.16(225C).

b. to d. No change.

e. The results of a standardized functional assessment support the need for intellectual disability services of the type and frequency identified in the individual's case plan. The standardized functional assessment methodology shall be designated for intellectual services by the director of ~~human services~~ in consultation with the state commission. A functional assessment must be completed within 90 days of application for services.

25.15(4) No change.

25.15(5) Eligibility for brain injury services. An individual must comply with all of the following requirements to be eligible for brain injury services under the regional service system, if such services were provided to the same class of individuals by a county in the region prior to regional formation.

a. The individual complies with the financial eligibility requirements in rule 441—25.16(331) 441—25.16(225C).

b. to d. No change.

e. The results of a standardized functional assessment support the need for brain injury services of the type and frequency identified in the individual's case plan. The standardized functional assessment methodology used is the methodology approved for brain injury services by the director of ~~human services~~ in consultation with the state commission. A functional assessment must be completed within 90 days of application for services.

25.15(6) No change.

25.15(7) Eligibility for developmental disability services.

a. Until funding is designated for other service populations, eligibility for the core service domains shall be as identified in Iowa Code section ~~331.397(2)~~ "b." 225C.65(2) "b."

HUMAN SERVICES DEPARTMENT[441](cont'd)

- b. No change.
- c. The individual complies with the financial eligibility requirements in rule 441—25.16(331) 441—25.16(225C).
- d. to f. No change.

ITEM 16. Amend rule 441—25.16(331) as follows:

441—25.16(331 225C) Financial eligibility requirements. The regional service system management plan shall identify basic financial eligibility standards for mental health and disability services as defined in Iowa Code sections ~~331.395 and 331.396A~~ 225C.62 and 225C.64.

25.16(1) and 25.16(2) No change.

25.16(3) Cost-share standards. A regional administrative entity must comply with cost-share standards as defined in Iowa Code sections ~~331.395 and 331.396A~~ 225C.62 and 225C.64.

a. Cost sharing is allowed for adults with income above 150 percent of the federal poverty level as defined by the most recently revised poverty guidelines published by the United States Department of Health and Human Services.

Cost-share amounts for regionally funded adult mental health and disability services in this rule are related to core services as defined in Iowa Code section ~~331.397~~ 225C.65 and must be identified in the enrollment and eligibility section of the region’s policy and procedures approved by the department.

b. Cost-share amounts for children’s behavioral health services are applicable to core services as defined in Iowa Code section ~~331.397A~~ 225C.66. The family of a child receiving regional funding for behavioral health services shall be responsible for a cost-share amount based on the family’s household income as follows:

Family Income as a % of FPL	Cost Share % Paid by Family
0 to 150%	0%
151 to 200%	10%
201 to 250%	15%
251 to 300%	20%
301 to 350%	35%
351 to 400%	50%
401 to 450%	65%
451 to 500%	80%
Over 500%	100%

25.16(4) No change.

ITEM 17. Amend rule 441—25.17(331) as follows:

441—25.17(331 225C) Exempted counties. If a county has been exempted pursuant to Iowa Code section ~~331.389~~ 225C.56 from the requirement to enter into a regional service system, the county and the county’s board of supervisors shall fulfill all the requirements of this chapter for a regional service system management plan.

ITEM 18. Amend rule 441—25.18(331) as follows:

441—25.18(331 225C) Annual service and budget plan. The annual service and budget plan shall describe the services to be provided and the cost of those services for the ensuing year.

25.18(1) No change.

25.18(2) The annual service and budget plan shall include but not be limited to the following:

- a. to c. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

d. Intensive mental health services. Identification of the intensive mental health services designated by the region according to rule ~~441—25.6(331)~~ 441—25.6(225C), including the provider name, contact information, and location of each of the following:

(1) to (4) No change.

e. No change.

f. Scope of services. A description of the scope of services to be provided, a projection of need for the service, and the funding necessary to meet the need.

(1) The scope shall include the regional core services as identified in rule ~~441—25.2(331)~~ 441—25.2(225C).

(2) No change.

g. to *i.* No change.

ITEM 19. Amend rule 441—25.19(331) as follows:

441—25.19(~~331~~ 225C) Annual service and budget plan approval. The annual service and budget plan shall be submitted each year by April 1. The director shall review all regional annual service and budget plans submitted by the dates specified. If the director finds the regional annual service and budget plan in compliance with these rules and state and federal laws, the director may approve the plan. A plan approved by the director for a fiscal year beginning July 1 shall remain in effect until June 30, subject to amendment.

25.19(1) to 25.19(5) No change.

ITEM 20. Amend rule 441—25.20(331) as follows:

441—25.20(~~331~~ 225C) Annual report. The annual report shall describe the services provided, the cost of those services, the number of individuals served, and the outcomes achieved for the previous fiscal year. The annual report is due on December 1 following a completed fiscal year of implementing the annual service and budget plan. The annual report shall include but not be limited to:

1. to 9. No change.

ITEM 21. Amend rule 441—25.21(331) as follows:

441—25.21(~~331~~ 225C) Policies and procedures manual for the regional service system. The policies and procedures manual shall describe the policies and process developed to direct the management and administration of the regional service system.

25.21(1) Content. The manual shall include but not be limited to:

a. and *b.* No change.

c. Eligibility. The process utilized to determine eligibility shall be included in the manual and shall include but not be limited to:

(1) No change.

(2) Financial eligibility and copayment criteria, which shall meet the requirements of rule ~~441—25.16(331)~~ 441—25.16(225C).

(3) and (4) No change.

d. to *f.* No change.

g. Targeted case management.

(1) and (2) No change.

(3) Targeted case management and service coordination services. Targeted case management and service coordination services utilized in a regional service system shall include but are not limited to the following as defined in Iowa Code section ~~331.393(4)~~“*g*” 225C.60(4)“*g*”:

1. to 3. No change.

h. to *o.* No change.

p. Service system management. The policies and procedures manual shall identify whether the region will be directly implementing a system of service management or will contract with a private entity to manage the regional service system. If the region contracts with a private entity, the region will

HUMAN SERVICES DEPARTMENT[441](cont'd)

ensure that all requirements of Iowa Code section ~~331.393~~ 225C.60 and these administrative rules are fulfilled.

q. and *r.* No change.

25.21(2) and **25.21(3)** No change.

25.21(4) *Reconsideration.* Regions dissatisfied with the director's decision on a manual or an amendment may file a letter with the director requesting reconsideration. The letter of reconsideration must be received within 30 working days of the date of the notice of decision and shall include a request for the director to review the decision and the reasons for dissatisfaction. Within 30 working days of the receipt of the letter requesting reconsideration, the director will review both the reconsideration request and evidence provided. The director shall issue a final decision in writing.

These rules are intended to implement Iowa Code sections ~~331.388 to 331.398~~ 225C.55 to 225C.67.

ITEM 22. Amend Free-form subrule **25.22(2)** as follows:

25.22(2) *Applicant conditions.* To receive funding, a region must submit to the department sufficient data to demonstrate that the region has met the standards in the region's performance-based contract outlined in rule ~~441—25.23(331)~~ 441—25.23(225C). Additionally, the region must meet the following conditions:

a. The region must be in compliance with the regional service system management plan as defined in Iowa Code section ~~331.393~~ 225C.60.

b. and *c.* No change.

ITEM 23. Amend rule ~~441—25.23(331)~~ as follows:

441—25.23(~~331~~ 225C) *Performance-based contract.* The mental health and disability services region shall enter into a performance-based contract with the department to administer the service system in accordance with Iowa Code section 225C.7A. The performance-based contract shall include but not be limited to the following requirements:

25.23(1) The department will approve, deny, or revise each region's annual service and budget plan in accordance with rule ~~441—25.19(331)~~ 441—25.19(225C).

25.23(2) The region will provide access to all core services under Iowa Code sections ~~331.397~~ 225C.65 and ~~331.397A~~ 225C.66 and in accordance with this chapter.

25.23(3) to 25.23(5) No change.

25.23(6) The department will take steps to address a region's noncompliance with the contract in accordance with Iowa Code section ~~331.389~~ 225C.56.

This rule is intended to implement Iowa Code section 225C.7A.

ITEM 24. Amend rule ~~441—25.41(331)~~ as follows:

441—25.41(~~331~~ 225C) *Minimum data set.* Each region shall maintain data on all clients served.

25.41(1) No change.

25.41(2) *Data required.* The data to be submitted are as follows:

a. to *e.* No change.

f. Regions must submit their data for each fiscal year by December 1 of the following fiscal year.

(1) and (2) No change.

(3) If the region remains noncompliant after the 30-day time period, the department may take action as allowable under the performance-based contracts established pursuant to rule ~~441—25.23(331)~~ 441—25.23(225C).

This rule is intended to implement Iowa Code chapter ~~331, subchapter III, parts 1 and 2~~ 225C, subchapter V.

ITEM 25. Amend rule **441—25.51(229)**, definitions of "County of residence," "County where the individual is located" and "Mental health and disability services region," as follows:

"*County of residence*" means the same as defined in Iowa Code section ~~331.394~~ 225C.61.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*County where the individual is located*” means the individual’s county of residence as defined in Iowa Code section ~~331.394~~ 225C.61, or if the individual has been ordered to receive treatment services under an Iowa Code chapter 229 commitment and is placed in a residential or other treatment facility.

“*Mental health and disability services region*” means the same as defined in Iowa Code section ~~331.389~~ 225C.56.

ITEM 26. Amend subrule 25.56(2) as follows:

25.56(2) As defined in rule ~~441—25.41(331)~~ 441—25.41(225C), the data to be submitted are as follows:

- a. No change.
- b. Demographic information, including the individual’s date of birth, sex, ethnicity, education, and diagnosis made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association (APA) (published 2013, with all changes and updates approved by the American Psychiatric Association through September 2023 incorporated herein).
- c. No change.

ARC 7931C

REAL ESTATE COMMISSION[193E]

Notice of Intended Action

Proposing rulemaking related to brokerage agreements, buyer’s representative agreements, and compensation and providing an opportunity for public comment

The Real Estate Commission hereby proposes to amend Chapter 7, “Offices and Management,” Chapter 11, “Brokerage Agreements and Listings,” and Chapter 12, “Disclosure of Relationships,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 543B.9.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 272C and 543B.

Purpose and Summary

The proposed rulemaking updates practice standards, including brokerage agreements, buyer’s representation agreements, and compensation, that were enacted by 2024 Iowa Acts, Senate File 2291. These amendments will protect the public while also providing direction to licensees relating to national real estate compensation shifts.

The proposed amendments were approved by the Commission on April 4, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Inspections, Appeals, and Licensing (DIAL) for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

REAL ESTATE COMMISSION[193E](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by DIAL no later than 4:30 p.m. on May 21, 2024. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@iowa.gov

Public Hearing

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

May 21, 2024
3 p.m.

Ledges Conference Room
6200 Park Avenue
Des Moines, Iowa
Via video/conference call:
us02web.zoom.us/j/85977907466?pwd=c0l6cER2OFJtS1MyeDhINHUwMkMwdz09

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Amend subrule 7.15(1) as follows:

7.15(1) A ~~customer's agent~~ client's broker seeking compensation from ~~the listing~~ another broker ~~cannot prepare an offer to purchase on the property without first obtaining~~ will obtain authorization and agreement from the ~~listing cooperating broker~~ prior to closing of the real estate transaction.

ITEM 2. Rescind subrule **7.15(2)**.

ITEM 3. Renumber subrules **7.15(3)** to **7.15(5)** as **7.15(2)** to **7.15(4)**.

ITEM 4. Rescind subrules **11.1(5)** and **11.1(6)**.

ITEM 5. Amend paragraph **11.3(1)“a”** as follows:

a. All ~~listing contracts and all brokerage agency contracts~~ agreements contain a statement disclosing the brokerage policy on cooperating with and compensating other brokerages ~~whether the brokerage is acting as subagent~~ or the other parties' agent in the sale, lease, rental, or purchase of real estate, including whether the brokerage intends to share the compensation with other brokerages and any other method for negotiating compensation for another party's broker. Such disclosure serves to inform the client of any policy that would limit the participation of any other brokerage; and

REAL ESTATE COMMISSION[193E](cont'd)

ITEM 6. Amend paragraph **11.3(6)“c”** as follows:

c. A broker may be compensated by more than one party for services in a transaction ~~if the parties have consented in writing to such multiple payments prior to entering into a contract to buy, sell, lease, or exchange.~~

ITEM 7. Adopt the following new paragraph **11.3(6)“k”**:

k. The seller or landlord may authorize a portion of the proceeds of the sale of real property or other negotiated term of an agreement or contract to pay compensation to other brokers who are part of the same real estate transaction as the seller or landlord, including a buyer's or tenant's broker solely representing the buyer or tenant. The payment of compensation may be a direct payment from the seller or landlord to the other brokers who are part of the same real estate transaction as the seller or landlord, including a buyer's or tenant's broker solely representing the buyer or tenant.

ITEM 8. Rescind subrule 11.3(9) and adopt the following new subrule in lieu thereof:

11.3(9) The seller or landlord may, in the brokerage agreement, authorize the seller's or landlord's broker to disburse part of the broker's compensation to other brokers, including a buyer's or tenant's broker solely representing the buyer or tenant.

ITEM 9. Adopt the following new subrule 11.3(10):

11.3(10) Nothing contained in this rule shall obligate any buyer or tenant or seller or landlord to pay compensation to a licensee representing the buyer or tenant or seller or landlord in a real estate transaction unless the buyer or tenant or seller or landlord has entered into a written brokerage agreement with the broker specifying the compensation terms and conditions, in accordance with Iowa real estate license law and commission rules.

ITEM 10. Amend subrule 11.6(2) as follows:

11.6(2) In a ~~listing contract~~ brokerage agreement, the broker is principal party to the contract. The broker may, with proper disclosure, pay a portion of the commission earned to an unlicensed seller, ~~or landlord, buyer, or tenant~~ that is a principal party to the ~~listing contract~~ brokerage agreement. This will be deemed a reduction in the amount of the earned commission.

ITEM 11. Rescind subrules **12.2(5)** and **12.2(6)**.

ITEM 12. Renumber subrules **12.2(7)** to **12.2(19)** as **12.2(5)** to **12.2(17)**.

ITEM 13. Amend renumbered subrule 12.2(12) as follows:

12.2(12) The licensee retains a copy of the disclosure form signed by the prospective buyer, seller, landlord or tenant, or the documentation and copies as obligated in subrule ~~12.2(12)~~ 12.2(10) as follows:

a. and *b.* No change.

ARC 7916C

BANKING DIVISION[187]**Adopted and Filed****Rulemaking related to required fees**

The Iowa Division of Banking (IDOB) hereby amends Chapter 2, “Application Procedures,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 524.213.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 524.213, 524.303, 524.305, 524.312, 524.544, 524.802A, 524.1201, 524.1303, 524.1309, 524.1401, 524.1402, 524.1403, 524.1404, 524.1405, 524.1410, 524.1413, 524.1415, 524.1505, 524.1508 and 524.1509.

Purpose and Summary

This rule codifies the administrative fees the IDOB has adopted for banks when filing certain corporate applications. The fees adopted herein are identical to the fees the IDOB currently charges for the specified applications but that have not previously been adopted by rule.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on February 7, 2024, as **ARC 7576C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Superintendent of Banking on April 2, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the IDOB for a waiver of the discretionary provisions, if any, pursuant to 187—Chapter 12.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

BANKING DIVISION[187](cont'd)

The following rulemaking action is adopted:

ITEM 1. Adopt the following new rule 187—2.19(17A,524):

187—2.19(17A,524) Required fees. The following is a schedule of the fees for corporate applications filed by state banks adopted by the superintendent:

Establish a bank office:	\$2,000
Establish a mobile bank office, courier service, or convenience office:	\$2,000
Relocate principal place of business:	\$1,050
Relocate a bank office:	\$1,000
Conversion to a state bank:	\$5,050 + examination fee
Merger:	
Two banks:	\$3,050
More than two banks (for each additional bank):	\$1,500
Bank holding company into state bank:	\$1,550
Voluntary dissolution:	\$5,550
Purchase and assumption of assets and liabilities:	\$3,000
New (de novo) state bank:	\$15,050
Reverse stock split:	\$2,050
Change in bank control:	\$1,000
Failure resolutions:	
Acquisition by de novo group:	\$5,500
Acquisition by existing bank, bank holding company, or experienced group:	\$3,000
Amendment or restatement of articles of incorporation:	
Review and file documents with secretary of state not in conjunction with a pending application (example: amendments):	\$550
Review and file documents with secretary of state in conjunction with a conversion to or merger with a national bank or thrift:	\$550
State bank merger into out-of-state bank or national bank:	\$505
Certificate of Good Standing or Proof of Official Records:	\$25

This rule is intended to implement Iowa Code sections 524.213, 524.303, 524.305, 524.312, 524.544, 524.802A, 524.1201, 524.1303, 524.1309, 524.1401, 524.1402, 524.1403, 524.1404, 524.1405, 524.1410, 524.1413, 524.1415, 524.1505, 524.1508 and 524.1509.

[Filed 4/2/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7886C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rulemaking related to ambulatory surgical centers

The Department of Inspections, Appeals, and Licensing (Department) hereby adopts new Chapter 49, “Ambulatory Surgical Centers,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 135R.4 as enacted by 2023 Iowa Acts, Senate File 75, and as amended by 2024 Iowa Acts, Senate File 2160.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 135R as enacted by 2023 Iowa Acts, Senate File 75; Iowa Code chapter 135R as amended by 2024 Iowa Acts, Senate File 2160; and Executive Order 10 (January 10, 2023).

Purpose and Summary

This rulemaking promulgates new Chapter 49, “Ambulatory Surgical Centers,” and implements Iowa Code chapter 135R as enacted by 2023 Iowa Acts, Senate File 75, and as amended by 2024 Iowa Acts, Senate File 2160. The rulemaking administers Iowa Code section 135R.4 by establishing a license application and renewal process, including clarifying implementation of Iowa Code chapter 135R in association with the Certificate of Need program set forth in Iowa Code chapter 10A.

The rules also implement an inspection frequency as described in Iowa Code chapter 135R and describe standard procedures as to access to records, referral of pertinent findings or allegations, notifications of final findings, and inspector conflicts of interest. The rules also describe substantive licensing standards consistent with the requirements of Iowa Code chapter 135R, including compliance with specific standards for coverage in the federal Medicare program for ambulatory surgical centers and external quality data reporting in accordance with Iowa Code chapter 135R and rules promulgated by the Department of Health and Human Services. The rules also describe enforcement and penalties for noncompliance with Iowa Code chapter 135R and standards promulgated in accordance therewith, processes for obtaining waivers, and the public and confidential nature of various records collected or created by the Department.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on February 21, 2024, as **ARC 7650C**. Public hearings were held on March 18 and 20, 2024, at 11 a.m. at 6200 Park Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings. No public comments were received.

2024 Iowa Acts, Senate File 2160, was signed into law on April 10, 2024. Revisions to the chapter published under Notice have been made to incorporate changes required by Senate File 2160. Such revisions include minor changes to subrule 49.2(2) regarding the applicability of certificate of need and changes to subrules 49.3(1) and 49.4(1) to incorporate legislative amendments related to accrediting organizations.

Adoption of Rulemaking

This rulemaking was adopted by the Department with the advice and approval of the Council on Health and Human Services on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** 481—Chapter 49:

CHAPTER 49
AMBULATORY SURGICAL CENTERS

481—49.1(135R) Definitions.

“*Ambulatory surgical center*” means the same as defined by Iowa Code section 135R.1.

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

481—49.2(135R,10A) Application and licensing.

49.2(1) Application and licensing. An ambulatory surgical center shall obtain a license from the department in accordance with Iowa Code section 135R.2.

a. An ambulatory surgical center seeking licensure will make application on forms provided by the department or through the department's online application system. Upon receipt of a completed application, including completion of the building and plan review set forth in paragraph 49.2(1)“*b*,” and receipt of the \$50 fee set forth in Iowa Code section 135R.3(3), the application will be considered.

b. An ambulatory surgical center applicant shall submit architectural technical documents, engineering documents, and plans and specifications to the department's building and construction division in accordance with rule 661—300.4(103A) that demonstrate the applicant's compliance with the construction and physical environment requirements of subrule 49.4(2). The submission may be completed by an authorized agent of the applicant or the responsible design professional, who shall certify that the building or building plans meet the construction and physical environment standards within subrule 49.4(2) or that a waiver has been granted by the department for any noncompliant standard. If the applicant was operating prior to and continuously since July 1, 2023, the applicant is permitted up to six months after submission of its license application to submit plans demonstrating compliance with subrule 49.4(1) or obtaining waivers for the construction and physical environment standards in accordance with subrule 49.4(2).

49.2(2) Certificate of need. An ambulatory surgical center will be granted an initial license and is not required to obtain a new certificate of need solely because licensure is mandated by Iowa Code chapter 135R if the ambulatory surgical center was operating prior to and continuously since July 1, 2023. If an ambulatory surgical center beginning or modifying its operations on or after July 1, 2023, would be

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required to obtain a certificate of need from the health facilities council pursuant to Iowa Code chapter 10A, subchapter VII, part 2, it shall obtain a certificate of need from the health facilities council prior to submitting its license application to the department.

49.2(3) *Renewal, changes of ownership, and changes of information.* A license issued pursuant to this chapter expires one year after the date of issuance or as indicated on the license.

a. Renewal. To renew a license, a completed application form shall be submitted to the department 30 days prior to license expiration.

b. Change of ownership. To request a change of ownership, a completed application form shall be submitted to the department for the new owner at least 30 days prior to the proposed effective date of the change of ownership. A change of ownership includes the purchase, transfer, assignment, or lease of the licensed ambulatory surgical center and includes a change in the management company responsible for the day-to-day operation of the ambulatory surgical center if the management company is ultimately responsible for any enforcement action taken by the department. For purposes of determining ownership and whether such changes constitute a change of ownership, the department adopts the Centers for Medicare and Medicaid Services (CMS) State Operations Manual sections 3210.1A and 3210.1D (Rev. 1, 05-21-04).

c. Change of information. The department should be notified of any changes to an applicant's or licensee's application information within 30 days of the date the change occurs, including the cessation of operation.

49.2(4) *Public display.* The license shall be displayed in a conspicuous place in the ambulatory surgical center viewed by the public.

481—49.3(135R,10A) Inspections.

49.3(1) *Frequency.* Inspections may be initiated because of a complaint or other information received by the department or upon referral from other agencies. The department will perform inspections at the same frequency and utilize any priority tier structure for survey and certification activities required for inspections of Medicare-certified ambulatory surgical centers. The department will recognize, in lieu of its own licensure inspection, the comparable inspection and findings of a Medicare survey or an accrediting organization survey from an accrediting organization approved by CMS for federal certification. An ambulatory surgical center utilizing an accrediting organization survey to satisfy the requirements of this subrule shall submit an accreditation certificate to the department within 30 days of completion of each accrediting organization survey.

49.3(2) *Access to records.* An inspector with the department may enter an ambulatory surgical center without a warrant and may examine and copy all records and items pertaining to the inspection unless the record or item is protected by some other legal privilege.

49.3(3) *Evaluation of allegations and referral to other agencies.* If an inspection is initiated, the department will evaluate the allegations to determine whether the allegations should also be referred to other local, state, or federal agencies. If the department believes a criminal or regulatory violation has occurred or is occurring, the department shall notify the appropriate law enforcement or regulatory agencies.

49.3(4) *Final findings.* The department will notify the ambulatory surgical center and any complainant, in writing, of the final findings of an inspection.

49.3(5) *Inspector conflict of interest.* An employee of the department will be excluded from participating in the inspection of an ambulatory surgical facility described by Iowa Code section 135R.5(3).

481—49.4(135R) General licensing standards.

49.4(1) *Federal specific conditions of coverage.* A state-licensed ambulatory surgical center shall comply with the specific conditions for coverage in the federal Medicare program for ambulatory surgical centers under 42 CFR Part 416, Subpart C, as amended to July 1, 2023, and federal interpretive guidelines for such regulations, including Appendix L of the State Operations Manual published by CMS, Rev. 215, as amended to July 21, 2023, or an accreditation standard of The Joint Commission,

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the American Association for Accreditation of Ambulatory Surgical Facilities, the Accreditation Association for Ambulatory Health Care, or an accrediting organization approved by CMS for federal certification if the state-licensed ambulatory surgical center is inspected by an accrediting organization pursuant to subrule 49.3(1).

49.4(2) Construction and physical environment standards. In accordance with subrule 49.4(1), the construction and physical environment standards of 42 CFR 416.44 as amended to July 1, 2023, are adopted. Ambulatory surgical centers built in compliance with construction and environment standards applicable at the time of building approval or building plan approval under subrule 49.2(1) are deemed in compliance with subsequent regulations, with the exception of any structural renovations, additions, functional alterations, or changes in space utilization after the date of approval. Any such structural renovations, additions, functional alterations, or changes in space utilization that will occur after the licensee's initial approval shall be reviewed and approved in accordance with paragraph 49.2(3) "b" prior to such changes being made.

49.4(3) External reporting. An ambulatory surgical center shall report quality data to the Iowa department of health and human services consistent with the data required to be reported to CMS in accordance with rules promulgated by the Iowa department of health and human services.

481—49.5(135R) Enforcement and penalties.

49.5(1) Denial, suspension, or revocation. The license for an ambulatory surgical center may be denied, suspended, or revoked for failure to comply with Iowa Code chapter 135R or this chapter, including any reason for which an ambulatory surgical center could be denied, suspended, or terminated from the federal Medicare program for ambulatory surgical centers under 42 CFR Part 416 as amended to July 1, 2023, and federal interpretive guidelines, including Appendix L of the State Operations Manual published by CMS, Rev. 215, as amended to July 21, 2023.

49.5(2) Effective date and contested case appeals. Unless otherwise stated, a denial, suspension or revocation of license is effective 30 days after certified mailing or personal service of the notice upon the licensee. The licensee may request a contested case hearing by submitting a request, in writing, to the department within 30 days of the mailing or service. Contested case appeals and hearings are governed by 481—Chapter 9, 481—Chapter 10, and 481—Chapter 16.

49.5(3) Enjoining an unlicensed ambulatory surgical center. An injunction or other process against any person to restrain or prevent the establishment, operation, or maintenance of an ambulatory surgical center without a license may be pursued by the department in accordance with Iowa Code section 135R.7.

49.5(4) Operation of unlicensed ambulatory surgical center—serious misdemeanor. A person establishing, operating, or maintaining an ambulatory surgical center without a license commits a serious misdemeanor as set forth in Iowa Code section 135R.9.

481—49.6(135R,10A) Public and confidential information. The department's final findings with respect to compliance by an ambulatory surgical center with requirements for licensing will be made available to the public on the department's website. Other information relating to an ambulatory surgical center obtained by the department that does not constitute the department's final findings from an inspection, including the name and identifying information about a complainant, are confidential in accordance with Iowa Code section 135R.6. This rule does not inhibit the referral of otherwise confidential information to other law enforcement or regulatory agencies pursuant to Iowa Code section 10A.105(5).

49.6(1) Public disclosure. The following records are open and available for inspection:

- a. License application forms and accompanying materials;
- b. Final findings of the department's inspections;
- c. Official notices of any enforcement action.

49.6(2) Confidential information. Confidential information includes the following:

a. Information obtained by the department that does not comprise a final finding resulting from an inspection. Inspection information that does not comprise a final finding may be made public in a

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contested case proceeding concerning the department's final findings, including the denial or revocation of registration.

b. Names and identifying information of all complainants.

49.6(3) Redaction of confidential information. If a record normally open for inspection contains confidential information, the confidential information will be redacted prior to providing the record for inspection.

481—49.7(135R,10A) Waivers. Requests for waiver may be submitted to the department in accordance with 481—Chapter 6. Waivers may be granted by the director of the department when, in the director's discretion, good and sufficient reasons underlying the need for a waiver have been established; no substantial risk to the health, safety, or welfare of patients is presented by approving the waiver; and alternate means are employed or compensating circumstances exist to justify the waiver. Any waiver granted is limited to the specific project under consideration and does not establish a precedent for similar acceptance in other cases.

These rules are intended to implement Iowa Code chapters 135R and 10A.

[Filed 4/12/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7887C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rulemaking related to hospitals

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 51, "Hospitals," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 135B.3A as enacted by 2023 Iowa Acts, Senate File 75, and section 135B.7 as amended by 2023 Iowa Acts, Senate File 75.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 135B.3A and 135B.7; 2023 Iowa Acts, Senate File 75; and Executive Order 10 (January 10, 2023).

Purpose and Summary

This rulemaking repromulgates Chapter 51. This rulemaking implements Iowa Code chapter 135B as amended by 2023 Iowa Acts, Senate File 75, in accordance with the goals and directives of Executive Order 10. Iowa Code chapter 135B requires that the Department, with approval by the Council on Health and Human Services, adopt rules setting forth standards for the different types of hospitals to be licensed under Iowa Code chapter 135B. Iowa Code section 135B.7 specifically requires that the rules state that a hospital or rural emergency hospital shall not deny clinical privileges to practitioners solely by reason of the license held by the practitioner or school or institution in which the practitioner received training; requires that a hospital or rural emergency hospital establish and implement written criteria for the granting of clinical privileges, including delineation of specified factors; and requires that the Department adopt rules requiring hospitals and rural emergency hospitals to establish and implement protocols for responding to the needs of patients who are victims of domestic abuse and elder abuse.

Pursuant to Iowa Code section 135B.3A, the Department is also required to adopt rules to establish minimum standards for the licensure of rural emergency hospitals consistent with the federal

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Consolidated Appropriations Act, Pub. L. No. 116-260, §125, and with regulations issued by the United States Secretary of Health and Human Services for rural emergency hospitals. Iowa Code section 135B.7A also requires the Department to adopt rules that require hospitals and rural emergency hospitals to establish procedures for authentication of all verbal orders by a practitioner within a period not to exceed 30 days following a patient's discharge.

These rules establish basic standards for patient care, including standards related to medical, nursing, and additional staff who provide services in hospitals; hospital response to abuse; hospital delivery of adequate nursing, surgical, anesthesia, emergency, obstetric, neonatal, and pediatric services; implementation of science-based infection control practices; delivery of services for medication administration, pharmacy, pathology and laboratory, and radiological services; organ and tissue procurement; maintenance of patient records; food protection and nutritional services; maintenance and use of patient equipment; and safe standards of construction.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on February 7, 2024, as **ARC 7572C**. This rulemaking was also adopted and filed emergency and published in the Iowa Administrative Bulletin as **ARC 7573C** on the same date. Public hearings were held on February 27 and 28, 2024, at 10:30 a.m. at 6200 Park Avenue, Suite 100, Des Moines, Iowa. No one attended the public hearings.

The Department received one public comment on behalf of the Iowa Society of Anesthesiologists. The commenter requested retention of the following underlined words in subrule 51.19(1): “Written policies and procedures governing anesthesia services shall be developed and implemented in consultation with and with the approval of the hospital’s medical staff and, at a minimum, provide for”. That previously deleted language has been restored.

In addition, a citation was corrected in the definition of “critical access hospital.”

Adoption of Rulemaking

This rulemaking was adopted by the Department with the approval of the Council on Health and Human Services on April 11, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa in an amount requiring a fiscal impact statement pursuant to Iowa Code section 17A.4(4).

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

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This rulemaking will become effective on June 5, 2024, at which time the Adopted and Filed Emergency rulemaking is hereby rescinded.

The following rulemaking action is adopted:

ITEM 1. Rescind 481—Chapter 51 and adopt the following new chapter in lieu thereof:

CHAPTER 51
HOSPITALS

481—51.1(135B) Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

“Critical access hospital” means any hospital located in a rural area and certified by the Iowa department of health and human services as being a necessary provider of health care services to residents of the area. A “critical access hospital” makes available 24-hour emergency care, is a designated provider in a rural health network, and meets the criteria specified pursuant to rule 481—51.27(135B).

“Governing board” means the board of trustees, the owner, or person(s) designated by the owner as the governing authority. The governing board has supreme authority in the hospital and is responsible for the management, control, and appointment of the medical staff.

“Hospital” or *“general hospital”* means an institution, place, building, or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the diagnosis or treatment, over a period exceeding 24 hours, of two or more nonrelated individuals suffering from illness, injury, infirmity or deformity, or other physical or mental condition for which medical, surgical and obstetrical care services are provided.

“Long-term acute care hospital” means any hospital that has an average inpatient length of stay greater than 25 days and that provides extended medical and rehabilitative care for patients who are clinically complex and who may suffer from multiple acute or chronic conditions. Services provided by a long-term acute care hospital include but are not limited to comprehensive rehabilitation, respiratory therapy, head trauma treatment, and pain management.

“Medical staff” means an organized body that is composed of individuals appointed by the hospital governing board, that operates under bylaws approved by the governing board and that is responsible for the quality of medical care provided to patients by the hospital. All members of the medical staff, one of whom shall be a licensed physician, shall be licensed to practice in the state of Iowa.

“Premises” means any or all designated portions of a building or structure, enclosures or places in the building, or real estate when the distinct and clearly identifiable parts provide separate care and services. “Premises” is not to be construed to permit the existence of a separately licensed specialty hospital within the physical structure of a general hospital.

“Rural emergency hospital” means the same as defined by Iowa Code section 135B.1.

“Specialized hospital” means any hospital devoted primarily to the specialized care and treatment of persons with chronic or long-term illness, injury, or infirmity. “Specialized hospital” does not include a specialty hospital.

“Specialty hospital” means the same as defined by 42 CFR Section 411.351 as amended to November 7, 2023.

481—51.2(135B) Classification, compliance and license.

51.2(1) All hospitals subject to licensure under this chapter will be classified as a critical access hospital, general hospital, long-term acute care hospital, rural emergency hospital, or specialized hospital. The license issued by the department will clearly identify the classification of the hospital, and such designation will be set forth on the hospital’s license.

51.2(2) A hospital shall comply with all of the general regulations for hospitals and any rules pertaining to specialized services, if specialized services are provided in the hospital.

51.2(3) A separate license is required for each hospital even though more than one is operated under the same management. A separate license is not required for separate buildings of a hospital

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located on separate parcels of land, which are not adjoining but provide elements of the hospital's full range of services for the diagnosis, care, and treatment of human illness, including convalescence and rehabilitation, and which are organized under a single owner or governing board with a single designated administrator and medical staff.

51.2(4) The license shall be conspicuously posted on the main premises of the hospital.

51.2(5) The department shall recognize, in lieu of its own licensure inspection, the comparable inspections and findings of an accrediting organization approved by the Centers for Medicare and Medicaid Services (CMS) for federal certification if the department is provided with copies of all requested materials relating to the inspection process. In cases of the initial licensure, the department may require its own inspection when needed in addition to comparable accreditations to allow the hospital to begin operations. The department may also initiate its own inspection when it is determined that the inspection findings of the accrediting organization are insufficient to address concerns identified as possible licensure issues.

51.2(6) The department may recognize, in lieu of its own licensure inspection, the comparable inspection and inspection findings of a Medicare conditions of participation survey of a hospital certified by CMS. Hospitals that are not federally certified will be inspected utilizing the requirements of this chapter.

481—51.3(135B) Quality improvement program.

51.3(1) There shall be an ongoing hospitalwide quality improvement program. This program is to be designed to improve, as needed, the quality of patient care by:

- a.* Assessing clinical patient care;
- b.* Assessing nonclinical and patient-related services within the hospital;
- c.* Developing remedial action as needed; and
- d.* Ongoing monitoring and evaluating of the progress of remedial action taken.

51.3(2) The governing body shall ensure there is an effective hospitalwide patient-oriented quality improvement program.

51.3(3) The quality improvement program shall involve active participation of physician members of the hospital's medical staff and other health care professionals, as appropriate. Evidence of this participation will include ongoing case review and assessment of other patient care problems, which have been identified through the quality improvement process.

51.3(4) The quality improvement plan may include external, state, local, federal, and regional benchmarking activities designed to improve the quality of patient care. The quality improvement plan shall be written and may address the following:

- a.* The program's objectives, organization, scope, and mechanisms for overseeing the effectiveness of monitoring, evaluation, and problem-solving activities;
- b.* The participation from all departments, services (including services provided both directly and under contract), and disciplines;
- c.* An assessment of participation through a quality improvement committee meeting on an established periodic basis;
- d.* The coordination of quality improvement activities;
- e.* The communication, reporting and documentation of all quality improvement activities on a regular basis to the governing board, the medical staff, and the hospital administrator;
- f.* An annual evaluation by the governing board of the effectiveness of the quality improvement program; and
- g.* The accessibility and confidentiality of materials relating to, generated by or part of the quality improvement process.

481—51.4(135B) Long-term acute care hospital located within a general hospital.

51.4(1) A long-term acute care hospital shall meet the requirements for a general hospital, including emergency services, except that obstetrical facilities are not required, and, if the long-term acute care

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hospital is located within a separately licensed hospital and does not provide its own emergency services, the long-term acute care hospital shall contract for emergency services with the host general hospital.

51.4(2) If a long-term acute care hospital occupies the same premises of a general hospital, all treatment facilities and administrative offices for each hospital shall be clearly marked and separated from each other and located within the licensed premises of each licensee. Treatment facilities shall be sufficient to meet the medical needs of the patients. Administrative offices include, but are not limited to, record rooms and personnel offices. Nothing prohibits a long-term acute care hospital that is occupying the same premises as a general hospital from utilizing the entrance, hallway, stairs, elevators or escalators of the general hospital to provide access to the long-term acute care hospital's separate entrance, but there should be clearly identifiable and distinguishable signs for each hospital.

51.4(3) A long-term acute care hospital located within a general hospital shall have sufficient staff to meet the patients' needs. No nursing services staff can be simultaneously assigned patient duties in both licensed hospitals.

51.4(4) Each long-term acute care hospital located within a general hospital and the general hospital shall have a separate and distinct governing board in control of the respective hospital. No more than one board member shall serve in a common capacity on the governing board of each licensed hospital. For the purposes of this rule, control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

51.4(5) A long-term acute care hospital located within a general hospital may contract with the host general hospital for the provision of services. All contracts shall clearly delineate the responsibilities of and services provided by the long-term acute care hospital and the general hospital and be executed by the respective governing boards.

481—51.5(135B) Medical staff.

51.5(1) A roster of medical staff members shall be kept.

51.5(2) All hospitals shall have one or more licensed physicians designated for emergency call service at all times.

51.5(3) A hospital shall not deny clinical privileges as set forth in Iowa Code section 135B.7(2).

51.5(4) A hospital shall establish and implement written criteria for the granting of clinical privileges that include but are not limited to consideration of the:

- a. Ability of the applicant to provide patient care services independently or appropriately in the hospital;
- b. License held by the applicant to practice;
- c. Training, experience, and competence of the applicant;
- d. Relationship between the applicant's request for privileges and the hospital's current scope of patient care services;
- e. Applicant's ability to provide comprehensive, appropriate and cost-effective services.

481—51.6(135B) Patient rights and responsibilities. The hospital governing board shall adopt a statement of principles relating to patient rights and responsibilities that is made available to patients of the hospital and addresses, at a minimum:

51.6(1) Access to treatment regardless of age, race, creed, ethnicity, religion, culture, language, physical or mental disability, socioeconomic status, sex, sexual orientation, gender identity or expression, diagnosis, or source of payment for care;

51.6(2) Preservation of individual dignity and protection of personal privacy in receipt of care;

51.6(3) Confidentiality of medical and other appropriate information;

51.6(4) Assurance of reasonable safety within the hospital;

51.6(5) Knowledge of the identity of the physician or other practitioner primarily responsible for the patient's care as well as identity and professional status of others providing services to the patient while in the hospital;

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51.6(6) Nature of patient's right to information regarding the patient's medical condition unless medically contraindicated, to consult with a specialist at the patient's request and expense, and to refuse treatment to the extent authorized by law;

51.6(7) Access to and explanation of patient billings;

51.6(8) Process for patient pursuit of grievances; and

51.6(9) Patient responsibilities, including to provide accurate and complete information regarding the patient's health status; to follow recommended treatment plans; to abide by hospital rules and regulations affecting patient care and conduct and be considerate of the rights of other patients and hospital personnel; and to fulfill the patient's financial obligations as soon as possible following discharge.

481—51.7(135B) Abuse.

51.7(1) Definitions.

"*Abuse*" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment, with resulting physical harm, pain or mental anguish. Neglect is a form of abuse and is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"*Child abuse*" means the same as defined in Iowa Code section 232.68.

"*Dependent adult abuse*" means the same as defined in Iowa Code section 235E.1 and 481—Chapter 52.

"*Domestic abuse*" means the same as defined in Iowa Code section 236.2.

"*Elder abuse*" means the same as defined in Iowa Code section 235F.1.

"*Family or household members*" means the same as defined in Iowa Code section 236.2.

51.7(2) Abuse prohibited. Each patient shall receive kind and considerate care at all times and shall be free from all forms of abuse or harassment.

a. Restraints shall be applied only when they are necessary to prevent injury to the patient or to others and shall be used only when alternative measures are not sufficient to accomplish their purposes.

b. There must be a written order signed by the attending physician approving the use of restraints either at the time they are applied or as soon thereafter as possible.

c. Careful consideration shall be given to the methods by which the restraints can be speedily removed in case of fire or other emergency.

51.7(3) Hospital response to elder abuse.

a. Each hospital shall establish and implement policies and procedures with respect to victims of elder abuse that, at a minimum, provide for:

(1) An interview with the victim in a place that ensures privacy;

(2) Confidentiality of the person's treatment and information; and

(3) Education of appropriate emergency department staff to assist in the identification of victims of elder abuse.

b. The treatment records of victims of elder abuse shall include:

(1) An assessment of the extent of abuse to the victim specifically describing the location and extent of the injury and reported pain;

(2) A record of the treatment and intervention by health care provider personnel;

(3) A record of the need for follow-up care and specification of the follow-up care to be given (e.g., X-rays, surgery, consultation, similar care); and

(4) The victim's statement of how the injury occurred.

51.7(4) Hospital response to domestic abuse. Each hospital shall establish and implement policies and procedures with respect to victims of domestic abuse that, at a minimum, meet the requirements of paragraph 51.7(3) "*a.*" and also provide for sharing information regarding the domestic abuse hotline and programs. The treatment records of victims of domestic abuse shall meet the requirements of paragraph 51.7(3) "*b.*" and also include evidence that the victim was informed of the telephone numbers for the domestic abuse hotline and domestic abuse programs and the victim's response.

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51.7(5) *Mandatory reporting of child abuse and dependent adult abuse.* Each hospital shall establish and implement policies and procedures with respect to the mandatory reporting of abuse pursuant to the Iowa Code. The treatment records of victims of child abuse or dependent adult abuse shall indicate that the department of health and human services' protective services was contacted.

481—51.8(135B) Organ, tissue and eye procurement. Each hospital shall have written policies and protocols for organ, tissue and eye donation consistent with Iowa Code chapter 142C and 42 CFR 482.45 as amended to November 7, 2023, or 42 CFR 485.643 as amended to November 7, 2023.

481—51.9(135B) Nursing services.

51.9(1) The hospital shall have an organized nursing service that provides complete and efficient nursing care to each patient. The authority, responsibility and function of each nurse shall be clearly defined.

51.9(2) Registered nurses shall utilize the nursing process in the practice of nursing, consistent with accepted and prevailing practice. The nursing process is ongoing and includes:

- a. Nursing assessments about the health status of an individual or group.
- b. Formulation of a nursing diagnosis based on analysis of the data from the nursing assessment.
- c. Planning of nursing care, which includes determining goals and priorities for actions that are based on the nursing diagnosis.
- d. Nursing interventions implementing the plan of care.
- e. Evaluation of the individual's or group's status in relation to established goals and the plan of care.

51.9(3) A licensed practical nurse(s) may participate in the nursing process as described in subrule 51.9(2) consistent with accepted practice by assisting the registered nurse or physician.

51.9(4) All nurses employed in a hospital who practice nursing as a registered nurse or licensed practical nurse shall hold an active Iowa license or hold an active license in another state and be recognized for licensure in this state pursuant to the nurse licensure compact in Iowa Code section 152E.1.

51.9(5) There shall be a director of nursing service with administrative and executive competency who holds an active Iowa license or holds an active license in another state and is recognized for licensure in this state pursuant to the nurse licensure compact in Iowa Code section 152E.1.

51.9(6) Nursing management shall have had preparation courses and experience in accordance with hospital policy commensurate with the responsibility of the specific assignment.

51.9(7) All unlicensed personnel performing patient-care service shall be under the supervision of a registered nurse, have duties defined in writing by the hospital, and be instructed in all duties assigned to them.

51.9(8) The nursing service shall have adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care essential for the proper treatment, well-being, and recovery of the patient.

51.9(9) Written policies and procedures shall be established for the administrative and technical guidance of the personnel in the hospital. Each employee shall be familiar with these policies and procedures.

51.9(10) Each hospital shall have a minimum of one registered nurse on duty at all times.

481—51.10(135B) Records and reports.

51.10(1) *Medical records.* Accurate and complete medical records shall be maintained for all patients and signed by the appropriate provider. These records shall be filed and stored in an accessible manner and in accordance with the statute of limitations as specified in Iowa Code chapter 614.

51.10(2) *Hospital records.* A hospital shall maintain the following records:

- a. *Admission records.* A register of all admissions to the hospital.
- b. *Death records.* A record of all deaths in the hospital, including all information on a standard death certificate as specified in Iowa Code chapter 144.

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c. Birth records. A record of all births in the hospital, including all information on a standard birth certificate as specified in Iowa Code chapter 144.

d. Controlled substance records. Controlled substance records in accordance with state and federal laws, rules and regulations.

51.10(3) Electronic records. In addition to the access provided in 481—subrule 50.10(2), an authorized representative of the department shall be provided unrestricted access to electronic records pertaining to the care provided to the patients of the hospital.

a. If access to an electronic record is requested by the authorized representative of the department, the hospital may provide a tutorial on how to use its particular electronic system or may designate an individual who will, when requested, access the system, respond to any questions or assist the authorized representative as needed in accessing electronic information in a timely fashion.

b. The hospital shall provide a terminal where the authorized representative may access records.

c. If the hospital is unable to provide direct print capability to the authorized representative, the hospital shall make available a printout of any record or part of a record on request in a time frame that does not intentionally prevent or interfere with the department's survey or investigation.

481—51.11(135B) Pharmaceutical service.

51.11(1) General requirements. Hospital pharmaceutical services shall be licensed in accordance with Iowa board of pharmacy rules.

51.11(2) Medication administration. All drugs and biologicals must be administered by, or under the supervision of, nursing or other trained personnel in accordance with hospital policies and procedures. The person assigned the responsibility of medication administration must complete the entire procedure by personally preparing the dose from a multiple-dose container or using a prepackaged unit dose, personally administering it to the patient, and observing the act of the medication being taken.

51.11(3) Standing orders. Standing orders for drugs may be used for specified patients when authorized by the prescribing practitioner. These standing orders shall be in accordance with policies and procedures established by the appropriate committee within each hospital. At a minimum, the standing orders shall:

a. Specify the clinical situations under which the drug is to be administered;

b. Specify the types of medical conditions of the patients for whom the standing orders are intended;

c. Be reviewed and revised by the hospital's pharmacy and therapeutics or similar committee on a regular basis as specified by hospital policies and procedures;

d. Be specific as to the drug, dosage, route, and frequency of administration; and

e. Be dated, authorized by signature or other secure electronic method by the prescribing practitioner within a period not to exceed 30 days following a patient's discharge, and included in the patient's medical record.

51.11(4) Self-administration of medications. Patients shall only be permitted to self-administer medications when specifically ordered by the prescribing practitioner and the prescribing practitioner has determined this practice is safe for the specific patient. The hospital shall develop policies and procedures regarding storage and documentation of the administration of drugs.

481—51.12(135B) Verbal orders. All verbal orders must be authenticated by the prescribing or ordering practitioner within a period not to exceed 30 days following a patient's discharge. When verbal or electronic mechanisms are used to transmit orders, the orders must be accepted only by personnel who are authorized to do so by hospital policies and procedures in a manner consistent with federal and state law.

481—51.13(135B) Radiological services.

51.13(1) The hospital must maintain, or have available, radiological services to meet the needs of the patients.

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51.13(2) All radiological services shall be furnished in compliance with any applicable state law or state rules, including 641—Chapters 38 through 42.

481—51.14(135B) Laboratory service.

51.14(1) The hospital must maintain, or have available, adequate laboratory and pathology services and facilities to meet the needs of its patients. The medical staff determine which laboratory tests are necessary to be performed on site to meet the needs of the patients.

51.14(2) Emergency laboratory services must be available 24 hours a day.

51.14(3) Laboratory services must be performed in a laboratory certified and operating in accordance with 42 CFR Part 493 as amended to November 7, 2023.

481—51.15(135B) Food and nutrition service.

51.15(1) *Food and nutrition service definitions.* “Food service” means providing safe, satisfying, and nutritionally adequate food for patients through the provision of appropriate staff, space, equipment, and supplies. “Nutrition service” means providing assessment and education to ensure that the nutritional needs of the patients are met.

51.15(2) *General requirements.*

a. All food will be handled, prepared, served, and stored in accordance with the Food Code adopted under provisions of Iowa Code section 137F.2.

b. The food and dietetic services shall be of a quality and quantity to meet the patient’s needs in accordance with any qualified health practitioner’s orders and meet the standards set forth in 42 CFR 482.28 as amended to November 7, 2023. Patient food preferences should be respected as much as possible, and substitutes offered through use of appropriate food groups.

c. Policies and procedures shall be developed and maintained.

d. Not less than three meals will be served daily unless contraindicated, and not more than 14 hours will elapse between the evening meal and breakfast of the following day. Nourishment between meals will be available to all patients unless contraindicated by the qualified health care practitioner.

e. The hospital will maintain adequate space, equipment, and staple food supplies to provide patient food service in emergencies.

f. Menus for regular and therapeutic diets will be available and standardized recipes with nutritional analysis adjusted to number of portions will be maintained and used in food preparation.

g. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance. Food shall be served attractively at appropriate and safe temperatures and in a form to meet individual needs.

h. Nutrition screening will be conducted by qualified hospital staff to determine the patient’s need for a comprehensive nutrition assessment by the licensed dietitian. Nutritional care will be integrated in the patient care plan, as appropriate, based upon the patient’s diagnosis and length of stay. The licensed dietitian will record in the patient’s medical record any observations and information pertinent to medical nutrition therapy, and any pertinent dietary records will be included in the patient’s transfer discharge record to ensure continuity of nutritional care. Upon discharge, nutrition counseling and education will be provided to the patient and family as ordered by the qualified health care practitioner, requested by the patient or deemed appropriate by the licensed dietitian.

i. In-service training, in accordance with hospital policies, will be provided for all food and nutrition service personnel.

j. On the nursing units, a separate patient food storage area will be maintained that ensures proper temperature control.

51.15(3) *Food and nutrition service staff.*

a. A licensed dietitian will be employed on a full-time, part-time or consulting basis, with any part-time or consultant services provided on the premises at appropriate times on a regularly scheduled basis. These services shall be of sufficient duration and frequency to provide continuing liaison with medical and nursing staff, advice to the administrator, patient counseling, guidance to the supervisor and staff of the food and nutrition service, approval of all menus, and participation in the development or

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revision of departmental policies and procedures and in planning and conducting in-service education programs.

b. If a licensed dietitian is not employed full-time, then one must be employed on a part-time or consultation basis with an additional full-time person who has completed a certified dietary manager course and is employed to be responsible for the operation of the food service.

c. Sufficient food service personnel will be employed, oriented, trained, and their working hours scheduled to provide for the nutritional needs of the patients and to maintain the food service areas.

51.15(4) *Food service equipment and supplies.* Equipment necessary for preparation and maintenance of menus, records, and references will be provided. At least one week's supply of staple foods and a reasonable supply of perishable foods shall be maintained on the premises. Supplies will be appropriate to meet the requirements of the menu.

481—51.16(135B) Equipment for patient care. Hospital equipment shall be selected, maintained and utilized in accordance with the manufacturer's specifications and the needs of the patients.

481—51.17(135B) Infection control. There shall be proper policies and procedures for the prevention and control of communicable diseases, including compliance with the current rules for the control of communicable disease as provided by the Iowa department of health and human services and current Centers for Disease Control and Prevention (CDC) guidelines for isolation precautions.

51.17(1) *Segregation.* There shall be proper arrangement of areas, rooms and patients' beds to provide for the prevention of cross-infections and the control of communicable diseases. There shall also be proper cleansing of rooms and surgeries immediately following the care of a communicable case and utilization of proper isolation techniques for patients and staff to prevent cross-infection.

51.17(2) *Visitors.* The hospital shall establish proper policies and procedures for the control of visitors to all services in the hospital.

51.17(3) *Health assessments.* Health assessments for all contracted or employed personnel who provide direct services shall be required at the commencement of employment and thereafter at least every four years.

a. "Direct services" means services provided through person-to-person contact. "Direct services" excludes services provided by individuals such as building contractors, repair workers, or others who are in the hospital for a very limited purpose, who are not in the hospital on a regular basis, and who do not provide any treatment or services for the patients of the hospital.

b. The health assessment may be performed by the person's primary care provider.

c. The health assessment shall include, at a minimum, vital signs and an assessment for infectious or communicable diseases.

d. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59.

51.17(4) *Notification.* Prior to removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease.

481—51.18(135B) Surgical services. All hospitals providing surgical services shall be properly organized and equipped to provide for the safe and aseptic treatment of surgical patients.

51.18(1) Written policies and procedures governing surgical services shall be developed and implemented in consultation with the hospital's medical staff and, at a minimum, provide for:

a. Surgical services under the direction of a qualified doctor of medicine or osteopathy.

b. Delineation of the privileges and qualifications of individuals authorized to provide surgical services as set forth in the hospital's medical staff bylaws and in accordance with subrule 51.5(4), including a periodic review and update of surgical privileges not to exceed every three years or other term permitted by an accrediting organization approved by CMS for federal certification, whichever is longer. The surgical service must maintain a roster of these individuals specifying the surgical privileges of each.

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- c.* Immediate availability of at least one registered nurse for the operating room suites to respond to emergencies.
- d.* The qualifications and job descriptions of nursing personnel, surgical technicians, and other support personnel and continuing education required.
- e.* Appropriate staffing for surgical services, including physician and anesthesia coverage and other support personnel.
- f.* Availability of ancillary services for surgical patients, including but not limited to blood banking, laboratory, radiology, and anesthesia.
- g.* Infection control and disease prevention, including aseptic surveillance and practice, identification of infected and noninfected cases, sterilization and disinfection procedures, and ongoing monitoring of infections and infection rates.
- h.* Housekeeping requirements.
- i.* Safety practices.
- j.* Ongoing quality assessment, performance improvement, and process improvement.
- k.* The pathological examination of tissue specimens either directly or through contractual arrangements.
- l.* Appropriate preoperative teaching and discharge planning.

51.18(2) Policies and procedures may be adjusted as appropriate to reflect the provision of surgical services in inpatient, outpatient or one-day surgical settings.

51.18(3) There must be an appropriate history and physical workup documented and a properly executed consent form in the chart of each patient prior to surgery, except in the event of an emergency.

51.18(4) A full operative report must be written or dictated within 24 hours following surgery and signed by the individual conducting the surgery.

51.18(5) Equipment available in the operating room, recovery room, outpatient surgical areas, and for postsurgical care must be consistent with the needs of the patient.

481—51.19(135B) Anesthesia services.

51.19(1) There shall be written policies and procedures governing anesthesia services that are consistent with the needs and resources of the hospital. Written policies and procedures governing anesthesia services shall be developed and implemented in consultation with and with the approval of the hospital's medical staff and, at a minimum, provide for:

- a.* Anesthesia services under the direction of a qualified doctor of medicine or osteopathy.
- b.* The qualifications of individuals authorized to administer anesthesia as set out in the hospital's medical staff bylaws or medical staff rules and regulations.
- c.* Preanesthesia evaluation, appraisal of a patient's current condition, preparation of an intraoperative anesthesia record, and discharge criteria for patients.
- d.* Equipment functioning and safety, including ensuring that a qualified medical doctor, osteopathic physician and surgeon or anesthetist checks, prior to the administration of anesthesia, the readiness, availability, cleanliness, and working condition of all equipment to be used in the administration of anesthetic agents and minimizing electrical hazard in anesthesia areas.
- e.* Quality assurance, including infection control procedures; integration of anesthesia services into various areas of the hospital; and ongoing monitoring, review, and evaluation of anesthesia services, processes, and procedures.

51.19(2) Policies and procedures may be adjusted as appropriate to reflect provision of anesthesia services in inpatient or outpatient settings.

481—51.20(135B) Emergency services.

51.20(1) All hospitals shall provide for emergency services that offers reasonable care within the medical capabilities of the facility in determining whether an emergency exists, renders care appropriate to the facility and, at a minimum, renders lifesaving first aid and makes appropriate referral to a facility that is capable of providing needed services.

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51.20(2) The hospital shall have written policies and procedures specifying the scope and conduct of patient care to be provided in the emergency service. The policies shall:

- a. Provide for training of all personnel providing patient care in the emergency service.
- b. Require that a medical record be kept on every patient given treatment in the emergency service and establish the medical record documentation. The documentation should include, at a minimum, appropriate information regarding the medical screening provided, except where the person refuses, then notation of patient refusal; physician documentation of the presence or absence of an emergency medical condition or active labor; physician documentation of transfer or discharge, stating the basis for transfer or discharge; and, where transfer occurs, identity of the facility of transfer, acceptance of the patient by the facility of transfer, and means of transfer of the patient.

481—51.21(135B) Obstetric and neonatal services. All hospitals providing obstetrical care shall be properly organized and equipped to provide accommodations for mothers and newborn infants. The supervision of the maternity area shall be under the direction of a qualified registered nurse.

481—51.22(135B) Pediatric services. All hospitals providing pediatric care shall be properly organized and equipped to provide appropriate accommodations for children. The supervision of the pediatric area shall be under the direction of a qualified registered nurse.

481—51.23(135B) Psychiatric services.

51.23(1) General requirements. Any hospital operating as a psychiatric hospital or operating a psychiatric unit shall:

- a. Be a hospital or unit primarily engaged in providing, by or under the supervision of a doctor of medicine or osteopathy, psychiatric services for the diagnosis and treatment of persons with psychiatric illnesses/disorders;
- b. Comply with the requirements of this chapter applicable to hospitals. If medical and surgical diagnostic and treatment services are not available within the hospital, the hospital shall have an agreement with an outside source of these services to ensure they are immediately available;
- c. Have policies and procedures for informing patients of their rights and responsibilities and for ensuring the availability of a patient advocate; and
- d. Have sufficient numbers of qualified professionals and support staff to evaluate patients, formulate written individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning.

51.23(2) Personnel.

a. *Director of inpatient psychiatric services.* The director of inpatient psychiatric services shall be a doctor of medicine or osteopathy qualified to meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry.

- b. *Director of psychiatric nursing services.* The director of psychiatric nursing services shall:
- (1) Be a registered nurse who has a master's degree in psychiatric or mental health nursing;
 - (2) Be an advanced registered nurse practitioner certified in psychiatric or mental health nursing;
- or
- (3) Be qualified by education and two years' experience in the care of persons with mental disorders.

c. *Psychological services.* Psychological services shall be provided or available that are in compliance with Iowa Code chapter 154B.

d. *Social services.* Social services shall provide, or have available by contract, at least one staff member who has:

- (1) A master's degree from an accredited school of social work; or
- (2) A bachelor's degree in social work with two years' experience in the care of persons with mental disorders.

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e. Therapeutic services. Therapeutic activities shall be provided by qualified therapists. The activities shall be appropriate to the needs and interests of the patients.

51.23(3) Individual written plan of care. An individual written plan of care shall be developed by an interdisciplinary team of a physician and other personnel who are employed by, or who provide service under contract to patients in, the facility. The plan of care shall:

a. Be based on a diagnostic and psychiatric evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the patient. The initial diagnostic and psychiatric evaluation shall be completed within 60 hours of admission;

b. Be developed by an interdisciplinary team in consultation with the patient, the patient's legal guardian, and others who are currently providing services or who will provide care upon discharge;

c. State treatment objectives through measurable and obtainable outcomes;

d. Prescribe an integrated program of therapies, activities, and experiences designed to meet those objectives;

e. Include an appropriate postdischarge plan with coordination of services to provide continuity of care following discharge; and

f. Be reviewed as needed by the interdisciplinary team for the continued appropriateness of the plan and for a determination of needed changes.

481—51.24(135B) Long-term care service.

51.24(1) Long-term care service definition. Long-term care service means any building or distinct part of a building utilized by the hospital for the provision of a service that would fall within the definition of a health care facility in Iowa Code chapter 135C if it was not operating as part of a hospital licensed under Iowa Code chapter 135B.

51.24(2) Long-term care service general requirements. The general requirements for the hospital's long-term care service are the same as required by Iowa Code chapter 135C or rules promulgated thereunder for the category of health care facility involved. Exceptions to those rules requiring distinct parts to be established may be waived where it is found to be in the best interest of the long-term care resident and of no detriment to the patients in the hospital. Requests for waivers to other applicable rules may be made in accordance with the appropriate health care facility rules.

51.24(3) Long-term care service staff. Where a hospital operates a freestanding nursing care facility, it shall be under the administrative authority of a licensed nursing home administrator who will be responsible to the hospital's administrator. Where a hospital operates a distinct part long-term care unit under the hospital license, a licensed nursing home administrator is not required. Other staffing requirements for the hospital's long-term care service are the same as required by Iowa Code chapter 135C or rules promulgated thereunder.

481—51.25(135B) Criminal, dependent adult abuse, and child abuse record checks. The requirements for criminal, dependent adult abuse, and child abuse records checks applicable to health care facilities set forth in rule 481—50.9(135C) are applicable to hospitals.

481—51.26(135B) Minimum standards for construction.

51.26(1) Minimum standards. The following construction standards are applicable to hospitals and off-site premises licensed under this chapter:

a. Construction shall be in accordance with the standards set forth in the Guidelines for Design and Construction of Hospitals, 2018 edition, published by the Facility Guidelines Institute.

b. Existing hospitals and off-site premises built in compliance with prior editions of the hospital construction guidelines will be deemed in compliance with subsequent regulations, with the exception of any new structural renovations, additions, functional alterations, or changes in utilization to existing facilities, which shall meet the standards specified in this subrule.

c. The design and construction of a hospital or off-site premises shall be in conformance with 661—Chapter 205.

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d. In jurisdictions without a local building code enforcement program, the construction shall be in conformance with the state building code, as authorized by Iowa Code section 103A.7, in effect at the time of plan submittal for review and approval. In jurisdictions with a local building code enforcement program, local building code enforcement must include both the adoption and enforcement of a local building code through plan reviews and inspections.

e. If an applicable requirement of 661—Chapter 205 is inconsistent with an applicable requirement of the state building code, the hospital or off-site premises is deemed to be in compliance with the state building code requirement if the requirement of 661—Chapter 205 is met.

51.26(2) *Submission of construction documents.* Submissions shall comply with rule 661—300.4(103A). The responsible design professional shall certify that the building plans meet the requirements specified in subrule 51.26(1), unless a waiver has been granted pursuant to subrule 51.26(3).

51.26(3) *Waivers.* Requests for waiver may be submitted to the department in accordance with 481—Chapter 6. Any waiver granted is limited to the specific project under consideration and does not establish a precedent for similar acceptance in other cases. The request must demonstrate how patient safety and the quality of care offered will not be compromised by the waiver. In determining whether a waiver request will be granted, the director will consider the following:

- a.* Whether the design and planning for the specific property offers improved or compensating features to provide equivalent desirability and utility;
- b.* Whether alternate or special construction methods, techniques, and mechanical equipment offer equivalent durability, utility, health, and safety;
- c.* Whether the health, safety or welfare of any patient is endangered;
- d.* Occupancy and function of the building; and
- e.* The type of licensing.

481—51.27(135B) Critical access hospitals. Critical access hospitals shall meet the federal conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F, as amended to November 7, 2023, and any federal interpretive guidelines. The requirements of this chapter applicable to hospitals are generally applicable to critical access hospitals unless compliance would be inconsistent with 42 CFR Part 485, Subpart F, as amended to November 7, 2023, and any interpretive guidelines. If swing-bed approval has been granted, all 25 beds may be used interchangeably for acute or skilled nursing facility level of care services.

481—51.28(135B) Rural emergency hospitals. Rural emergency hospitals shall meet the federal conditions of participation for rural emergency hospitals, as set forth in 42 CFR Part 485, Subpart E, as amended to January 1, 2023, and any federal interpretive guidelines. The requirements of this chapter applicable to hospitals are generally applicable to rural emergency hospitals unless compliance would be inconsistent with 42 CFR Part 485, Subpart E, as amended to January 1, 2023, and any federal interpretive guidelines.

481—51.29(135B) Specialized hospitals. A specialized hospital shall meet the requirements for a general hospital. The diagnosis, treatment or care at a specialized hospital shall be administered by or performed under the direction of persons especially qualified in the diagnosis and treatment of the particular illness, injury, or infirmity.

These rules are intended to implement Iowa Code sections 135B.3A, 135B.7 and 135B.7A.

[Filed 4/12/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7888C**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed****Rulemaking related to operation**

The Natural Resource Commission (Commission) hereby rescinds Chapter 1, “Operation of Natural Resource Commission,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 17A.3 and 455A.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 455A.

Purpose and Summary

Chapter 1 governs the conduct, structure, and business operations of the Commission. Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, the new chapter reduces and consolidates the rules. This is accomplished by rescinding outdated provisions and by removing those redundant to statute, including particular provisions around conflict of interest found in Iowa Code chapter 68B and associated rules. The chapter has also been streamlined as much as possible, stating the conduct, structure, and business operations of the Commission more succinctly and clearly than before.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7249C**. Public hearings were held on January 17, 2024, at 2 p.m. and January 24, 2024, at 10 a.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings.

One written comment was received. It suggested that the rulemaking be changed to allow the sale or lease of farm products at a farmer’s market and to reflect the 2021 legislation that added “real estate” to the conflict of interest provisions found in Iowa Code chapter 68B. The Commission supports these edits.

Consistent with this comment, the following changes from the Notice have been made:

1. The term “real estate” was added to the title of rule 571—1.8(17A,455A) and subrules 1.8(1) and 1.8(2);
2. The phrase “or to the general public at a farmer’s market, retail store, or road-side stand” was added to paragraph 1.8(2)“b” regarding the sale or lease of farm products;
3. Paragraph 1.8(2)“h” was added to address the sale or lease of real estate at a live auction; and
4. Paragraph 1.8(2)“i” was added to address the leasing of real estate.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

NATURAL RESOURCE COMMISSION[571](cont'd)

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 1 and adopt the following **new** chapter in lieu thereof:

TITLE I
GENERAL

CHAPTER 1

OPERATION OF NATURAL RESOURCE COMMISSION

571—1.1(17A,455A) Scope. This chapter governs the conduct of business by the natural resource commission. Rulemaking proceedings and contested case proceedings are governed by other departmental rules.

571—1.2(17A,455A) Meeting location and notification.

1.2(1) Time of meetings. The commission generally meets monthly, but is required to meet at least quarterly. The director, chairperson, or a majority of the commission may establish meetings.

1.2(2) Notification of meetings. The director will provide public notice of all meeting dates, locations, and agendas. Notice of meetings is given by posting the agenda. The agenda lists the time, date, location, and topics to be discussed at the meeting. The agenda may include a specific time for the public to address the commission on any issue related to the duties and responsibilities of the commission, except as otherwise provided in these rules.

a. The agenda for each meeting will be posted at the department's main office and on the department's website. The agenda will be provided to anyone who files a request with the department. The final agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. Any additions to the agenda after posting and distribution will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The commission may adopt additions to the agenda at the meeting only if good cause exists requiring expeditious discussion or action. The reasons and circumstances necessitating agenda additions, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

b. Written materials provided to the commission with the agenda may be examined by the public. Copies of the materials may be distributed at the discretion of the director. The director may require a fee to cover the reasonable cost to the department to provide the copies, in accordance with rules of the department.

571—1.3(17A,455A) Attendance and participation by the public.

1.3(1) Attendance. All meetings are open to the public. The commission may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

NATURAL RESOURCE COMMISSION[571](cont'd)

1.3(2) Participation.

a. Items on agenda. Presentations to the commission may be made at the discretion of the chairperson.

b. Items not on agenda. The commission will not act on a matter not on the agenda, except in accordance with paragraph 1.2(2)“b.” Persons who wish to address the commission on a matter not on the agenda should file a request with the director to place that matter on the agenda of the subsequent meeting.

c. Meeting decorum. The chairperson may limit participation as necessary for the orderly conduct of agency business. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices discontinued if they cause interference and may exclude those persons who fail to comply with that order.

571—1.4(17A,455A) Quorum and voting requirements.

1.4(1) Quorum. Two-thirds of the members of the commission constitutes a quorum.

1.4(2) Voting. The concurrence of a majority of the commission members is required to determine any matter before the commission for action, except for a vote to go into closed session, which requires the concurrence of two-thirds of the members of the commission.

571—1.5(17A,455A) Conduct of meeting.

1.5(1) General. Meetings will be conducted in accordance with Robert’s Rules of Order unless otherwise provided in these rules. Voting will be by voice or by roll call. Voting will be by voice unless a voice vote is inconclusive, a member of the commission requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairperson will announce the result of the vote.

1.5(2) Voice votes. All commission members present should respond when a voice vote is taken.

a. All members present will be recorded as voting aye on any motion when there are no nay votes or abstentions heard.

b. Any member who abstains will state at the time of the vote the reason for abstaining. The abstention and the reason for it will be recorded in the minutes.

1.5(3) Provision of information. The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

571—1.6(17A,455A) Minutes, transcripts, and recordings of meetings.

1.6(1) Audio recordings. The director may record each meeting and shall record each closed session.

1.6(2) Minutes. The director will keep minutes of each meeting. Minutes will be reviewed and approved by the commission.

571—1.7(17A,455A) Officers and duties.

1.7(1) Officers. The officers of the commission are the chairperson, the vice chairperson, and the secretary.

1.7(2) Duties. The chairperson will preside at meetings and will exercise the powers conferred upon the chairperson. The vice chairperson will perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson. The secretary will make recommendations to the commission on approval or revision of the minutes and act as parliamentarian.

1.7(3) Elections. Officers will be elected annually during May.

1.7(4) Succession.

a. If the chairperson does not serve out the elected term, the vice chairperson will succeed the chairperson for the remainder of the term. A special election will be held to elect a new vice chairperson to serve the remainder of the term.

b. If the vice chairperson does not serve out the elected term, a special election will be held to elect a new vice chairperson to serve the remainder of the term.

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c. If the secretary does not serve out the elected term, a special election will be held to elect a new secretary to serve the remainder of the term.

571—1.8(17A,455A) Sales and leases of goods, real estate, and services.

1.8(1) Sales and leases. The general provisions for the sales and leases of goods, real estate, and services by commission members is governed by rule 351—6.11(68B).

1.8(2) Consent by rule. The commission concludes that sales or leases of goods, real estate, or services described in this paragraph do not, as a class, constitute the sale or lease of a good, real estate, or service that affects an official's functions. Application and department approval are not required for these sales or leases unless there are unique facts surrounding a particular sale or lease that would cause that sale or lease to affect the official's duties or functions, would give the buyer an advantage in its dealings with the department, or would otherwise present a conflict of interest.

Sales or leases for which consent is granted by rule are:

a. Nonrecurring sale or lease of goods and services if the official is not engaged for profit in the business of selling or leasing those goods or services.

b. Sale or lease of farm products at market prices to a buyer ordinarily engaged in the business of purchasing farm products or to the general public at a farmer's market, retail store, or road-side stand.

c. Sale or lease of goods to general public at an established retail or consignment shop.

d. Sale or lease of legal, mechanical, or other services at market or customary prices. However, if an official's client or customer has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

e. Sale or lease of goods at wholesale prices to a buyer ordinarily engaged in the business of purchasing wholesale goods for retail sale.

f. Sale or lease of creative works of art, including but not limited to sculpture and literary products, at market, auction, or negotiated prices. However, if an official's customer has a matter for decision before the commission directly or indirectly involving that good, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

g. Sale or lease of goods to general public at market or franchiser-established prices. However, if an official's customer has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

h. Sale or lease of real estate at a live auction or through an open or closed bidding process. However, if the buyer, seller, lessee, or lessor has a matter for decision before the commission within the next 12 months, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

i. Leasing of real estate; however, if the lessee or lessor has a matter for decision before the commission, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

These rules are intended to implement Iowa Code sections 17A.3(1)“a” and 455A.5.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7889C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to forfeited property

The Natural Resource Commission (Commission) hereby rescinds Chapter 10, “Forfeited Property,” Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455A.5(6)“a.”

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission rescinds Chapter 10. This chapter is unnecessary. It is duplicative of state law (Iowa Code sections 481A.13A, 483A.32, and 482A.33 and chapter 809) that sufficiently details the process for disposing of seized or forfeited property used in fish and game crimes.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7250C**. A public hearing was held on January 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **571—Chapter 10**.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7890C**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed****Rulemaking related to conservation education**

The Natural Resource Commission (Commission) hereby rescinds Chapter 12, “Conservation Education,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 321G.2, 321G.23, 321I.2, 321I.25, 462A.12A, 481A.17 and 483A.27.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 321G.2, 321G.23, 321I.2, 321I.25, 462A.12A, 481A.17 and 483A.27.

Purpose and Summary

Chapter 12 sets forth the curriculum and course standards for the Department of Natural Resources’ (Department’s) recreation education courses and shooting sports programs. It also establishes eligibility and responsibilities for coaches, instructors, and mentors to teach, advise, and train others in these recreational programs. The recreation education courses cover all-terrain vehicle riding, boating, hunter education, bow hunter education, fur harvester education, snowmobiling, and snow groomer operator education.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17.7(2), this chapter was edited for length, redundancy, and clarity. Additionally, all provisions related to the Resource Enhancement and Protection (REAP) conservation education program have been removed. Those rules are being adopted with other REAP rules in new 571—Chapter 33, which was adopted concurrently with this rulemaking.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7234C**. Public hearings were held on January 16 and 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
CONSERVATION EDUCATION

DIVISION I
MENTOR AND VOLUNTEER INSTRUCTOR CERTIFICATION AND DECERTIFICATION PROCEDURES

571—12.1 to 12.19 Reserved.

571—12.20(321G,321I,462A,483A) Purpose. Pursuant to Iowa Code sections 321G.23, 321G.24, 321I.25, 321I.26, 462A.12(6), 462A.12A, and 483A.27(8), these rules set forth curriculum and course standards for the department's recreation education courses and provisions for certification of volunteer instructors and approved mentors to teach, advise, and train others.

571—12.21(321G,321I,462A,483A) Definitions. For the purpose of this division:

"Certified instructor" means a person who meets all criteria in rule 571—12.23(321G,321I,462A,483A) and the specifics contained in each education program's Instructor Policies and Procedures Manual and who wishes to voluntarily teach an education course.

"Education course" means the department's bow hunter, fur harvester, mentor, snowmobile, all-terrain vehicle (ATV), boating, snow groomer operator, and hunter education programs.

"Mentor" means a person skilled and knowledgeable in a particular activity or subject area and who has been approved by the department or a recognized partner organization to teach, advise, and train others in that activity or subject area.

"Online event and instructor management system" means a web-based application that tracks student data, allows students to register for courses, allows certified instructors to list their course offerings and to track volunteer hours and program details, and displays downloadable files.

"Outdoor skills specialist" means a person who manages and trains volunteers and mentors to participate in the recreation education programs of the department.

"Program coordinator" means a person assigned to coordinate instructor certification and development activities, develop curriculum standards for the programs, conduct outreach for the programs, train volunteer instructors and mentors and evaluate their skills, and serve as the primary contact for information about the programs.

571—12.22(321G,321I,462A,483A) Mentor and certified instructor application process.

12.22(1) Application procedures.

a. The instructor or mentor applicant must request an application by contacting a program coordinator or outdoor skills specialist.

b. The instructor or mentor applicant must provide all information requested on the application or the department may reject the application.

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c. The application will remain on file until the instructor or mentor applicant meets all the requirements in rule 571—12.23(321G,321I,462A,483A).

d. Once the instructor applicant successfully completes all required training and meets all required qualifications, the program coordinator or outdoor skills specialist shall document that all certification requirements have been met and shall issue a certified instructor identification card to the applicant.

e. Once the mentor applicant meets all required qualifications, the program coordinator or outdoor skills specialist will notify the successful applicant and provide the applicant with guidance on the process to begin mentoring.

12.22(2) *Acceptance of mentor or certified instructor applications.* If the number of existing certified instructors or mentors in one or more of the education courses meets demand, the department may choose not to accept new applications.

571—12.23(321G,321I,462A,483A) Requirements for instructor certification and mentoring.

12.23(1) *Minimum requirements.* The conditions listed in this rule must be satisfied before an instructor applicant may become a certified instructor or an approved mentor. Failure to meet these requirements shall result in the denial of the application. The applicant will be notified of the denial by the program coordinator or outdoor skills specialist. The applicant must:

- a. Submit an application as provided by the department.
- b. Be at least 18 years of age.

12.23(2) *Additional certified instructor requirements.* Instructor applicants must also complete the following:

a. A training and certification course for the ATV, boating, hunter, bow hunter, fur harvester, snowmobile, and snow groomer operator education programs. Instructor training courses shall review policies and procedures of the department, required recordkeeping and paperwork, education course material, teaching techniques, and criteria for evaluating the performance of student skills.

b. The specific education course the instructor will be teaching.

c. An apprenticeship for the specific education program that the instructor will be teaching. The apprenticeship shall consist of either teaching a simulated class to other instructor applicants or assisting a certified instructor to prepare and present an education course to students. The hunter education program apprenticeship must be completed within one year of attending the certified instructor training course.

12.23(3) *Background check.* The instructor or mentor applicant must authorize a background check that includes, but may not be limited to, a criminal history check. A record of a felony conviction will disqualify the applicant. A record of a misdemeanor within the last three years may disqualify the instructor applicant, except for simple misdemeanors under Iowa Code chapter 321 or its counterparts in other states.

12.23(4) *Fish and wildlife violation check.* The applicant may be disqualified if the instructor applicant has accumulated any habitual offender points pursuant to rule 571—15.16(483A) within the last five years or had a license suspended by a court of law or the department.

571—12.24(321G,321I,462A,483A) Mentor and certified instructor responsibilities and requirements.

12.24(1) A mentor or certified instructor has the following responsibilities:

a. To follow all administrative rules and applicable policies and procedures as set forth by the department for the specified education program.

b. To assist in the recruitment of additional instructors and mentors.

c. To recruit and train students or mentees.

d. To actively promote and publicize the education courses and mentorship opportunities. A course must be posted at least 30 days prior to the start date.

e. To maintain order and discipline in the learning environment at all times.

f. To accurately and completely fill out forms and reports within the online event and instructor management system, or on paper forms if applicable.

g. To teach the education course or perform the mentorship role as prescribed by the department.

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12.24(2) A certified instructor must teach a minimum of one course every two years. If this requirement is not met, the instructor's certification may be revoked after notification by certified mail. If an instructor's certification is revoked due to inactivity, the instructor may reapply pursuant to rule 571—12.22(321G,321I,462A,483A). Based upon the period of inactivity, some of the requirements in rule 571—12.23(321G,321I,462A,483A) may be waived by the program coordinator or outdoor skills specialist.

12.24(3) A certified hunter, bow hunter, or fur harvester education instructor must attend one continuing education instructor workshop every two years. A certified ATV, boating, snowmobile, or snow groomer operator education instructor must attend one continuing education workshop every three years.

12.24(4) A certified instructor or mentor shall represent the department in a professional and positive manner that supports the department's goals and mission. The certified instructor or mentor shall avoid even the appearance of impropriety while instructing or mentoring students.

12.24(5) A certified instructor must teach the education course with another adult present unless prior approval is obtained from the department. It is the department's preference that the certified instructor is assisted by another certified instructor. A noncertified assistant over 18 years of age may assist and must meet the same standards and expectations for character and behavior as the department has for its instructors and mentors. The certified instructor is responsible for the conduct of the noncertified assistant. The certified instructor is subject to suspension or revocation of certification based upon the actions of the noncertified assistant. A parent or legal guardian of a student in the class who is present as a direct result of the student's participation is not eligible to assist with the class.

This subrule does not apply to a conservation officer or any other department representative who is teaching an education course alone.

12.24(6) A certified instructor shall not use private residences for classes and shall limit instruction to public buildings or facilities unless a private, nonresidence venue is approved beforehand by the program coordinator or outdoor skills specialist.

12.24(7) All recreation education courses shall be made available to the public except for special circumstances that are preapproved by the department, such as courses being held in conjunction with schools, camps, and other special events.

571—12.25(321G,321I,462A,483A) Grounds for revocation or suspension of instructor certification or a mentor's approved status. The department may, at any time, seek to revoke or suspend the mentor status or instructor certification of any person who:

1. Fails to meet the instructor or mentor responsibilities and requirements as outlined in rule 571—12.24(321G,321I,462A,483A).

2. Fails to follow the policies and procedures of the department.

3. Falsifies any information that may be required by the department. Falsifying information is understood to mean purposefully supplying information that is inaccurate or misleading or the intentional omission of information.

4. Handles any equipment in an unsafe manner, or allows any student or other instructor to handle equipment in a reckless or unsafe manner.

5. Is convicted of or forfeits a bond for any fish and game, snowmobile, ATV, or navigation violation of this state or any other state. Anyone who has a privilege to operate a motor vehicle suspended, barred, or revoked shall not be eligible to be an instructor for the snowmobile, ATV, or snow groomer operator education programs.

6. Uses profanity or inappropriate language, such as any type of lewd, sexist, or racial references or generalities; engages in any kind of discriminatory conduct due to race, color, national origin, religion, sex, age, disability, or sexual orientation; or otherwise acts in an unprofessional manner.

7. Engages in the physical punishment of a student, including the use of unreasonable or unnecessary physical force or physical contact made with the intent to cause pain, or any type of indecent contact with a child as defined by the Iowa Code.

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8. Participates in a course while under the influence of alcohol or any illegal drug or while ingesting prescription medication in a manner contrary to the dosing directions given by the prescribing physician. The physician shall be a licensed physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner.

9. Has substantiated complaints filed against the instructor by the public, department personnel, or another certified instructor.

10. Is under investigation for committing, is in the process of a judicial proceeding based on the allegation of committing, or is convicted of committing a felony or a misdemeanor as defined in the statutes of this state or another state, except for simple misdemeanors under Iowa Code chapter 321 or its counterparts in other states. Every certified instructor or mentor is subject to a criminal history check and conservation violation check at any time during the instructor's or mentor's tenure as an instructor or mentor.

11. Receives compensation directly or indirectly from students for time spent preparing for or participating in an education course or mentorship.

12. Teaches an education course without another adult present without prior department approval.

571—12.26(321G,321I,462A,483A) Temporary suspensions and immediate revocations of instructor certifications or approved mentor status.

12.26(1) Any complaint made against a certified instructor or a mentor will be taken seriously and will be investigated by a program coordinator or a conservation officer. If convincing evidence exists that a certified instructor or mentor engaged in any of the activities listed in rule 571—12.25(321G,321I,462A,483A), the instructor's certification or mentor's approved status will be temporarily suspended. A letter detailing the reason(s) for the suspension will be sent via certified mail to the last-known address of the instructor or mentor. The letter will detail the length of the suspension and any corrective action to be taken before the instructor or mentor can be reinstated.

12.26(2) At the conclusion of the department's investigation, any certified instructor or mentor who is found to have engaged in the activities listed in rule 571—12.25(321G,321I,462A,483A), numbered paragraph "3," "5," "7," "8," "10," or "11," shall immediately have the instructor's certification or mentor status revoked.

12.26(3) At the conclusion of the department's investigation, if a certified instructor is found to have engaged in the activities listed in rule 571—12.25(321G,321I,462A,483A), numbered paragraph "1," "2," "4," "6," "9," or "12," the suspension shall be exercised at the department's discretion based upon the nature and seriousness of the misconduct.

12.26(4) For the hunter education program, bow hunter education program, and fur harvester education program, the results of the department's investigation shall be supplied to the Iowa hunter education instructor association (IHEIA), which shall review the results and supply a disciplinary recommendation to the department. The department shall consider IHEIA's recommendation when exercising its discretion to suspend or revoke the instructor's certification, based upon the nature and seriousness of the misconduct.

571—12.27(321G,321I,462A,483A) Termination of certification or mentor status. Any certified instructor or mentor has the right, at any time, to voluntarily stop teaching or mentoring. If a certified instructor voluntarily terminates the certification or the instructor's certification is terminated by the department, the instructor must return to the department the certification card and all materials that were provided to the individual.

571—12.28(321G,321I,462A,483A) Compensation for instructors and mentors. Instructors and mentors shall not receive any compensation for their time either directly or indirectly from students or mentees while preparing for or participating in a course or mentorship. However, instructors or mentors may require students and mentees to pay for actual, course-related or mentorship expenses involving facilities, meals, or materials other than those provided by the department. All certified instructors and

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mentors shall keep all records, bills, receipts, etc., relating to student payments for at least five years after the course and shall submit such documents to the department upon request.

571—12.29 and 12.30 Reserved.

These rules are intended to implement Iowa Code sections 321G.23, 321G.24, 321I.25, 321I.26, 462A.12, 462A.12A, and 483A.27.

DIVISION II
RECREATION EDUCATION PROGRAMS

571—12.31(321I) ATV education program.

12.31(1) The department has developed a course designed to meet the statutory requirement in Iowa Code section 321I.25. The education course is designed to teach ATV riders the principles and behaviors of safe and responsible ATV riding.

12.31(2) Reciprocity. The department recognizes safety courses taught by ATV Safety Institute (ASI)-certified instructors and those sanctioned by a governmental authority of another state. Students who successfully complete such a course are not required to take any additional training and are eligible to receive an education card issued by the department upon proof of completion of the course and payment of the certification fee.

12.31(3) The following criteria apply to the ATV education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall not become valid until the student's twelfth birthday.

b. Students shall register as described on the program's website.

c. Students engaging in the rider-based course must provide their own protective riding gear and a properly sized ATV. The student will follow all applicable requirements of Iowa Code chapter 321I.

12.31(4) The department will establish requirements and standards for curriculum, security protocol, and course delivery for an online education offering. Only vendors that have entered into a memorandum of understanding with the department will be allowed to offer an online course that results in the issuance of a department education certificate. Vendors will be allowed to charge for the courses identified in the memorandum of understanding and must collect the department's education certificate fee on behalf of the department.

571—12.32(321G) Snowmobile education program.

12.32(1) The department has developed an education course designed to meet the statutory requirement in Iowa Code section 321G.23.

12.32(2) The following criteria apply to the snowmobile education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

b. Students shall register as described on the program's website.

12.32(3) The department will establish requirements and standards for curriculum, security protocol, and course delivery. Only vendors that have entered into a memorandum of understanding with the department will be allowed to offer an online course that results in the issuance of a department education certificate. Vendors will be allowed to charge for the courses identified in the memorandum of understanding and must collect the department's education certificate fee on behalf of the department.

571—12.33(462A) Boating education program.

12.33(1) In accordance with Iowa Code sections 462A.12(6) and 462A.12A, the goal of the boating education program and education course is to promote safe and responsible boating practices.

12.33(2) Reciprocity. The department also recognizes safety courses taught by the United States Coast Guard Auxiliary and America's Boating Club/United States Power Squadrons-certified instructors. Students who successfully complete such a course are not required to take any additional training or

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testing from the department and are eligible to receive an education card issued by the department upon proof of completion of the course and payment of the certification fee.

12.33(3) The boating education course is taught by certified instructors virtually or in a classroom setting and shall be six to eight hours in length.

12.33(4) The following criteria apply to the boating education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

b. Students will be given a written examination that they must pass with 80 percent accuracy in order to earn an education certificate.

c. A home study course may be offered at the discretion of the department. The home study packet will contain the same written material provided in the classroom-based setting. An attestation form must be signed by the parent or guardian stating that the student completed the work. A student must pass a written examination with 80 percent accuracy in order to earn an education certificate.

d. The cost of the education course, for both the instructor-led class and the home study option, is \$5 per student. Payment may be made when the student registers for the course or to the instructor at the time of class. Home study students must mail in payment with their completed course paperwork. Payment shall be made by check or money order made payable to the department. Course fees are nonrefundable.

e. Students shall register as described on the program's website.

12.33(5) The department will establish requirements and standards for curriculum, security protocol, and course delivery. Only vendors that have the National Association of State Boating Law Administrators seal of approval and have entered into a memorandum of understanding with the department will be allowed to offer an online course that results in the issuance of a department education certificate. Vendors may charge for their courses as agreed to in the memorandum of understanding and must collect the department's education certificate fee on behalf of the department.

571—12.34(483A) Hunter education program.

12.34(1) The hunter education program is designed to teach students basic survival and first-aid skills, water safety, wildlife identification, and the basics of wildlife management, hunting laws, and firearm/archery safety. The education course also stresses the importance of individual responsibility and outdoor ethics.

12.34(2) The education course is taught by certified instructors and shall have both classroom and hands-on components unless otherwise exempted by law. Where permitted, live fire exercises may be taught.

12.34(3) The hunter education program also offers an online course/field day. The online course, offered by an approved third-party vendor, covers the same subject taught in the lecture portion of the department's course and meets the standards set forth by the International Hunter Education Association—United States of America (IHEA—USA). A field day voucher must be obtained from the approved vendor upon the student's successful completion of the online course. The field day voucher is valid for one year from the date of issuance and authorizes entrance into a field day course. The field day is designed to meet the additional required elements of the hunter education program as set forth in Iowa Code section 483A.27.

12.34(4) Reciprocity. The department recognizes hunter education courses sanctioned by a governmental authority of another state, province or country that meets the current IHEA—USA content and delivery standards. Students who successfully complete such a course are not required to take any additional training and are eligible to purchase an Iowa hunting license as long as they meet all other licensing requirements.

12.34(5) The following criteria apply to the hunter education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall

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not become valid until the student's twelfth birthday. If the certificate is lost, a replacement certificate may be obtained during regular business hours or online.

b. A student successfully completes the course by passing both the classroom-based instruction and a hands-on firearm component. A student successfully passes the classroom-based instruction by achieving a score of 75 percent or higher on the end of course exam. A student passes the hands-on component by demonstrating the safe handling of a firearm. Upon successful completion of the course, a student shall be issued a certification of completion.

c. Students shall register as described on the program's website.

12.34(6) An online-only course is available through the department's website. The online-only course is available for students 18 years of age or older. The online course meets the standards set by IHEA—USA. The online-only course has the same general content as the traditional classroom-based course and online/field day combination courses but requires state-specific information to be covered. To pass the course, a student must score at least 75 percent on the final exam. Upon successful completion of the course and payment of any applicable online course fees directly to the approved vendor, a student will be issued a permanent certificate that the student can download and print immediately.

12.34(7) The department offers a dual online-only handgun safety/hunter education course for Iowa residents 21 years of age or older. This course has the same general content as the traditional classroom-based course and online/field day combination course, but requires state-specific information to be covered, plus additional handgun safety curriculum. To pass the course, a student must score at least 75 percent on the final exam. Upon successful completion of the course and payment of any applicable online course fees directly to the approved vendor, a student will be issued a permanent certificate that the student can download and print immediately. This course meets the educational requirements necessary to qualify for the Iowa permit to carry.

571—12.35(321G) Snow groomer operator education program.

12.35(1) The department has developed a program to educate snow groomer operators to meet the statutory requirement of Iowa Code section 321G.2.

12.35(2) The snow groomer operator education program includes review of the department's policies and procedures, course materials, operator certification requirements, paperwork requirements, and the department's equipment agreement and completion of an apprenticeship.

12.35(3) The following criteria apply to the snow groomer operator education program:

a. An operator must be at least 18 years of age and possess a valid driver's license.

b. Operators shall agree to follow all policies and procedures as set forth by the department.

12.35(4) A student who wishes to become a certified operator must complete an apprenticeship. A student must operate the equipment under the direct supervision of a certified operator until the certified operator is confident that the student can successfully operate the equipment. Operation of snow grooming equipment is allowed only by certified operators or by an apprentice under direct supervision of a certified snow groomer operator. Proof of certification must be in the snow groomer operator's possession when the equipment is being operated.

12.35(5) Certified operators must attend a recertification course once every three years to maintain their certification.

12.35(6) The department may revoke an operator's certification if it finds that equipment was used or maintained in violation of the equipment agreement, that there are founded cases of misuse of the equipment, or that an operator does not possess a valid driver's license.

571—12.36(483A) Bow hunter education program.

12.36(1) The education course for the bow hunter education program is designed to teach bow hunters safe and ethical hunting techniques and to instill responsible attitudes toward people, wildlife, and the environment. The education course is based on the National Bowhunter Education Foundation's publications and is administered by the department. The education course covers topics such as responsibilities of a bow hunter, knowledge necessary before hunting, shot placement, tree stand safety, blood trailing, and game care.

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12.36(2) The education course is offered in both a classroom and an online setting.

a. The classroom course is taught by certified instructors and consists of both a lecture and hands-on exercises. Students will be given a written examination, which they must pass with 75 percent accuracy in order to earn a certificate of completion.

b. An online course is available through the department's website. The online course meets the standards set by IHEA—USA. The online-only course has the same general content as the traditional classroom-based course. To complete the online-only course, a student must pass a final exam with a score of 75 percent or higher. Upon successful completion of the course and payment of any applicable online course fees to an approved vendor, the student will be issued a permanent certificate that the student can download and print immediately.

c. Students shall register as described on the program's website.

12.36(3) Reciprocity. The department recognizes bowhunter education courses sanctioned by a governmental authority of another state, province or country that meets the current National Bowhunter Education Foundation and IHEA—USA content and delivery standards. Students who successfully complete such a course are not required to take any additional training.

12.36(4) Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

571—12.37(483A) Fur harvester education program.

12.37(1) The fur harvester education program is designed to teach trappers safe and ethical trapping techniques and to instill responsible attitudes toward people, wildlife, and the environment.

12.37(2) The education course is offered in both a classroom and an online setting.

a. The classroom course is taught by certified instructors, and students will receive instruction and hands-on training on the history and heritage of the fur trade, biology and management of Iowa furbearers, wildlife regulations and their purpose, ethics and responsibility, fur harvesting equipment, the basics of harvesting Iowa furbearers, marketing furbearers, public relations, and the basics of outdoor safety and survival. Students will receive a certificate of completion at the end of the education program.

b. An online course is available through the department's website. The online course meets the standards set by IHEA—USA and has the same general content as the traditional classroom-based course. To complete the online course, a student must pass a final exam with a score of 75 percent or higher. Upon successful completion of the course and payment of any applicable online course fees to an approved vendor, the student will be issued a permanent certificate that the student can download and print immediately.

c. Students shall register as described on the program's website.

12.37(3) Reciprocity. The department recognizes fur harvester education courses sanctioned by a governmental authority of another state, province or country that meets the current IHEA—USA content and delivery standards. Students who successfully complete such a course are not required to take any additional training.

12.37(4) Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

571—12.38 to 12.59 Reserved.

These rules are intended to implement Iowa Code sections 321G.23, 321I.24, 321I.25, 321I.26, 462A.12, 462A.12A, and 483A.27.

DIVISION III
SHOOTING SPORTS PROGRAM

571—12.60(481A) Purpose. Pursuant to Iowa Code section 481A.17, these rules set forth the department's shooting sports programs.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—12.61(481A) Definitions. For the purpose of this division:

“*Athlete*” or “*student*” means a member of a department-approved shooting sports team.

“*Certified coach or instructor*” means a person who wishes to coach a shooting sports team and who meets all criteria in rule 571—12.24(481A) and the specifics contained in the department’s certified coach policies and procedures manual.

“*Trainer*” means someone who has received specialized advanced training and is certified to train coaches or instructors in a national program.

571—12.62(481A) Department-recognized shooting sports programs. The following shooting sports programs are recognized by the department:

12.62(1) Archery. The National Archery in the Schools Program (NASP) or other equivalent nationally recognized archery program including bullseye and 3D target training, education, and competition.

12.62(2) Rifle and pistol. The Scholastic Action Shooting Program (SASP) or other equivalent nationally recognized rifle and pistol program, which may include centerfire, rimfire, and air-powered disciplines.

12.62(3) Shotgun. The Scholastic Clay Target Program (SCTP) or other equivalent nationally recognized clay target shooting program that includes both American and international clay target disciplines.

571—12.63(481A) Administration of shooting sports programs.

12.63(1) Program coordinator. The department shall assign a program coordinator for the programs identified in rule 571—12.62(481A).

12.63(2) The program coordinator’s responsibilities shall include the following:

- a. Coordinate the overall program in the state.
- b. Coordinate regular coach certification and development training opportunities.
- c. Coordinate athlete competitions and state championship events and serve as the shoot director for championship events.
- d. Develop policies and procedures for the program, including any state-specific eligibility criteria and rules of play for the program. Such standards shall be published on the department’s website prior to the start of the season.
- e. Enforce and uphold all national and state-specific program rules.
- f. Conduct outreach for the program and serve as the primary point of contact in the state for the program.

571—12.64(481A) Certified coach or instructor requirements and responsibilities.

12.64(1) Registration procedure. The certified coach or instructor applicant must register with the applicable program and meet the minimum requirements in subrule 12.64(2). The applicant shall completely and accurately fill out the registration form.

12.64(2) Minimum requirements. Failure to meet the following requirements shall result in the denial of the applicant’s registration. The applicant shall be notified of the denial by the program coordinator.

- a. *Minimum age.* The applicant must meet the minimum age of the program.
 - (1) For archery, certified coaches must be 18 years of age.
 - (2) For rifle and pistol, certified head coaches must be 21 years of age. Certified assistant coaches must be at least 18 years of age.
 - (3) For shotgun, certified head coaches must be 21 years of age. Certified assistant coaches must be 18 years of age.
- b. *Training.* The applicant must satisfactorily pass a designated training course.
- c. *Background check.* The applicant must authorize a background check that includes, but may not be limited to, a criminal history check. A record of a felony conviction will disqualify the applicant. A record of a misdemeanor conviction (not including simple misdemeanors under Iowa Code chapter 321) within the last three years may disqualify the applicant.

NATURAL RESOURCE COMMISSION[571](cont'd)

d. Fish and wildlife violation check. The applicant may be disqualified if the applicant has accumulated any habitual offender points pursuant to rule 571—15.6(483A) within the last five years or had a license suspended by a court of law or the department.

12.64(3) Certified coach or instructor responsibilities. A certified coach or instructor has the following responsibilities:

a. Complete required data management and reporting, including updating and maintaining athlete and coach information in the online data management systems, recording shooting sports competitions and results, and recording volunteer coaching hours when required.

b. Follow all applicable administrative rules, policies, and procedures as set forth by the department for the specified shooting sports program.

c. Follow any applicable national program or state-specific program rules or policies including but not limited to handbooks, rules, and sportsmanship contracts.

d. Represent the department and associated program in a professional and positive manner that supports the department's goals and mission, and avoid even the appearance of impropriety while instructing or coaching athletes or students.

e. Recruit students and volunteer coaches for shooting sports teams.

f. Actively promote shooting sports.

g. Maintain order and discipline on the shooting sports team, model good sportsmanship, and ensure safe handling practices of the relevant shooting sports equipment at all times.

571—12.65(481A) Athlete or student requirements and responsibilities.

12.65(1) Registration. The athlete or student shall contact the athlete's or student's local shooting sports team to participate. The head coach will provide the athlete or student with an electronic link to register online with the applicable program.

12.65(2) Requirements. An athlete or student participating on a department-approved shooting sports team shall abide by the following requirements. Failure to do so may result in removal from the program, disqualification from competitions, or both.

a. Complete any national program or department-required documents prior to participation.

b. Follow any applicable national program or state-specific program rules or policies including but not limited to handbooks, rules, conduct requirements, and sportsmanship contracts.

12.65(3) Fish and wildlife violations. Prior to participation on a department-approved team, the athlete or student shall be subject to a fish and wildlife violations check. If the athlete or student has accumulated any habitual offender points pursuant to rule 571—15.6(483A) within the last five years or has had a hunting, fishing, or trapping license suspended by a court of law or the department, the athlete or student may be ineligible to participate on a department-approved shooting sports team for the current season. Eligibility will be reviewed prior to the beginning of the next season.

571—12.66(481A) Certified trainer requirements and responsibilities.

12.66(1) Registration. A certified trainer applicant must register with the applicable program. The applicant shall completely and accurately fill out the registration form. A certified trainer applicant must have successfully completed certified coach or instructor training before being eligible to become a certified trainer.

12.66(2) Responsibilities.

a. The trainer applicant must register with the applicable program and meet the program's minimum requirements. The applicant shall completely and accurately fill out the registration form.

b. A certified trainer shall represent the department and respective program in a professional and positive manner that supports the department's goals and mission and shall avoid even the appearance of impropriety while instructing.

c. The certified trainer will work with the program coordinator to identify and schedule training classes around the state.

d. Trainers will utilize the online class registration system for the program to create coach training classes for which coach applicants can register.

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e. Certified trainers must conduct at least one class per year to remain an active certified trainer.

12.66(3) Acceptance of new trainers. If the number of existing certified trainers meets the demand for the program, the department may choose not to add additional trainers.

571—12.67(481A) Grounds for revocation or suspension of certification of a certified trainer, coach, or instructor. The department may, at any time, seek to revoke or suspend the certification of a certified trainer, coach, or instructor who:

12.67(1) Fails to meet the responsibilities and requirements as outlined in rule 571—12.64(481A) or 571—12.66(481A), as appropriate.

12.67(2) Fails to follow the policies and procedures of the department.

12.67(3) Falsifies any information that may be required by the department. Falsifying information is understood to mean purposefully supplying information that is inaccurate or misleading or the intentional omission of information.

12.67(4) Handles any shooting sports equipment in a negligent, reckless, or unsafe manner, or allows any student to do so.

12.67(5) Is convicted of or forfeits a bond for any fish and game, snowmobile, ATV, or navigation violation of this state or any other state.

12.67(6) Uses profanity or inappropriate language, such as any type of lewd, sexist, or racial references or generalities; engages in any kind of discriminatory conduct due to race, color, national origin, religion, sex, age, disability, or sexual orientation; or otherwise acts in an unprofessional manner.

12.67(7) Engages in the physical punishment of a student, including the use of unreasonable or unnecessary physical force or physical contact made with the intent to cause pain, or any type of indecent contact with a child as defined by the Iowa Code.

12.67(8) Coaches while under the influence of alcohol or any illegal drug or while ingesting prescription medication in a manner contrary to the dosing directions given by the prescribing physician.

12.67(9) Has substantiated complaints filed against the trainer, coach, or instructor by the public, department personnel, or another certified volunteer coach.

12.67(10) Is under investigation for committing, is in the process of a judicial proceeding based on the allegation of committing, or is convicted of committing a felony or misdemeanor as defined in the statutes of this state or another state, except for simple misdemeanors under Iowa Code chapter 321 or its counterparts in other states. Every certified trainer, coach, or instructor is subject to a criminal history check and conservation violation check at any time during the individual's tenure as a certified trainer, coach, or instructor.

12.67(11) Is suspended or expelled by a national governing body for a shooting sports program.

These rules are intended to implement Iowa Code section 481A.17.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7891C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to permits and easements for construction on public lands

The Natural Resource Commission (Commission) hereby rescinds Chapter 13, "Permits and Easements for Construction and Related Activities on Public Lands and Waters," and adopts a new Chapter 13, "Permits and Easements for Construction and Other Activities on Public Lands and Waters," Iowa Administrative Code.

Legal Authority for Rulemaking

NATURAL RESOURCE COMMISSION[571](cont'd)

This rulemaking is adopted under the authority provided in Iowa Code sections 455A.5(6)“a,” 461A.4(1)“b,” 461A.25(2) and 462A.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 461A.4 and 462A.3 and Executive Order 10 (January 10, 2023).

Purpose and Summary

Chapter 13 is rescinded and replaced to remove obsolete, ineffective, excessively burdensome, or redundant administrative rules. Chapter 13 provides a process for permitting construction and other activities that alter the physical characteristics of public lands and waters under the jurisdiction of the Commission. The Commission holds lands and waters under its jurisdiction in public trust and protects the interests of all citizens in those lands and waters.

These rules establish procedures and regulate the evaluation and issuance of permits for covered activities, which are generally referred to as sovereign lands construction permits. They also establish procedures for issuance of easements to public utilities and political subdivisions for activities that are determined to have a permanent effect on use and enjoyment of public lands and waters under Commission jurisdiction. This rulemaking removes redundancies, improves clarity, and corrects typos relative to the existing chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7248C**. Public hearings were held on January 23 and 30, 2024, at 12 noon via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 1. Rescind 571—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
PERMITS AND EASEMENTS FOR CONSTRUCTION AND OTHER ACTIVITIES
ON PUBLIC LANDS AND WATERS

571—13.1(455A,461A,462A) Purpose. The commission holds lands and waters under its jurisdiction in public trust and protects the interests of all citizens in these lands and waters.

13.1(1) These rules establish procedures and regulate the evaluation and issuance of permits for construction or other activities that alter the physical characteristics of public lands and waters under the jurisdiction of the commission, including those activities that occur over or under such lands and waters. However, these rules do not apply to activities accomplished by the department and its agents that would only temporarily alter the characteristics of public lands and waters and that would be considered management practices.

13.1(2) These rules also establish procedures for issuance of easements to public utilities and political subdivisions for activities that are determined to have a permanent effect on use and enjoyment of public lands and waters under the jurisdiction of the commission.

13.1(3) These rules do not apply to:

- a. Impoundments regulated under Iowa Code chapter 462A.
- b. Docks regulated under 571—Chapter 16, except as specified herein.
- c. Stationary blinds regulated under rule 571—51.6(481A).

571—13.2(455A,461A,462A) Affected public lands and waters. These rules are applicable to all fee title lands and waters under the jurisdiction of the commission; dedicated lands and waters under the jurisdiction of the commission and managed by the commission for public access to a meandered sovereign lake or meandered sovereign river; meandered sovereign lakes; meandered sovereign rivers; and sovereign islands, except those portions of the Iowa River and the Mississippi River where title has been conveyed to charter cities.

571—13.3(455A,461A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“Applicant” means a person who applies for a permit or easement pursuant to these rules.

“Authorized agent” means a person, designated by the applicant, who shall be responsible to perform part or all of the proposed activity and who certifies the application according to subrule 13.9(2).

“Canal” means a narrow strip of water, artificially made, between two water bodies described in rule 571—13.2(455A,461A,462A).

“Cantilever access structure” means a structure constructed for improving the proximity of access to a lake or river, that has a support footing located entirely on littoral or riparian land above the ordinary high water mark (OHWM), and that extends from the footing and is completely suspended above the water at normal water elevation with no occupation of the lakebed or riverbed.

“Channel” means a narrow body of water that may be natural or artificially made.

“Charter cities” means the city of Wapello operating under special charter enacted in 1856; the city of Camanche operating under special charter enacted in 1857; the city of Davenport by chapter 84, Acts of the 47th General Assembly; the cities of Burlington, Clinton, Dubuque, Fort Madison, Keokuk, and Muscatine by chapter 249, Acts of the 51st General Assembly; and the city of Le Claire by chapter 383, Acts of the 58th General Assembly.

“Commercial boat ramp” means a boat ramp installed or maintained as part of a business to provide access to a public water body where use of the ramp is available to the general public.

“Commission” means the natural resource commission.

“Department” means the department of natural resources.

“Director” means the director of the department of natural resources or the director’s designee.

“Easement” means an easement authorized under Iowa Code section 461A.25.

NATURAL RESOURCE COMMISSION[571](cont'd)

"Fee title lands and waters" means lands and waters for which title is acquired by deed or testamentary devise.

"Lease" means a lease authorized under Iowa Code section 461A.25.

"Littoral land" means land abutting a lake.

"Meandered sovereign lakes" means those lakes which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states. A list of these lakes is available on the department's website.

"Meandered sovereign rivers" means those rivers which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states upon their admission to the union. A list of such rivers is available on the department's website.

"Native stone riprap" means broken limestone, dolomite, quartzite or fieldstone meeting Iowa department of transportation specification 4130, Class D (Iowa department of transportation's standard specifications for highway and bridge construction, 2015 edition).

"Ordinary high water mark" or *"OHWM"* means the boundary between meandered sovereign lakes and rivers, except the Mississippi River, and littoral or riparian property. The OHWM is the limit where high water occupies the land so long and continuously as to wrest terrestrial vegetation from the soil or saturate the root zone and destroy its value for agricultural purposes. The OHWM is the boundary between upland and wetland as defined by the 1987 Corps of Engineers Wetlands Delineation Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (Version 2.0). For Storm Lake in Buena Vista County and Clear Lake in Cerro Gordo County, the elevation has been established by adjudication.

"Ordinary high water mark of the Mississippi River" means the elevation, as defined by criteria in the Code of Federal Regulations, 33 CFR Part 328.3 (November 13, 1986), promulgated by the U.S. Army Corps of Engineers, where the water exists at or below such elevation 75 percent of the time as shown by water stage records since construction of the locks and dams in the river.

"Permit" means a sovereign lands construction permit issued pursuant to this chapter.

"Permittee" means a person who receives a permit pursuant to these rules, which may also include the authorized agent if designated pursuant to these rules.

"Person" means the same as defined in Iowa Code section 4.1.

"Public boat ramp" means a boat ramp constructed to provide public access from public land to a water body.

"Public lands" means land under the jurisdiction of the commission that is owned by the state or that has been dedicated for public access to a meandered sovereign lake or meandered sovereign river.

"Public waters" means a water body under the jurisdiction of the commission that is owned by the state or that has been dedicated for public access to a meandered sovereign lake or meandered sovereign river.

"Riparian land" means land abutting a river.

"Sovereign island" means an island located within a sovereign meandered lake or a sovereign meandered river that was transferred to the state upon its admission to the union and whose title continues to be retained by the state.

"Standard riprap" means broken stone, dolomite, quartzite, fieldstone, or broken concrete meeting Iowa department of transportation specification 4130, Class D (Iowa department of transportation's standard specifications for highway and bridge construction, 2015 edition). Broken concrete shall not have reinforcing materials protruding from the surface of the riprap. Standard riprap shall not include petroleum-based materials.

NATURAL RESOURCE COMMISSION[571](cont'd)

DIVISION I
PERMITS**571—13.4(455A,461A) Permits required.**

13.4(1) General. No person shall temporarily or permanently place or build any structure or alter the characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit issued by the department prior to commencement of such activities as provided in the rules of this chapter.

13.4(2) Hazardous conditions. Trees, rock, brush or other natural materials located on sovereign or dedicated lands may be removed by persons without a permit issued pursuant to these rules only after the department, in its sole discretion, determines and evidences in writing that a hazard or other detrimental condition exists and that the proposed mitigative activity is appropriate. Such activity shall be limited only to the work required to address the immediate hazard or other detrimental condition. Any removal allowed by this rule shall conform to the requirements enumerated by the department regarding such removal, or the removal shall be deemed an unauthorized action resulting in damage to public lands and waters. Persons proposing to remove hazards must contact a local department official and request an exception to a permit. The department official shall inspect the hazard and provide written authorization to proceed or shall require the person to apply for a permit.

571—13.5(455A,461A) Interest in real estate. A permit shall be construed to do no more than give the permit holder a license to alter an area as specifically set forth in the permit. The permit creates no interest, personal or real, in the real estate covered by the permit.

571—13.6(455A,461A,462A) Evaluation.

13.6(1) In considering complete applications, the department will evaluate the impact of the proposed activities on public use and enjoyment of public lands or waters, on the natural resources in the areas within and surrounding the proposed activities, and the department's present and future intended management for the area against the applicant's identified and reasonable need to undertake the proposed activities and the viable alternatives that may exist with respect to the proposed activities.

13.6(2) In no event shall the department issue a permit for activities that:

a. May result in the taking, possession, transport, import, export, processing, selling, buying, transporting, or receiving any species of fish, plants or wildlife appearing on lists referenced in Iowa Code section 481B.5, unless the permittee meets one of the exemptions enumerated in rule 571—77.4(481B).

b. Have not received floodplain permits pursuant to Iowa Code chapter 455B and 567—Chapters 70 through 76, if applicable.

c. May impact a littoral or riparian property owner without the express written permission of the littoral or riparian property owner.

d. Do not comply with the review standards defined in rule 571—13.7(455A,461A,462A).

e. Interfere with department obligations or limitations related to federal funds or agreements or other restrictive covenants that may be applicable to the affected area.

f. Allow fill to be placed beyond the OHWM of waters described in rule 571—13.2(455A,461A,462A) for purposes of regaining land lost due to erosion.

13.6(3) The department may withhold a permit when the applicant has not obtained all other required permits or licenses necessary to construct and operate the proposed activity.

571—13.7(455A,461A,462A) Review standards. Department staff shall conduct an environmental review of the application. In completing the environmental review, different bureaus and staff members of the department will provide input based on law, professional judgment, data and accepted scientific theory. The following standards shall apply to permits issued under the rules of this chapter:

13.7(1) Uses of public lands and waters. Development of public lands and public waters permitted by these rules shall be limited to projects that meet all of the following criteria. The projects:

NATURAL RESOURCE COMMISSION[571](cont'd)

a. Are built to minimally impact the natural resources of public recreational use and navigation on such lands and waters. Specifically, applicants must demonstrate that the project accomplishes all of the following:

- (1) Does not negatively impact water quality in or around the proposed permitted area.
- (2) Minimizes erosion and sedimentation in or around the proposed area.
- (3) Minimizes detrimental impacts to biological and botanical resources in or around the proposed area, including upland, wetland and sensitive areas and unique community structures.
- (4) Complies with laws and regulations related to threatened and endangered species, through both federal and state programs.

b. Utilize the smallest amount of public lands and public waters.

c. Do not convert the public lands and public waters to an exclusive or private use.

d. Are the only viable method for conducting the activities, and no viable alternatives to constructing on public lands exist.

13.7(2) *Shoreline erosion protection and retaining walls.* Shoreline erosion protection activities may be permitted if the activities are in compliance with rule 571—13.6(455A,461A,462A) and the following additional standards:

a. Shoreline erosion protection activities on meandered sovereign lakes shall be limited to placement of native stone riprap, extending to a maximum of four feet horizontally within or below the elevation contour line of the OHWM. Placement of earth fill within the OHWM shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall be placed above the OHWM. When such retaining structures are placed at the OHWM, they must be faced with native stone riprap.

b. Shoreline erosion protection activities on meandered sovereign rivers, except the Mississippi River, shall be limited to placement of approved in-stream erosion control structures or native stone or standard riprap. Riprap shall extend riverward from the OHWM and may not exceed a slope of two feet horizontal to one foot vertical (2:1). Placement of earth fill below the OHWM shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall not be placed within the OHWM. When such retaining structures are placed at the OHWM, they must be faced with riprap.

c. Shoreline erosion protection activities on the Mississippi River shall be limited to placement of approved in-stream erosion control structures or native stone riprap. Riprap shall extend riverward from the OHWM and may not exceed a slope of two feet horizontal to one foot vertical (2:1). Placement of earth fill within the OHWM shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall not be placed within the OHWM. When such retaining structures are placed at the OHWM, they must be faced with native stone riprap.

d. Retaining walls on all meandered sovereign lakes and meandered sovereign rivers. The landowner shall maintain the wall system at all times and take corrective measures to eliminate any nuisance condition, repair deterioration of the structure, eliminate erosion around the structure, and repair damage to the structure caused by the action of the water or ice. When a retaining wall or other structure placed on the shoreline prevents the public from traversing the shoreline, the landowner shall grant the public a license to walk from the landowner's property within 15 feet of the top of the wall or structure for the purpose of traversing the shoreline.

Notwithstanding the prohibitions in this subrule, nothing in this subrule shall prohibit activities that would be part of habitat development or natural resources mitigation projects constructed or approved by a political subdivision of the state and subject to review under these rules.

13.7(3) *Quality of the applicant.* Applicants or authorized agents who have a current violation for another project are not eligible for consideration for a permit under these rules unless and until all other noncompliant projects have been remediated and any enforcement actions related to the same have been resolved or satisfied.

13.7(4) *Cantilever access structures.* Permanent cantilever access structures that lawfully existed and were lawfully permitted under prior sovereign lands construction permit rules as of April 15, 2009, shall be deemed lawfully permitted under these rules. All cantilever access structures that were not lawfully installed prior to April 15, 2009, or were installed after April 15, 2009, shall be regulated as docks by 571—Chapter 16.

NATURAL RESOURCE COMMISSION[571](cont'd)

13.7(5) *Beaches, canals, commercial boat ramps, and channels.* Permits may be granted to maintain existing beaches, canals, and channels lawfully installed as of April 15, 2009, to ensure the navigation and safety of those existing lawful beaches, canals, and channels. The department shall not permit new beaches, canals, commercial boat ramps or artificial channels or expansion of existing beaches, canals, commercial boat ramps or artificial channels, except that the department may permit new beaches, canals, commercial boat ramps and artificial channels and expansions of existing beaches, canals, commercial boat ramps and artificial channels when such establishment or expansion would be under the jurisdiction of a political subdivision of the state, would be accomplished to provide public access to the water, and would meet the review standards established by these rules.

571—13.8(455A,461A) Leases or easements as a condition of permits. If a permitted structure or its use will have a continuing impact on the availability or desirability of public lands or public waters, the permit shall be conditioned on the requirement that the permittee obtain a lease or easement under Division II of this chapter. However, a lease or easement shall not be required for proposed activities that are wholly within the scope of the permittee's littoral or riparian rights.

571—13.9(455A,461A,462A) Permit application. Applicants shall apply for permits using an application form provided by the department. Permit application resources can be found on the Permit and Environmental Review Management Tool (PERMT) at programs.iowadnr.gov/permt/. Applicants shall state the need for the proposed construction or use, the availability of alternatives, and the measures proposed to prevent, minimize or mitigate adverse impacts to natural resources or public use of the affected area. The department reserves the right to refuse to review incomplete applications. Each application, including all amendments, shall be signed by the applicant and authorized agent if one shall be so appointed by the applicant. The applicant's signature shall acknowledge that the application is accurate and made in good faith.

13.9(1) For purposes of this rule, the department will deem an application complete if the application meets all of the following criteria. The application:

- a. Is provided on the department's form, and all fields are completed and legible;
- b. Includes the name(s), mailing address and telephone number of the applicant(s) and authorized agent(s), if applicable;
- c. Describes the proposed activity, including:
 - (1) Physical address and legal description of the location where the proposed activity is to occur; a written description of existing natural and man-made structures and features; an aerial photograph, if possible or available; and a ground-level photograph(s) showing the area where the activity is proposed to occur;
 - (2) Schematic or design plans, including cross sections and plan views, that accurately and clearly depict the proposed activities;
 - (3) Description of the construction methods used to complete the project, the methods used to transport material to the site, and the type and amount of material to be used;
 - (4) Description of measures proposed to prevent or minimize adverse impacts on the property in the proposed area;
 - (5) Description of any borrows or disposal sites, including the location of any borrows or disposal sites and the type and amount of material to be borrowed or disposed of in them;
- d. Includes identification of the OHWM, if the proposed activities are in or near a meandered sovereign lake or meandered sovereign river;
- e. Describes alternative plans to undertake the activity that may be available to the applicant;
- f. Identifies the need for the proposed activity in the proposed project area;
- g. Provides a statement of consent for the department to enter the property during the term of the proposed permit.

13.9(2) For applications that provide for an authorized agent to perform part or all of the proposed activities, the following additional information shall be required to constitute a complete application:

- a. Statement signed by the authorized agent and applicant;

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- b. Statement signed by the authorized agent acknowledging that the authorized agent is aware of such designation and is responsible to complete the identified work; and
- c. Description of the work to be completed by the authorized agent.

571—13.10(455A,461A) Additional information or analysis required for permit review.

13.10(1) The director may require an applicant to provide additional information, at the applicant's sole cost, necessary to complete review of the application, including but not limited to study of alternatives to construction on public lands and waters, social and environmental impacts of the proposed activities, professional surveys to establish the social and environmental impacts of the proposed activities, professional land surveys to delineate or show real property boundaries and other characteristics, and a professional real estate appraisal of the value that a permit may convey.

13.10(2) If the applicant does not respond to a request for additional information within 90 days of such request being made by the department, the department may withdraw the application from consideration and the applicant must reapply for the permit.

13.10(3) When the director determines that the proposed activity will significantly affect the public interest, the director may hold a public meeting in the vicinity of the proposed activity. When a public meeting is held, the director shall consider public input in conjunction with other information collected or provided as part of the application review when acting on a permit application.

571—13.11(455A,461A) Permit issued or denied. The department shall promptly review all permit applications, and the director shall issue a permit or deny all or part of an application upon completion of review. A permit may include specified conditions denying the application in part and the reasons for the conditions. The denial of a permit may include a proposed removal order. A permit denial shall be final agency action, unless the unsuccessful applicant otherwise has a constitutional right to a contested case, in which case an administrative appeal pursuant to procedures in 571—Chapter 7 shall be available. The unsuccessful applicant's request for a contested case may include a request for a waiver under the provisions of Iowa Code section 17A.9A and 571—Chapter 11. The decision of the presiding officer in a contested case shall constitute final agency action.

571—13.12(455A,461A) Authorized agent. When an authorized agent is designated on the application for a permit and acknowledges the same, that authorized agent shall be responsible in the same manner as the permittee to comply with the terms of the permit issued.

571—13.13(455A,461A) Inspection. The department may inspect the location during the term of the permit to ensure that the permitted activities comply with the terms of the permit. The permittee shall grant the department the right to access the permitted activities for purposes of inspecting the permitted activities during the term of the permit. If the permittee denies permission for entry, the department may obtain an order from the Iowa district court for the county in which the permitted activities or the majority of the permitted activities occur, as needed, to enable the department to carry out its inspection duty. The intent of the inspection is to evaluate compliance with permit conditions and the impact to the natural resources and the public's recreational use of the area.

571—13.14(455A,461A) Additional information or analysis required during term of the permit. The director may require a permittee to provide additional information, at the permittee's sole cost, necessary to ensure that the permittee is complying with the terms of the permit, including but not limited to social and environmental impacts of the activities, professional surveys to establish the social and environmental impacts of the activities, professional land surveys to delineate or show real property boundaries and other characteristics, and a professional real estate appraisal of the value that a permit may convey or has conveyed.

571—13.15(455A,461A) Violations; types of enforcement actions; citation and notice of violation.

13.15(1) Violations.

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a. A person shall be in violation of these rules and Iowa Code section 461A.4 in the event the person does any of the following:

(1) Performs construction on or undertakes other activities that alter the physical characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit required by these rules;

(2) Performs such work out of conformance with specific requirements enumerated in a permit issued in accordance with these rules; or

(3) Fails to comply with an order of the commission under these rules.

b. Each day of a violation shall be considered a separate offense.

13.15(2) *Types of enforcement actions.* A person who violates these rules shall be subject to either of the following:

a. Criminal enforcement. A peace officer of the state may issue a citation for each offense. A person who is found guilty of violating these rules shall be charged with a simple misdemeanor for each violation.

b. Civil enforcement. A civil penalty may be assessed in conformance with Iowa Code section 461A.5B and rule 571—13.17(455A,461A). Written notice of the violation(s) shall be given to the person against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. If agreement as to appropriate disciplinary sanction, if any, can be reached between the director and the person against whom disciplinary action is being considered, a written stipulation and settlement between the department and the person shall be entered. Such a settlement shall take into account how the corrective actions described in subrule 13.15(3) shall be accomplished. In addition, the stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the person, and the reasons for the particular sanctions imposed. If an agreement as to appropriate disciplinary action, if any, cannot be reached, the director may issue an administrative order as described in rule 571—13.17(455A,461A).

13.15(3) *Actions to be taken upon receipt of citation or notice of violation.* A person who has violated these rules shall cease the specified unauthorized activity upon receipt of a citation or as may be stipulated in the notice of violation. The notice of violation or a written notice accompanying the citation from the department shall require the person to take one or more of the following actions within a specified time:

a. Apply for a permit to authorize completion of construction or maintenance and use, as applicable;

b. Remove materials and restore the affected area to the condition that existed before commencement of the unauthorized activity;

c. Remediate the affected area in a manner and according to a plan approved by the department. The department may enforce such a remediation at the expense of the permittee, adjacent landowner or culpable party.

571—13.16(455A,461A) Removal orders. If the violation includes the unauthorized placement of materials or personal property on the public lands or public waters under the jurisdiction of the commission, and the person, who may include a permittee or authorized agent but may not, fails to comply with the action required by the notice, the director may cause a proposed removal order to be issued to the person responsible for such placement. The proposed removal order shall specify the removal action required and include notice of the right to an administrative appeal including a contested case hearing under procedures in 571—Chapter 7. The proposed decision in a contested case may be appealed to the commission under 571—Chapter 7. If there is no appeal from a proposed decision that includes a removal requirement, the proposed decision shall be presented to the director for review and adoption. A removal order approved by the director shall constitute final agency action under Iowa Code sections 461A.4 and 461A.5A and may be enforced through an original action in equity filed in a district court of the state by the attorney general on behalf of the department and the commission.

571—13.17(455A,461A) Civil penalties. The department may assess a civil penalty of up to \$5,000 per offense for each violation of these rules, provided the department does not utilize a criminal citation

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for a violation. Each day the violation continues shall be a separate offense or violation. Penalties shall be assessed through issuance of an administrative order of the director which recites the facts and the legal requirements that have been violated and a general rationale for the prescribed fines. The order also may be combined with any other order authorized by statute for mandatory or prohibitory injunctive conditions and is subject to normal contested case and appellate review under procedures in 571—Chapter 7. The proposed decision in a contested case may be appealed to the commission under 571—Chapter 7. The commission may refer orders that include singular or cumulative penalties over \$10,000 to the attorney general's office.

571—13.18(455A,461A) Report of completion. Once an approved activity is completed, the permittee shall notify the department through PERMT using the project's PERMT identification number created through the original application process. The activity shall be subject to final approval before the department determines that the conditions of the permit have been met.

571—13.19(455A,461A) Final inspection. Once the permittee notifies the department pursuant to rule 571—13.18(455A,461A), the department shall inspect the permitted area to ensure that the permittee has complied with the terms of the permit. Such inspection shall occur within 60 days of the department's receipt of the notice provided pursuant to rule 571—13.18(455A,461A). In the event the department does not provide final inspection within 60 days of the department's receipt of the notice provided pursuant to rule 571—13.18(455A,461A), the permittee shall be deemed compliant and the permit shall expire. The intent of this inspection is to evaluate compliance with permit conditions and the impacts to the natural resources and the public's recreational use of the area.

571—13.20(455A,461A) Permit extensions. Prior to the expiration of a permit, a permittee or an authorized agent may submit a written request by email to the department for an extension of the permit. In evaluating whether to grant the extension, the department will consider the work completed, the work to be performed, the extent to which the permit extension is needed and the extent to which the permittee has made efforts to meet the obligations of the original permit. The department reserves the right to modify the conditions of a permit as part of any extension. An extension granted by this rule is not a project modification.

571—13.21(455A,461A) Project modifications. If projects are modified to the extent that the additional or modified work would not be allowed within the original permit, the permittee must apply for a new permit for the additional or modified work.

571—13.22(455A,461A) Transferability. Permits are transferable only upon written approval of the department and only after the department is satisfied that the permitted activities will not change and the new permittee would be eligible to receive a permit under subrule 13.7(3).

571—13.23 to 13.50 Reserved.

DIVISION II
LEASES AND EASEMENTS

571—13.51(455A,461A) Leases. Where a permitted structure or related activity will have a continuing impact on the availability or desirability of public lands or public waters or exceeds the scope of littoral or riparian rights, the permittee must enter into a lease covering the area affected by the construction. Fees for leases shall be determined by 571—Chapter 17 or other methods approved by the commission and executed pursuant to Iowa Code section 461A.25. Requests for leases shall be made on the form and shall include the information required by rule 571—13.9(455A,461A,462A) under Division I of this chapter. The department may grant a lease if, in the department's sole discretion, the lease will not impair the state's intended use of the area during the term of the lease; the lease will not negatively impact a

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federal interest, including related deed restrictions, related to the area during the term of the lease; and the lease will not result in an exclusive use.

571—13.52(455A,461A) Easements. The director may grant an easement to political subdivisions and utility companies pursuant to Iowa Code section 461A.25, provided the following terms are met:

13.52(1) Requests for easements shall be made on the form and shall include the information required by rule 571—13.9(455A,461A,462A) under Division I of this chapter. The department may grant an easement if, in the department's sole discretion, the easement will not impair the state's intended use of the area during the term of the easement or the easement will not negatively impact a federal interest, including related deed restrictions, related to the area during the term of the agreement.

13.52(2) The value of an easement shall be determined by the director based upon a real estate appraisal or other method approved by the commission, as evidenced in the meeting minutes thereof. In addition to fees for easements, the director may assess the applicant for the reasonable transaction costs associated with the issuing of an easement including the cost of appraisals, other methods of establishing values, and land surveys. In determining the fee for an easement, the department may consider the value the proposed activity may contribute to the department's management of the affected property.

13.52(3) Recipients of any easements granted pursuant to this rule shall assume liability for structures installed pursuant to such easement and shall comply with the standards enumerated in rule 571—13.7(455A,461A,462A), as applicable, in the sole discretion of the department.

571—13.53(455A,461A) Appeals. The department and the commission are under no legal obligation to provide any person a legal interest in property under the jurisdiction of the commission. An applicant may appeal to the director a decision of the department regarding leases and easements and request that the director reconsider a condition of an easement or a lease or a denial of an easement or a lease. The determination of the director shall be final agency action.

These rules are intended to implement Iowa Code sections 455A.5, 461A.4, 461A.5A, 461A.5B, 461A.6, 461A.18, 461A.25 and 462A.3.

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ARC 7892C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to concessions

The Natural Resource Commission (Commission) hereby rescinds Chapter 14, "Concessions," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 461A.3 and 461A.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 461A.3 and 461A.4.

Purpose and Summary

Chapter 14 establishes the rules surrounding the advertising/notice procedure, bidding process, evaluation and selection of a concessionaire, and other contract terms related to concession operations in Iowa State Parks. The changes now allow for longer-term/larger scope concession contracts, providing

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more security and efficiency for the concessionaires/vendors and additional visitor services and experiences in parks areas while decreasing the time Department of Natural Resources (Department) staff spend on paperwork and evaluation of concessionaires/vendors.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7246C**. Public hearings were held on January 30, 2024, at 12 noon and January 31, 2024, at 4 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 14 and adopt the following **new** chapter in lieu thereof:

TITLE II
LICENSES, PERMITS AND CONCESSION CONTRACTS
CHAPTER 14
CONCESSIONS

571—14.1(461A) Definitions.

“*Concessionaire*” means a person or firm granted a contract to operate a concession in a state park or recreation area. The concessionaire is an independent contractor and not an employee or agent of the department.

“*Concession operation*” means operating a business within a concession area in a state park or recreation area including, but not limited to, boat rental, snack food sales, beach operation, and sale of fishing bait and tackle.

“*Department*” means the same as defined in Iowa Code section 461A.1(2).

“*Director*” means the same as defined in Iowa Code section 461A.1(3).

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“Friends group or organization” means an organization incorporated under Iowa Code chapter 504 as a not-for-profit group which has been formed solely for the purposes of promoting and enhancing a particular state park, recreation area, or the Iowa state park system, or any combination of the three.

“Gross receipts” means the total amount received, excluding sales tax, realized by or accruing to the concessionaire from all sales, for cash or credit, of services, accommodations, materials, or other merchandise pursuant to rights granted in the contract, including gross receipts of subconcessionaires. All moneys paid into coin-operated devices, except telephones, shall be included in gross receipts.

“New concession” means the right to establish a concession operation in an area that does not currently have a concessionaire or an area where the department wishes to invite bids for a mobile type concession operation.

“Newspaper” means the same as described in Iowa Code section 618.3.

571—14.2(461A) Advertising or notice procedure.**14.2(1) *New concession.***

a. Advertising. When the department desires to obtain a new concession operation to offer multiple concession services in an area, the department shall advertise the request for proposals on the targeted small business website and the department’s requests for proposals website. The department shall advertise a notice for the request for proposals in one newspaper of statewide circulation and in at least one newspaper designated by the county to be used for official publications in the county in which the state park or recreation area is located.

b. The notice shall state the following:

- (1) The names and location of the area(s) in which concession operations are available.
- (2) The general types of services the department would expect a concessionaire to furnish.
- (3) How to obtain the request for proposals information.
- (4) The deadline for submission of proposals to the department.

c. The department shall allow a minimum of 15 days between the date of publication of advertisements and the deadline for submission of proposals.

d. The request for proposals shall include the following information:

(1) A scope of work that contains detailed information regarding the types of services expected to be offered by the concessionaire and the history of the gross receipts reported for the previous five operating years by the prior concessionaire (if applicable); bid terms acceptable to the department; the name, address, and telephone number of the person to contact regarding the request for proposals; and the date and time by which the proposals must be received by the department.

(2) A map of the park in which the concession operation is proposed.

(3) A sample of the contract the successful bidder will be expected to sign.

(4) Samples of report forms that the concessionaire must submit to the department while the concession is in operation.

14.2(2) *Renewal of existing concession operation.*

a. The department may, at its option, mutually agree with the concessionaire to renew a contract during or at the end of its term. A concessionaire may request renewal during the term of a contract after a minimum of three years of concession operation and a minimum of six months prior to expiration of the existing contract. The provisions of the renewal contract shall be negotiated between the department and the concessionaire. Should either party choose not to renew the contract, appropriate notice shall be sent to the other party four months prior to the expiration date of the existing contract, and the department may advertise for bids in accordance with this chapter.

b. The department shall publish a notice of intent to renew a concession contract that has been negotiated in accordance with paragraph 14.2(2)“*a.*” The notice shall be published in the same manner as provided in paragraph 14.2(1)“*a.*” and shall solicit public comments regarding the renewal.

c. The department director shall, upon review of comments received, determine whether to solicit bids or proceed with the renewal of the existing contract and shall notify the concessionaire of the

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decision in writing. If the director denies the renewal request, the existing concessionaire may request a contested case proceeding pursuant to Iowa Code chapter 17A.

571—14.3(461A) Bidding process.

14.3(1) Proposals. Persons interested in operating a concession in a state park or recreation area shall submit a proposal in the format requested in the request for proposals. It is the bidder's responsibility to inspect the area proposed for concession operation and be fully aware of the condition and physical layout of the area. The proposal shall also include an explanation of any proposed operation not mentioned in the request for proposals. Concession facilities shall be bid on an "as is" basis unless the department agrees in writing to undertake certain improvements.

- a. The department reserves the right to reject any or all bids.
- b. If no bids are received for a concession operation, the department may:
 - (1) Readvertise for bids; or
 - (2) Contact interested persons and attempt to negotiate a contract; or
 - (3) Determine that there will be no concession operation in that particular area that year.

14.3(2) Vending machines.

a. Placement of vending machines in state parks and recreation areas shall not be subject to the advertising and bidding process established by this chapter.

b. Vending machines may be placed in state parks and recreation areas only by the publisher or distributor of the newspaper to be sold, the distributor of the soft drink to be sold in the machines, or by private vending machine companies.

c. Companies placing vending machines in state parks and recreation areas must submit a proposal to the department that states the location, number, and type of vending machines to be placed; the price(s) that will be charged to the public; and the proposed fee or commission to be paid to the state.

d. Any fees or commissions to be paid by the vendor to the state shall be paid directly to the department's central office in Des Moines, Iowa.

e. The department will not install new electrical lines, concrete pads, or any other items needed to enable installation of vending machines.

14.3(3) Firewood sales.

a. Firewood sales contracts shall not be subject to the advertising and bidding process established by this chapter.

b. Persons interested in selling firewood in a state park or recreation area that has no other concessionaire, or if the concessionaire has declined the opportunity to sell firewood, shall submit a request to the department that identifies the area(s) where the firewood would be sold, the price to be charged to the public, and the proposed fee or commission to be paid to the state.

c. All firewood sold or distributed in state parks and recreation areas shall be accompanied with a firewood label that meets labeling requirements identified in rule 21—46.16(177A).

d. All firewood that originates from a quarantined area and that is sold or distributed in state parks and recreation areas must be certified by the United States Department of Agriculture to show that the firewood has been processed or treated according to applicable federal regulations.

14.3(4) Friends group or organization.

a. Concession contracts with a friends group or organization, as defined in rule 571—14.1(461A), in state parks and recreation areas shall not be subject to the advertising and bidding process established by this chapter.

b. A friends group or organization shall submit a proposal to operate a concession operation at a particular state park or recreation area. The proposal shall state the services to be provided, the proposed hours of operation, and proposed staffing.

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c. All net proceeds from the sale of merchandise and other concession services shall be spent on state park or recreation area improvement projects.

571—14.4(461A) Selection of a concessionaire. The department shall select the concessionaire it determines to be best suited for a concession operation in a state park or recreation area upon evaluation of the following information:

1. The services proposed in the concession operation.
2. The concessionaire's managerial experience and other concession-related experience.
3. The concessionaire's financial stability, based upon a review of the concessionaire's existing profitability, equity, available cash, and other applicable financial data.
4. The annual lease payment bid.
5. The length of contract proposed.
6. A check of all business and personal references given in the proposal.
7. The use of environmentally friendly practices and materials including, but not limited to, participation in recycling programs, use of items that contain recycled-content materials, use of energy-efficient appliances and equipment, and light pollution reduction.
8. The results of a criminal background check and driver's license record check.

571—14.5(461A) Concession contract—general. The term of the concession contract shall be for no more than a ten-year period without being subject to the renewal process as outlined in this chapter. The contract may be amended during its term, in writing, and effective only if the amendments are approved by all parties.

14.5(1) Construction. The contract may allow the construction of department-approved buildings or other facilities by the concessionaire in lieu of annual concession fee payments on an equal value basis. The value of the buildings or facilities shall be based on actual, documented cost of construction. Any structures built under this contract condition shall become state property and cannot be removed by the concessionaire unless removal is required by the contract.

14.5(2) Insurance. Insurance coverage required to be carried by the concessionaire shall be "occurrence" type rather than "claims made."

14.5(3) Exclusive rights. The contract gives the concessionaire exclusive rights to conduct the concession operation in a particular state park or recreation area. The concessionaire must have department approval prior to allowing other vendors to do business in the area under the terms of the contract. This provision does not prohibit the department from allowing other vendors in an area if the department identifies a service that is not under contract with the concessionaire and the concessionaire declines to provide that service.

14.5(4) Temporary authorization. If necessary, the department director shall have authority to issue a temporary letter of authorization to enable the successful bidder to operate a concession pending approval of the contract by the commission if commission approval is required by statute. The letter of authorization will incorporate all stipulations and conditions of the contract. The term of the letter of authorization shall not exceed 90 calendar days from the date of issuance.

571—14.6(461A) Dispute resolution. Should a dispute arise between the concessionaire and the department as to the interpretation of contract stipulations or whether the concessionaire is performing satisfactorily, the concessionaire shall initially meet with the local staff and district supervisor. If the matter cannot be resolved, the bureau chief will attempt to resolve the dispute. If the dispute cannot be resolved, the contract shall be terminated and the department may advertise for bids in accordance with this chapter. The requirements of Iowa Code section 17A.18(3) shall apply to any contract termination under the provisions of this rule. The provisions of this rule shall not be a bar to or prerequisite of the provisions of rule 571—14.7(461A).

571—14.7(461A) Suspension or termination for cause.

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14.7(1) *Emergency suspension.* If the department determines that continued operation of the concession presents an immediate hazard to the public health, safety or welfare or is in violation of any state law or policy, the department may immediately suspend the contract by notice procedures described in the contract. The notice shall contain specific reasons for the emergency suspension.

The department may enforce the suspension by physically closing the concession premises. The department may assign employees to operate any part of a concession which the department determines should be opened during a suspension in order to provide continued services for park users.

If possible, the concessionaire may take action to correct the hazardous situation and request reinstatement of the contract if the department agrees that a hazardous situation no longer exists.

14.7(2) *Termination of contract.* The department may terminate the contract, for one or more of the following reasons:

a. Failure to correct a hazardous condition within a reasonable time specified in the notice of emergency termination.

b. Nonconformance with the stipulations of the contract including payment of fees.

c. Unsatisfactory performance of the concessionaire.

Upon notice of termination of the contract, the concessionaire may request a hearing under the provisions of natural resource commission rules in 571—Chapter 7.

571—14.8(456A,461A,463C) Honey Creek Resort State Park exemption. The rules in this chapter do not apply to Honey Creek Resort State Park.

These rules are intended to implement Iowa Code sections 461A.1, 461A.3, and 461A.4.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7893C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to general license regulations

The Natural Resource Commission (Commission) hereby rescinds Chapter 15, “General License Regulations,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 456A.24(14), 481A.134, 481A.135, 483A.1, 483A.9A and 483A.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 456A.24(14), 481A.134, 481A.135, 483A.1, 483A.9A and 483A.10.

Purpose and Summary

Chapter 15 governs hunting, fishing, and trapping license sales, fees, general administration, and a framework for license revocation and suspensions. Iowa law requires that most individuals obtain a license prior to engaging in fish- and game-based recreational pursuits. Chapter 15 ensures efficient, timely, and consistent license administration.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, there were numerous provisions in this chapter that were repetitive of statute or of rules elsewhere. There were other provisions

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that were outdated, such as those related to paper licenses and traditional wet ink signatures. These provisions have been removed from the chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7245C**. Public hearings were held on January 16, 2024, at 12 noon and January 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15
GENERAL LICENSE REGULATIONS

571—15.1(483A) Scope. The purpose of this chapter is to provide rules for license fees, sales, refunds and administration; implement the wildlife violator compact and penalties for multiple offenses; and administer special licenses available for hunting and fishing.

DIVISION I
LICENSE SALES, REFUNDS AND ADMINISTRATION

571—15.2(483A) Definitions. For the purposes of this division, the following definitions shall apply, in addition to those found in Iowa Code chapter 483A:

“*Administration fee*” means the fee collected by the department to pay a portion of the cost of administering the sale of licenses through electronic means.

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“*Immediate family member*” means the spouse, a domestic partner, and all minor children of the licensee or person seeking a license.

“*Licensee*” means a person who applies for and receives a license under these rules from the department.

“*Retail*” means the sale of goods or commodities to the ultimate consumer, as opposed to the sale of goods or commodities for further distribution or processing.

“*Wholesale*” means the sale of goods or commodities for resale by a retailer, as opposed to the sale of goods or commodities to the ultimate consumer.

571—15.3(483A) Form of licenses. Every license shall contain a general description of the licensee. At the time of application, the applicant for a license must provide the applicant’s date of birth and either a social security number or a valid Iowa driver’s license number. The license shall be signed by the applicant and shall clearly indicate the privilege granted.

571—15.4(483A) Administration fee. An administration fee of \$1.50 per privilege purchased shall be collected from the purchaser at the time of purchase, except upon the issuance of free landowner deer and turkey hunting licenses, free annual hunting and fishing licenses, free annual fishing licenses, free group home fishing licenses, and boat registrations, renewals, transfers, and duplicates. An administrative fee of \$3.65 will be collected from the purchaser at the time of boat registration, renewal, transfer, and duplicate purchases.

571—15.5(483A) Electronic license sales.

15.5(1) Designation as license agent. The director may designate a retail business establishment, an office of a governmental entity, or a nonprofit corporation as an agent of electronically issued licenses in accordance with the provisions of this rule.

15.5(2) Application. Application forms to sell electronically issued licenses may be secured by a written or in-person request to the Licensing Section, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034. The following information must be provided on the application form:

- a. The legal name, address, and telephone number of the entity applying for designation;
- b. The hours open for business and general service to the public;
- c. A brief statement of the nature of the business or service provided by the applicant;
- d. Type of Internet connection (dial up or high speed) used for accessing the electronic licensing system; and
- e. A signature by an owner, partner, authorized corporate official, or public official of the entity applying for designation.

15.5(3) Application review.

a. The department shall approve or deny the application to sell electronically issued licenses based upon the following criteria:

- (1) The need for a license agent in the area;
- (2) The hours open for business or general service to the public;
- (3) The potential volume of license sales;
- (4) The apparent financial stability and longevity of the applicant;
- (5) The number of point-of-sale (POS) terminals available to the department; and
- (6) Type of Internet connection (dial up or high speed) used for accessing the electronic licensing system.

b. If necessary, the department may utilize a waiting list for license agent designation. The order of priority for the waiting list will be determined by the time of submittal of a complete and correct application and receipt of the required security deposit, as outlined in the application.

15.5(4) Issuance of electronic licensing equipment. Upon the director’s approval of an application under this rule and designation of a license agent for electronic license sales, the equipment necessary to

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conduct such sales will be issued to the license agent by the department subject to the following terms and conditions:

a. Prior to the issuance of the electronic licensing equipment, the approved license agent shall furnish to the department an equipment security deposit in an amount to be determined by the department.

b. Prior to the issuance of the electronic licensing equipment, the approved license agent shall enter into an electronic license sales agreement with the department which sets forth the terms and conditions of such sales, including the authorized amounts to be retained by the license agent.

c. Prior to the issuance of the electronic licensing equipment, the approved license agent shall furnish to the department a signed authorization agreement for electronic funds transfer pursuant to subrule 15.5(5).

d. Electronic licensing equipment and supplies must be stored in a manner to provide protection from damage, theft, and unauthorized access. Any damage to or loss of equipment or loss of moneys derived from license sales is the responsibility of the license agent.

e. Upon termination of the agreement by either party, all equipment and supplies, as outlined in the agreement, must be returned to the department. Failure to return equipment and supplies in a usable condition, excluding normal wear and tear, will result in the forfeiture of deposit in addition to any other remedies available to the department by law.

15.5(5) License fees. All moneys received from the sale of licenses, less and except the agreed-upon service fee, must be immediately deposited and held in trust for the department.

a. All license agents must furnish to the department a signed authorization agreement for electronic funds transfer authorizing access by the department to a bank account for electronic transfer of license fees received by the license agent.

b. The amount of money due for accumulated sales will be drawn electronically by the department on a weekly basis. The license agent shall be given notice of the amount to be withdrawn at least two business days before the actual transfer of funds occurs. The license agent is responsible for ensuring that enough money is in the account to cover the amount due.

c. License agents may accept or decline payment in any manner other than cash, such as personal checks or credit cards, at their discretion. Checks or credit payments must be made payable to the license agent, not to the department. The license agent shall be responsible for ensuring that the license fee is deposited in the electronic transfer account, regardless of the payment or nonpayment status of any check accepted by the license agent.

15.5(6) Termination. Upon the termination of the electronic license sales agreement pursuant to subrule 15.5(7) or 15.5(8), the department may disconnect or otherwise block the license agent's access to the electronic licensing system.

15.5(7) Equipment shut down and termination. The department reserves the right to disconnect the license agent's access to the electronic licensing system or terminate the license agent's electronic license sales agreement for cause. Cause shall include, but is not limited to, the following:

a. Failing to deposit license fees into the electronic transfer account in a sum sufficient to cover the amount due for accumulated sales;

b. Charging or collecting any fees in excess of those authorized by law;

c. Discriminating in the sale of a license in violation of state or federal law;

d. Knowingly making a false entry concerning any license sold or knowingly issuing a license to a person who is not eligible for the license issued;

e. Using license sale proceeds, other than the service fee, for personal or business purposes;

f. Disconnecting or blocking access to the electronic licensing system for a period of 30 days or more; or

g. Violating any of these rules or the terms of the electronic license sales agreement. Repeated violations of these rules may result in termination of the license agent's electronic license sales agreement.

15.5(8) Voluntary termination. A license agent may terminate its designation and the electronic license sales agreement at its discretion by providing written notice to the department. Voluntary termination shall become effective 30 days after the department's receipt of notice.

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571—15.6(483A) Refund or change requests for special deer and turkey hunting licenses and general licenses.

15.6(1) *Death of licensee.* The fee for a deer or turkey hunting license will be refunded to the licensee's estate when a licensee's death predates the season for which the license was issued and a written request from the licensee's spouse, executor or estate administrator is received by the department within 90 days of the last date of the season for which the license was issued.

15.6(2) *Military duty.* The fee for a deer or turkey hunting license will be refunded if the licensee is a member of the armed forces and is either deployed or activated for a national or state emergency during the season for which the license was issued. A written refund request must be received by the department within 90 days of the last date of the season for which the license was issued.

15.6(3) *License changes.* The department will attempt to change a licensee's choice of season or type of license if a written request is received by the licensing section prior to the start of the established season.

15.6(4) *Other refund requests.* Except as previously described in this rule, the department will not issue refunds for any licenses.

571—15.7(483A) Proof of residency required. The department shall have the authority to require persons applying for or who have received resident licenses to provide additional information to determine the person's principal and primary residence or domicile and residency status. Whether a person was issued resident or nonresident licenses by the department in previous years shall not be a determining factor of residency. Persons required to provide additional information under this rule shall be notified in writing by the department and shall have 60 days to submit all required information to the department.

571—15.8(483A) Residency status determination. Upon receipt of information requested from the person, the department may determine whether the person is a resident or a nonresident for purposes of these rules and Iowa Code chapter 483A. The department shall provide the person with written notice of the finding.

571—15.9(483A) Suspension or revocation of licenses when nonresidents obtain resident licenses.

15.9(1) *Suspension or revocation of license.* If the department finds that a nonresident has obtained a resident license, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

15.9(2) *Dates of suspension or revocation.* The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in subrule 15.9(1) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

571—15.10(483A) Licenses—fees. Except as otherwise provided by law, a person shall not fish, trap, hunt, harvest, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or a part of any wild animal, bird, game, turtle, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose and paying a fee as follows:

15.10(1) *Residents.*

- a. Fishing license, annual — \$20.
- b. Fishing license, three-year — \$60.
- c. Fishing license, seven-day — \$13.50.
- d. Fishing license, one-day — \$8.50.
- e. Third-line fishing permit, annual — \$12.
- f. Fishing license, lifetime, 65 years of age or older — \$59.50.

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- g.* Fishing license, lifetime, disabled veteran or POW — \$5.
 - h.* Paddlefish fishing license, annual — \$23.50.
 - i.* Trout fishing fee — \$12.50.
 - j.* Boundary waters sport trotline license, annual — \$24.
 - k.* Hunting license, annual — \$20.
 - l.* Hunting license, annual, including the wildlife habitat fee — \$33.
 - m.* Hunting license, three-year, including the wildlife habitat fee — \$99.
 - n.* Hunting license, lifetime, 65 years of age or older — \$59.50.
 - o.* Combination hunting and fishing license, annual, including the wildlife habitat fee — \$53.
 - p.* Combination hunting and fishing license, lifetime, disabled veteran or POW — \$5.
 - q.* Deer hunting license — \$30.
 - r.* First antlerless deer license — \$25.50.
 - s.* Additional antlerless deer license — \$12.
 - t.* Wildlife habitat fee — \$13.
 - u.* Migratory game bird fee — \$10.
 - v.* Wild turkey hunting license — \$26.50.
 - w.* Fur harvester license, annual — \$24.
 - x.* Fur harvester license, annual, including the wildlife habitat fee — \$37.
 - y.* Fur harvester license, annual, under 16 years of age — \$5.50.
 - z.* Fur harvester license, lifetime, 65 years of age or older — \$59.50.
 - aa.* Fur dealer license, annual — \$264.
 - bb.* Aquaculture unit license, annual — \$30.
 - cc.* Retail bait dealer license, annual — \$36.
 - dd.* Wholesale bait dealer license, annual — \$146.50.
 - ee.* Game breeder license, annual — \$18.
 - ff.* Taxidermy license, annual — \$18.
 - gg.* Trout fishing license, lifetime, 65 years of age or older — \$63.
 - hh.* Trout fishing license, lifetime, disabled veteran — \$63.
 - ii.* Fishing license, annual, veteran — \$5.
 - jj.* Combination hunting and fishing license, annual, veteran — \$5.
- 15.10(2) Nonresidents.**
- a.* Fishing license, annual — \$46.
 - b.* Fishing license, seven-day — \$35.50.
 - c.* Fishing license, three-day — \$18.50.
 - d.* Fishing license, one-day — \$10.
 - e.* Third-line fishing permit, annual — \$12.
 - f.* Paddlefish fishing license, annual — \$47.
 - g.* Trout fishing fee — \$15.50.
 - h.* Boundary waters sport trotline license, annual — \$47.50.
 - i.* Hunting license, annual — \$129.
 - j.* Hunting license, annual, including the wildlife habitat fee — \$142.
 - k.* Hunting license, annual, under 18 years of age — \$30.
 - l.* Hunting license, annual, under 18 years of age, including the wildlife habitat fee — \$43.
 - m.* Hunting license, five-day (not applicable to deer or wild turkey seasons) — \$75.
 - n.* Hunting license, five-day, including the wildlife habitat fee (not applicable to deer or wild turkey seasons) — \$88.
 - o.* Deer hunting license, antlered or any-sex deer — \$345.50.
 - p.* Deer hunting license, antlerless-deer-only, required with the purchase of an antlered or any-sex deer hunting license — \$146.50.
 - q.* Deer hunting license, antlerless-deer-only — \$263.50.
 - r.* Preference point issued under Iowa Code section 483A.7(3) “*b*” or 483A.8(3) “*e*” — \$58.50.
 - s.* Holiday deer hunting license issued under Iowa Code section 483A.8(6),

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antlerless-deer-only — \$88.

- t. Wildlife habitat fee — \$13.
- u. Migratory game bird fee — \$10.
- v. Wild turkey hunting license, annual — \$117.
- w. Fur harvester license, annual — \$232.
- x. Fur harvester license, annual, including the wildlife habitat fee — \$245.
- y. Fur dealer license, annual — \$586.50.
- z. Fur dealer license, one-day, one location — \$292.50.
- aa. Location permit for fur dealer — \$66.
- bb. Aquaculture unit license, annual — \$66.
- cc. Retail bait dealer license, annual — \$146.50.
- dd. Wholesale bait dealer license, annual — \$292.50.
- ee. Game breeder license, annual — \$30.50.
- ff. Taxidermy license, annual — \$30.50.

571—15.11 to 15.15 Reserved.

DIVISION II
MULTIPLE OFFENDER AND WILDLIFE VIOLATOR COMPACT

571—15.16(481A,481B,482,483A,484A,484B) Multiple offenders—revocation and suspension of hunting, fishing, and trapping privileges from those persons who are determined to be multiple offenders.

15.16(1) Definitions. For the purpose of this rule, the following definitions shall apply:

“*Department*” means the Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034.

“*Multiple offender*” means any person who has equaled or exceeded five points for convictions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716 during a consecutive three-year period as provided in subrule 15.16(3).

“*Revocation*” means the taking or cancellation of an existing license or privilege.

“*Suspension*” means to bar or exclude one from applying for or acquiring licenses or privileges for future seasons.

15.16(2) Recordkeeping procedures. For the purpose of administering this rule, it shall be the responsibility of the clerk of district court for each county to deliver, on a monthly basis, disposition reports of each charge filed under Iowa Code chapters 456A, 481A, 481B, 482, 483A, 484A, 484B, and 716 to the department. Dispositions and orders of the court of all cases filed on the chapters listed in this subrule shall be sent to the department regardless of the jurisdiction or the department of the initiating officer.

a. *License suspensions.* In the event of a license suspension pursuant to Iowa Code section 481A.133, the clerk of court shall immediately notify the department.

b. *Entering information.* Upon receipt of the disposition information from the clerks of court, the department will, on a monthly basis, enter this information into a licensed system that is directly accessible to all law enforcement agencies of the state.

c. *Disposition report information.* Information from the disposition report that will be entered into an electronic license system which includes but may not be limited to the following:

- (1) County of violation,
- (2) Name of defendant,
- (3) Address of defendant,
- (4) Social security or driver’s license number,
- (5) Date of birth,
- (6) Race,
- (7) Sex,

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- (8) Height,
- (9) Weight,
- (10) Date and time of violation,
- (11) Charge and Iowa Code section,
- (12) Officer name/C-number who filed charge, and
- (13) Date of conviction.

15.16(3) *Point values assigned to convictions.* Point values for convictions shall be assessed as stated in this subrule. Multiple citations and convictions of the same offense will be added as separate convictions:

- a. Convictions of the following offenses shall have a point value of three:
 - (1) Illegal sale of birds, game, fish, or bait.
 - (2) More than the possession or bag limit for any species of game or fish.
 - (3) Hunting, trapping, or fishing during the closed season.
 - (4) Hunting by artificial light.
 - (5) Hunting from aircraft, snowmobiles, all-terrain vehicles or motor vehicle.
 - (6) Any violation involving threatened or endangered species.
 - (7) Any violations of Iowa Code chapter 482, except Iowa Code sections 482.6 and 482.14.
 - (8) Any violation of nonresident license requirements.
 - (9) No fur dealer license (resident or nonresident).
 - (10) Illegal taking or possession of protected nongame species.
 - (11) The unlawful taking of any fish, turtle, game, or fur-bearing animal.
 - (12) Illegal taking, possession, or transporting of a raptor.
 - (13) Hunting, fishing, or trapping while under license suspension or revocation.
 - (14) Illegal removal of fish, minnows, frogs, or other aquatic wildlife from a state fish hatchery.
 - (15) Any fur dealer violations except failure to submit a timely annual report.
 - (16) Any resident or nonresident making false claims to obtain a license.
 - (17) Illegal taking or possession of hen pheasant.
 - (18) Applying for or acquiring a license while under suspension or revocation.
 - (19) Taking game from the wild—see Iowa Code section 481A.61.
 - (20) Violation of Iowa Code sections 483A.27(7) and 483A.27A.
 - (21) Any violation of Iowa Code section 716.8 while hunting, fishing, or trapping.
- b. Convictions of the following offenses shall have a point value of two:
 - (1) Hunting, fishing, or trapping on a refuge.
 - (2) Illegal possession of fur, fish, turtle, or game.
 - (3) Chasing wildlife from or disturbing dens.
 - (4) Trapping within 200 yards of an occupied building or private drive.
 - (5) Possession of undersized or oversized fish.
 - (6) Shooting within 200 yards of occupied building or feedlot.
 - (7) No valid resident license relating to deer, turkey, or paddlefish.
 - (8) Illegal importation of fur, fish, or game.
 - (9) Failure to exhibit catch to an officer.
 - (10) Trapping or poisoning game birds, or poisoning game animals.
 - (11) Violations pertaining to private fish hatcheries and aquaculture.
 - (12) Violations of the fur dealers reporting requirements.
 - (13) Violation of Iowa Code section 481A.126 pertaining to taxidermy.
 - (14) Loaded gun in a vehicle.
 - (15) Attempting to unlawfully take any fish, turtle, game, or fur-bearing animals.
 - (16) Attempting to take game before or after legal shooting hours.
 - (17) Wanton waste of fish, game or fur-bearing animals.
 - (18) Illegal discharge of a firearm pursuant to Iowa Code section 481A.54.
 - (19) Any violation of Iowa Code section 482.14 pertaining to commercial fishing.
 - (20) Failure to tag deer, turkey, or paddlefish.

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- (21) Applying for or obtaining more than the legal number of licenses allowed for deer or turkey.
- (22) Illegal transportation of game, fish or furbearers.
- (23) Violation of Iowa Code section 483A.27, except Iowa Code section 483A.27(7).

c. All other convictions of provisions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B shall have a point value of one.

15.16(4) Length of suspension or revocation.

a. The term of license suspension or revocation shall be determined by the total points accumulated during any consecutive three-year period, according to the following: 5 points through 8 points is one year, 9 points through 12 points is two years, and 13 points or over is three years.

b. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code section 481A.135(2) shall have an additional suspension of one year. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code section 481A.135(3) shall have an additional suspension of two years. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code section 481A.135(4) shall have an additional suspension of three years. The foregoing provisions apply whether or not a person has been found guilty of a simple misdemeanor, serious misdemeanor or aggravated misdemeanor pursuant to Iowa Code sections 481A.135(2), 481A.135(3) and 481A.135(4). If a magistrate suspends the privilege of a defendant to procure another license and the conviction contributes to the accumulation of a point total that requires the department to initiate a suspension, the term of suspension shall run consecutively up to a maximum of five years. After a five-year suspension, remaining time will be calculated at a concurrent rate.

15.16(5) Points applicable toward suspension or revocation. If a person pleads guilty or is found guilty of an offense for which points have been established by this rule but is given a suspended sentence or deferred sentence by the court as defined in Iowa Code section 907.1, the assigned points will become part of that person's violation record and apply toward a department suspension or revocation.

15.16(6) Notification of intent to suspend and revoke license. If a person reaches a total of five or more points, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

15.16(7) Dates of suspension or revocation. The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in subrule 15.16(6) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

571—15.17(456A) Wildlife violator compact. The department has entered into the wildlife violator compact (the compact) with other states for the uniform enforcement of license suspensions. The compact, a copy of which may be obtained by contacting the department's law enforcement bureau, is adopted herein by reference. The procedures set forth in this rule shall apply to license suspensions pursuant to the wildlife violator compact.

15.17(1) Definitions. For purposes of this rule, the following definitions shall apply:

“*Compliance*” with respect to a citation means the act of answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

“*Department*” means the Iowa department of natural resources.

“*Issuing state*” means a participating state that issues a fish or wildlife citation to a person.

“*Participating state*” means any state which enacts legislation to become a member of the wildlife violator compact. Iowa is a participating state pursuant to Iowa Code section 456A.24(14).

15.17(2) Suspension of licenses for noncompliance. Upon the receipt of a valid notice of failure to comply, as defined in the compact, the department shall issue a notice of suspension to the Iowa resident. The notice of suspension shall:

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a. Indicate that all department-issued hunting (including furbearer) or fishing licenses shall be suspended, effective 30 days from the receipt of the notice, unless the department receives proof of compliance.

b. Inform the violator of the facts behind the suspension with special emphasis on the procedures to be followed in resolving the matter with the court in the issuing state. Accurate information in regard to the court (name, address, telephone number) must be provided in the notice of suspension.

c. Notify the license holder of the right to appeal the notice of suspension within 30 days of receipt. Said appeal shall be conducted pursuant to 571—Chapter 7 but shall be limited to the issues of whether the person so notified has a pending charge in the issuing state, whether the person has previously received notice of the violation from the issuing state, and whether the pending charge is subject to a license suspension for failure to comply pursuant to the terms of the compact.

d. Notify the license holder that, prior to the effective date of suspension, a person may avoid suspension through an appearance in the court with jurisdiction over the underlying violations or through the payment of all fines, costs, and surcharges associated with the violations.

e. Indicate that, once a suspension has become effective, the suspension may only be lifted upon the final resolution of the underlying violations.

15.17(3) *Reinstatement of licenses.* Any license suspended pursuant to this rule may be reinstated upon the receipt of an acknowledgement of compliance from the issuing state, a copy of a court judgment, or a certificate from the court with jurisdiction over the underlying violations and the payment of applicable Iowa license fees.

15.17(4) *Issuance of notice of failure to comply.* When a nonresident is issued a citation by the state of Iowa for violations of any provisions under the jurisdiction of the natural resource commission which is covered by the suspension procedures of the compact and fails to timely resolve said citation by payment of applicable fines or by properly contesting the citation through the courts, the department shall issue a notice of failure to comply.

a. The notice of failure to comply shall be delivered to the violator by certified mail, return receipt requested, or by personal service.

b. The notice of failure to comply shall provide the violator with 14 days to comply with the terms of the citation. The violator may avoid the imposition of the suspension by answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

c. If the violator fails to achieve compliance, as defined in this rule, within 14 days of receipt of the notice of failure to comply, the department shall forward a copy of the notice of failure to comply to the home state of the violator.

15.17(5) *Issuance of acknowledgement of compliance.* When a person who has previously been issued a notice of failure to comply achieves compliance, as defined in this rule, the department shall issue an acknowledgement of compliance to the person who was issued the notice of failure to comply.

15.17(6) *Reciprocal recognition of suspensions.* Upon receipt of notification from a state that is a member of the wildlife violator compact that the state has suspended or revoked any person's hunting or fishing license privileges, the department shall:

a. Enter the person's identifying information into the records of the department.

b. Deny all applications for licenses to the person for the term of the suspension or until the department is notified by the suspending state that the suspension has been lifted.

571—15.18 to 15.20 Reserved.

DIVISION III
SPECIAL LICENSES

571—15.21(483A) Fishing license exemption for patients of substance abuse facilities.

15.21(1) *Definition.* For the purpose of this rule, the definition of “substance abuse facility” is identical to the definition of “facility” in Iowa Code section 125.2(8).

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15.21(2) Procedure. Each substance abuse facility may apply to the department of natural resources for a license exempting patients from the fishing license requirement while fishing as a supervised group as follows:

a. Application shall be made on a form provided by the department and shall include the name, address and telephone number of the substance abuse facility including the name of the contact person. A general description of the type of services or care offered by the facility must be included as well as the expected number of participants in the fishing program and the water bodies to be fished.

b. A license will be issued to qualifying substance abuse facilities and will be valid for all patients under the care of that facility.

c. Patients of the substance abuse facility must be supervised by an employee of the facility while fishing without a license pursuant to this rule. An employee of the substance abuse facility must have the license in possession while supervising the fishing activity of patients.

d. Notwithstanding the provisions of this rule, each employee of the substance abuse facility must possess a valid fishing license while participating in fishing.

571—15.22(481A) Authorization to use a crossbow for deer and turkey hunting during the bow season by handicapped individuals.

15.22(1) Definitions. For the purpose of this rule:

“Bow and arrow” means a compound, recurve, or longbow.

“Crossbow” means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire a bolt, arrow, or quarrel by the release of the bow string, which is controlled by a mechanical or electric trigger and a working safety.

“Handicapped” means a person possessing a physical impairment of the upper extremities that makes a person physically incapable of shooting a bow and arrow. This includes difficulty in lifting and reaching with arms as well as difficulty in handling and fingering.

15.22(2) Application for crossbow permit. An individual requesting use of a crossbow for hunting deer or turkey must submit an application for a crossbow permit on forms provided by the department. The application must include a statement signed by the applicant’s physician declaring that the individual is not physically capable of shooting a bow and arrow. The physician shall be a licensed physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner. A first-time applicant must submit the crossbow permit application no later than ten days before the last day of the license application period for the season the person intends to hunt.

15.22(3) Crossbow permit—issuance and use. Approved applicants will be issued a permit authorizing the individual to hunt deer and turkey with a crossbow. The crossbow permit must be carried with the license and on the person while hunting deer and turkey and must be exhibited to a conservation officer upon request.

15.22(4) Validity and forfeiture of permit. A permit authorizing the use of a crossbow for hunting deer and turkey will be valid for as long as the person is incapable of shooting a bow and arrow. If a conservation officer has probable cause to believe the person’s handicapped status has improved, making it possible for the person to shoot a bow and arrow, the department may, upon the officer’s request, require the person to obtain in writing a current physician’s statement. The physician shall be a licensed physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner.

If the person is unable to obtain a current physician’s statement confirming that the person is incapable of shooting a bow and arrow, the department may initiate action to revoke the permit pursuant to 571—Chapter 7.

15.22(5) Restrictions. Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer or turkey. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead.

571—15.23(483A) Free hunting and fishing license for low-income persons 65 years of age and older or low-income persons who are permanently disabled.

NATURAL RESOURCE COMMISSION[571](cont'd)

15.23(1) Purpose. Pursuant to Iowa Code section 483A.24(15), the department of natural resources will issue a free annual combination hunting and fishing license to low-income persons who meet the age status or permanently disabled status as defined.

15.23(2) Definitions.

“Age status” means a person who has achieved the sixty-fifth birthday.

“Low-income person” means a person who is a recipient of a program administered by the state department of human services for persons who meet low-income guidelines.

“Permanently disabled” means a person who meets the definition in Iowa Code section 483A.4.

15.23(3) Procedure. Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, address, height, weight, color of eyes and hair, date of birth, and gender of the applicant. In addition, applicants shall include a copy of an official document such as a birth certificate if claiming age status, or a copy of an award letter from the Social Security Administration or private pension plan if claiming permanent disabled status. The application shall include an authorization allowing the department of health and human services to verify the applicant’s household income if proof of income is provided through the department of health and human services.

b. The free annual hunting and fishing combination license will be issued by the department upon verification of program eligibility. The license issued under this rule will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain a free license.

c. A person whose income falls below the federal poverty guidelines may apply for this license by providing either of the following:

(1) A current Notice of Decision letter. For purposes of this rule, a “current Notice of Decision letter” shall mean a letter from the department of health and human services dated in the month the application is received or dated in the five months immediately preceding the month the application is received that describes the applicant’s monthly or annual household income.

(2) If a person does not have a Notice of Decision letter as described in subparagraph 15.23(3)“c”(1), a document shall be provided that states that the applicant’s annual income does not exceed the federal poverty limit for the current year and lists income from all sources, including but not limited to any wages or compensation, social security, retirement income, dividends and interest, cash gifts, rents and royalties, or other cash income. In addition, the applicant shall provide documentation of such income by submitting a copy of the applicant’s most recently filed state or federal income tax return to the department. In the event an applicant does not have a tax return that was filed within the last year because the applicant’s income level does not require the filing of a tax return, the applicant shall so notify the department, shall provide to the department bank statements, social security statements or other relevant income documentation identified by the department, and shall meet with the department to verify income eligibility under this rule.

Federal poverty guidelines are published in February of each year and will be the income standard for applicants from that time until the guidelines are available in the subsequent year. The guidelines will be shown on the application and will be available upon request from the department.

15.23(4) Revocation. Any license issued pursuant to rule 571—15.23(483A) may be revoked, in whole or in part, by written notice, if the director determines that a license holder had provided false information to obtain a license under this chapter or has violated any provision of this chapter and that continuation of the license is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the license holder may file a notice of appeal, requesting a contested case hearing pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the license be reinstated.

571—15.24(483A) Free annual fishing license for persons who have severe physical or mental disabilities.

NATURAL RESOURCE COMMISSION[571](cont'd)

15.24(1) Purpose. Pursuant to Iowa Code section 483A.24(9), the department of natural resources will issue a free annual fishing license to Iowa residents 16 or more years of age who have severe mental or physical disabilities who meet the definition of “severe mental disability” or “severe physical disability” in subrule 15.24(2).

15.24(2) Definitions. For the purposes of this rule, the following definitions apply:

“*Severe mental disability*” means a person who has severe, chronic conditions in all of the following areas which:

1. Are attributable to a mental impairment or combination of mental and physical impairments;
2. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency;
3. Reflect the person’s need for a combination and sequence of services that are individually planned and coordinated; and
4. Requires the full-time assistance of another person to maintain a safe presence in the outdoors.

“*Severe physical disability*” means a disability that limits or impairs the person’s mobility or use of a hand or arm and that requires the full-time assistance of another person or that makes the person dependent on a wheelchair for the person’s normal life routine.

15.24(3) Procedure. Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, home address, home telephone number, height, weight, eye and hair color, date of birth, and gender of the applicant and other information as required. The license issued under this rule will be issued by the department upon verification of program eligibility and will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain the license.

b. The application shall be certified by the applicant’s attending physician with an original signature and, based upon the definition of severe mental disability or severe physical disability as provided for in this rule, declare that the applicant has a severe mental or physical disability. A medical statement from the applicant’s attending physician specifying the applicant’s type of disability shall be on 8½” x 11” stationery of the attending physician or on paper inscribed with the attending physician’s letterhead. For purposes of this rule, the attending physician must be a currently practicing licensed physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner.

15.24(4) Revocation. Any license issued pursuant to rule 571—15.24(483A) may be revoked, in whole or in part, by written notice, if the director determines that a license holder had provided false information to obtain a license under this chapter or has violated any provision of this chapter and that continuation of the license is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the license holder may file a notice of appeal, requesting a contested case hearing pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the license be reinstated.

571—15.25(483A) Transportation tags for military personnel on leave from active duty.

15.25(1) Military transportation tags for deer and turkey. The military transportation tag shall include the following information: name, birth date, current address of military personnel; species and sex of animal taken; date of kill; and weapon used. Only conservation officers of the department shall be authorized to issue military transportation tags.

15.25(2) Annual limit for military transportation tags. A person receiving a military transportation tag shall be limited to one military deer tag and one military turkey tag annually.

15.25(3) Regulations apply to military personnel. With the exception of the license requirement exemption set forth in Iowa Code section 483A.24(7), all hunting and fishing regulations shall apply to active duty military personnel.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—15.26(483A) Special nonresident deer and turkey licenses. The commission hereby authorizes the director to issue special nonresident deer and turkey licenses pursuant to the provisions of 561—Chapter 12.

571—15.27 to 15.39 Reserved.

DIVISION IV
EDUCATION AND CERTIFICATION PROGRAMS

571—15.40(483A) Hunter education program.

15.40(1) This division clarifies the term “hunting license” as used in Iowa Code section 483A.27 in relation to the hunter education course requirement, and explains the requirements for individuals who wish to demonstrate their knowledge of hunter education so as to be eligible to purchase an Iowa hunting license. For the purpose of this division, a hunting license, pursuant to Iowa Code sections 483A.1 and 483A.24, includes:

- a. Hunting licenses for legal residents except as otherwise provided.
- b. Hunting licenses for nonresidents.
- c. Hunting preserve licenses.
- d. Free annual hunting and fishing licenses for persons who are disabled or are 65 years of age or older and qualify for low-income status as described in Iowa Code section 483A.24.
- e. Veterans’ hunting and fishing licenses as described in Iowa Code section 483A.24.

15.40(2) Deer and wild turkey license applications. Individuals are not required to exhibit a certificate showing satisfactory completion of a hunter education course when applying for a deer or wild turkey license.

These rules are intended to implement Iowa Code chapters 456A, 481A, and 483A.

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[Published 5/1/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7894C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to structures on public waters

The Natural Resource Commission (Commission) hereby rescinds Chapter 16, “Docks and Other Structures on Public Waters,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 461A.4 and 462A.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 461A.4, 461A.11, 461A.18, 462A.27 and 462A.32.

Purpose and Summary

Chapter 16 regulates docks on water bodies open to the public for boating or other recreational uses. This includes a permitting system for docks operated by residential owners, commercial entities, and governmental subdivisions. The chapter also contains the rules for the Department of Natural Resources’ (Department’s) dock management area (DMA) program.

NATURAL RESOURCE COMMISSION[571](cont'd)

The primary purposes of the chapter are to balance the needs of dock owners with those of the general public on public lakes and to reduce conflicts between neighboring dock owners. Additionally, the DMA program provides dock access to members of the public who are not riparian property owners.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7255C**. Public hearings were held on January 30, 2024, at 12 noon and January 31, 2024, at 4 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings.

A public comment received sought clarification on a few provisions; however, it did not propose any specific changes.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
DOCKS AND OTHER STRUCTURES ON PUBLIC WATERS

571—16.1(461A,462A) Definitions.

“*Artificial lake*” means all river impoundments and all other impoundments of water to which the public has a right of access from land or from a navigable stream inlet. Examples are Lake Panorama, Lake Delhi, Lake Nashua, and Lake Macbride.

“*Boat*” means “watercraft” as defined in Iowa Code section 462A.2.

“*Boat hoist*” or “*lift*” means a structure placed in the water or below the ordinary high-water mark for boat storage, including platforms for storage of personal watercraft. For the purposes of this chapter, a boat hoist that is designed to store up to two small vessels such as personal watercraft

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or one-person sailboats may be treated as a single hoist. For the purposes of this chapter, storage of stand-up paddleboards on racks above the platform of a dock is not counted as a boat hoist or lift; however, a rack for storage of canoes or kayaks is a boat hoist.

“*Catwalk*” means a platform no more than four feet wide installed to provide access from a dock to a moored boat or boat hoist.

“*Commercial dock*” means a dock used as part of a business, including a dock extending from residential property if one or more mooring spaces at the dock are rented for a fee. A dock maintenance fee charged by a property owners’ association to its members is not a basis to classify a dock as commercial. This definition is not applicable to docks in dock management areas or concession operations administered by the department.

“*Commission*” means the natural resource commission.

“*Common dock*” means a dock serving two or more adjoining shoreline properties.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources or the director’s designee.

“*Dock*” means a platform-type structure extending from shoreline property over a public water body, including but not limited to platforms that provide access to boats moored on the water body.

“*Dock management area*” or “*DMA*” means an area designated by the department in the bed of a water body adjoining a state park, wildlife management area, or recreation area or adjoining a strip of land that was dedicated to the public and is subject to the jurisdiction of the department pursuant to Iowa Code section 461A.11(2). A dock management area as designated by the department includes an area adjoining public land from which docks extend.

“*Impoundment*” means a body of water formed by constructing a dam across a waterway.

“*Public dock*” means a dock constructed and maintained to provide public access from public land to a water body.

“*Public land*” means land that is owned by the state, a city, or a county or land that has been dedicated for public access to a public water body.

“*Public water body*” is a water body to which the public has a right of access.

“*Rental*” means taking compensation, trading, or bartering for the usage of a slip or hoist on a Class I or Class III dock, including the rental of a vehicle parking spot that includes the privilege of using a hoist or slip on a Class I or Class III dock.

“*Shoreline property*” means a parcel of property adjoining (littoral to) a lake or adjoining (riparian to) a river or other navigable stream.

“*Slip*” means a mooring space, usually adjacent to a dock, sometimes accessed by a catwalk.

“*Water body*” means a river or other stream, a natural lake, an artificial lake or other impoundment, or an excavated pit.

DIVISION I
PRIVATE, COMMERCIAL AND PUBLIC DOCKS

571—16.2(461A,462A) Scope of division and classes of permits. Permits are required for docks on all water bodies open to the public for boating or other recreational uses. This division governs permits for all types of docks except docks in dock management areas designated by the department. Classes of permits are designated as follows: Class I permits authorize standard private docks, other private docks in specified areas, and docks permitted by the U.S. Army Corps of Engineers; Class II permits authorize docks that are managed by governmental entities and extend from shoreline property owned by those governmental entities; Class III permits authorize nonstandard private docks; and Class IV permits authorize commercial docks. A dock that involves placement of fill or construction of a permanent structure in a state-owned public water body also requires a construction permit issued under 571—Chapter 13. A dock issued a permit by the U.S. Army Corps of Engineers, located on a water body managed by the U.S. Army Corps of Engineers, does not require a state dock permit under this chapter.

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571—16.3(461A,462A) Standard requirements for all docks. All docks are subject to the following requirements:

16.3(1) *Adverse impacts on aquatic ecosystem.* All docks, hoists, slips and related structures shall be located, sized, configured, constructed and installed to limit their adverse impacts on the aquatic ecosystem. In areas of sensitive aquatic habitat, docks and hoists shall be located, configured, constructed and installed to minimize harm to aquatic habitat. Other restrictions may be placed on docks that are in a state-protected waters area as necessary to protect the natural features of the designated area.

16.3(2) *Adverse impacts on public access for recreational use.* A dock shall not be configured to enclose an area of a public water body and create a private water area or otherwise adversely affect public recreational use of the water body. Where walking or wading parallel to the shore below the ordinary high-water mark would be physically practical except for the obstruction created by a dock, the dock owner shall not prevent a person from stepping on or over the dock to bypass the obstruction.

16.3(3) *Location and offsets.* To the extent practical, a dock and boat hoists shall be placed near the center of the shoreline property frontage and installed perpendicular to the ordinary high-water mark to maximize offsets from neighboring properties. Each dock, hoist, moored vessel and other permitted structure shall be offset a minimum of five feet from an adjoining property line and five feet from the projection of a line perpendicular from the ordinary high-water mark at the common boundary with adjoining shoreline property as determined by the department. A minimum gap of ten feet shall be maintained between adjoining docks (including “L” or “T” or catwalk segments), hoists or moored boats. Where projection of a line perpendicular from the ordinary high-water mark is impractical, it is the intent of this rule that a ten-foot gap be maintained in a manner that is equitable to each adjoining shoreline property owner.

16.3(4) *Length.* A dock shall not extend farther from the water’s edge than the distance necessary for reasonable access to the water body in relation to characteristics of the water body in the vicinity of the dock site and the impacts on the water body and other users. Access to maintain one or more boats in water with a minimum depth of three feet shall be considered sufficient access.

16.3(5) *Display of 911 address.* Each dock owner shall display the 911 address, including the street and city, assigned to the property served by the dock. The owner of a dock authorized by an individual permit shall also display the dock permit number. The information shall be displayed in block letters and numbers at least one inch high in a color contrasting with the background, on the water end of the dock, facing away from shore, and shall be plainly visible.

16.3(6) *Winter removal.* Each dock must be removed from public waters before December 15 of each year and shall not be reinstalled until the following spring unless the removal requirement is waived by a condition of a dock permit or by rule 571—16.18(461A,462A).

16.3(7) *No enclosure of private docks.* Private docks and docks in dock management areas shall not be enclosed by roofs or sides. Hoists may be enclosed by roofs and sides constructed of soft-sided natural fiber or synthetic fiber materials for the purpose of protecting watercraft.

16.3(8) *Materials and flotation specifications.* Every new floating structure authorized by this chapter shall use flotation methods and devices of a type constructed of low-density, closed-cell rigid plastic foam; high-impact polyethylene fiberglass material; wood products pressure-treated with a product approved by the United States Environmental Protection Agency for aquatic use; or other inert materials to provide flotation. Synthetic (such as plastic or fiberglass) or metal containers not originally manufactured as flotation devices may be used as dock flotation devices if they have been cleaned of any product residue, sealed and watertight, and filled with a closed-cell rigid plastic foam.

16.3(9) *Flow of water.* All docks shall be constructed and placed in a manner that allows the free flow of water beneath them.

16.3(10) *Excavation, fill and aquatic vegetation removal prohibited.* No bed material may be excavated or fill placed, and no aquatic vegetation may be removed below the ordinary high-water mark of a water body in association with construction of a dock unless excavation, placement of fill, or aquatic vegetation removal is specifically authorized by a construction permit issued under 571—Chapter 13.

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16.3(11) Storage, use, and dispensing of fuel. The storage, use, and dispensing of any fuel on a dock on or over a public water body or adjacent public land shall be in compliance with Iowa Code chapter 101 and administrative rules that implement Iowa Code chapter 101.

16.3(12) Electrical service. Any electrical service on or leading to any dock used for storage or dispensing of fuel must comply with the National Electrical Code, 2023 edition. All electrical service leading to docks shall include ground fault circuit interrupter protection.

16.3(13) Anchoring of river docks. All river docks must be securely anchored to prevent them from becoming floating hazards during times of high river flows. The riparian owner is responsible for dock retrieval and removal when necessary to prevent or remove a navigation hazard.

16.3(14) Access for inspection. A dock, boat hoist, raft, platform, mooring buoy or any other structure on a public water body may be physically inspected at any time by a representative of the department as needed to determine whether it was placed and is maintained in a manner consistent with the requirements in these rules or with a permit issued under these rules.

571—16.4(461A,462A) Class I permits for standard private docks. This rule establishes criteria and procedures for Class I permits for private docks qualifying as standard docks under criteria in this rule and for certain other docks in areas listed in this rule.

16.4(1) Criteria for standard docks. A Class I permit for a standard dock may authorize a total of one dock and up to two hoists serving one residence. It may authorize a common dock serving two or more residences located on adjoining shoreline properties. A common dock may include up to three hoists per shoreline property and be eligible for a Class I dock permit. The dock must extend from shoreline property on which one or more of the residences are located and must meet all of the following criteria:

a. Dock length limits. A dock on a natural lake may extend the greater of 100 feet from the water's edge or far enough so that the outer 50 feet of the dock is in 3 feet of water up to a maximum of 300 feet from the water's edge. These lengths shall be measured from the water's edge when the dock is installed. A dock on an artificial lake or river may extend the lesser of 50 feet from the water's edge or one-fourth of the width of the waterway measured from the water's edge when the dock is installed. However, the department may give notice to a property owner that a shorter dock length is necessary to avoid interference with navigation or an adjoining property owner's access. The width of an "L" or "T" segment at the outer end of a dock is included in measuring the length of the dock.

b. Width and configuration of docks on natural lakes. A dock on a natural lake may have no more than one "L" or "T" segment. The total length of the "L" or "T" segment facing opposite from shore may not be greater than 20 feet including the width of the dock. The total area of the "L" or "T" segment may not exceed 200 square feet. That part of the main dock forming the center of a "T" segment or an extension of an "L" segment is included in measuring the area of the "T" or "L" segment. No other part of the dock may be more than six feet wide. Catwalks shall be at least two feet wide and considered as part of the dock. Catwalks shall be limited in length as in an "L" or "T" segment of the dock construction and may not extend beyond the width of the hoist, except that a catwalk may be extended around the hoist for access to the hoist.

c. Compliance with standard requirements. The dock and associated hoists must comply with the standard requirements in rule 571—16.3(461A,462A) for all docks.

d. Other structures not authorized. A Class I permit does not authorize placement of any other anchored or floating structure, such as a swim raft.

16.4(2) Class I permits for private docks in other specified areas. This subrule authorizes issuance of Class I permits for private docks in certain areas where circumstances, including narrowness of the water areas specified below, require different dock and hoist configurations. In the following areas, docks that fail to comply with the offset or ten-foot gap requirement in subrule 16.3(3) but that meet other standard dock requirements in rule 571—16.3(461A,462A) are eligible for a Class I permit, unless they obstruct navigation or an adjoining property owner's access: canals off West Okoboji Lake; Okoboji Harbor; inside harbor of Harbourage at Clear Lake; Venetian Village Canal at Clear Lake; Cottage Reserve on Lake Macbride; Lake Panorama; canals at Lake Manawa; and Lake Delhi.

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16.4(3) Procedures for issuance of Class I dock permits. The owner of a standard dock eligible for a Class I permit under the criteria in subrule 16.4(1) or a dock in an area specified in subrule 16.4(2) shall apply for a Class I dock permit via the department's website. The applicant shall certify that the dock meets the criteria for a Class I permit. The department shall approve the application based on the applicant's certification and shall assign a permit number, which may be a series of numbers or letters or a combination of numbers and letters. The applicant is responsible for obtaining stickers with the permit numbers and letters, for attaching them to the end of the dock facing opposite from the shoreline, and for displaying the 911 address as provided in subrule 16.3(5). Class I dock permits authorized by this rule are issued without administrative fee and remain valid until the property is sold or transferred. In the event the property is sold or transferred, the new owner may request to transfer the Class I dock permit as provided in subrule 16.11(1). A Class I dock permit shall be valid only while dock and hoists comply with the criteria for a Class I permit.

571—16.5(461A,462A) Class II permits for docks authorized by governmental entities that own or otherwise control shoreline property. This rule authorizes issuance of a Class II dock permit to a governmental entity for docks authorized by that entity to extend from public land owned or controlled by the entity. A Class II permit may include all docks and hoists authorized by a governmental entity on one water body. The Class II dock permit shall require that all docks comply with the standard requirements in rule 571—16.3(461A,462A). Class II permits may include exceptions as needed to provide continuing authorization for docks and hoists that were lawfully installed and maintained before the effective date of certain requirements as set forth in this rule. A dock on a natural lake may extend the greater of 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water up to a maximum of 300 feet from the water's edge. These lengths shall be measured from the water's edge when the dock is installed. The governmental entity authorizing maintenance of a dock and boat hoists shall be responsible for enforcing the standard requirements and length limit. The department reserves authority to determine whether the requirements of rule 571—16.3(461A,462A) and the length limit are met upon complaint of a person who claims that a public or private right is adversely affected by a permitted dock. If the department determines that a dock or hoist must be moved or removed from the water body because of an adverse effect, the department shall issue an administrative order to the governmental entity that is authorizing maintenance or use of the dock and to the person who is maintaining or using the dock. Issuance of the administrative order shall trigger a right of the governmental entity and the affected person to a contested case. If shoreline property is public land but there is uncertainty concerning the relationship between the authority of the governmental entity and the authority of the department, the Class II permit shall include a recital concerning the relative authorities of the department and the permittee. Class II permits are issued without fee and are valid until a classification change is made.

571—16.6(461A,462A) Class III permits for nonstandard private docks. All private docks that are not authorized by Class I or Class II permits shall require a Class III dock permit. In determining whether to issue a Class III permit for a private dock or to condition the permit by denying an application in part, the department shall apply the following criteria:

16.6(1) A Class III private dock permit shall require docks or hoists to be in compliance with requirements in rule 571—16.3(461A,462A), except as provided in rule 571—16.8(461A,462A).

16.6(2) An individual private dock on a natural lake may be permitted by a Class III permit to extend 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water when the dock is installed. These lengths shall be measured from the water's edge when the dock is installed. If the water level declines after installation, additional segments may be installed during the season as needed to maintain 80 feet of dock in 3 feet of water, up to a maximum length of 300 feet from the water's edge. However, the department may give notice to a permittee that a shorter dock length is required to avoid interference with navigation or an adjoining property owner's access. The maximum permitted length of an individual private dock on an artificial lake or river is the lesser of 50 feet from the water's edge or one-fourth of the width of the waterway measured from the water's edge at normal

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water levels. The width of an “L” or “T” segment at the outer end of a dock is included in measuring the length of the dock.

16.6(3) The maximum number of hoists authorized by a Class III permit for an individual private dock is one hoist for every 10 feet of shoreline.

16.6(4) A Class III permit for an individual private dock on a natural lake may not authorize “L” or “T” segments containing more than a total of 240 square feet including the area of the adjoining parts of the main dock.

16.6(5) An individual private dock may be exempted by permit condition from the winter removal requirement in appropriate circumstances under criteria in rule 571—16.12(461A,462A).

571—16.7(461A,462A) Class IV permits for commercial docks. In determining whether to issue a Class IV permit for a commercial dock or to condition the permit by denying an application in part, the department shall apply the following criteria:

16.7(1) A Class IV permit shall require docks or hoists to be in compliance with requirements in rule 571—16.3(461A,462A), except as provided in rule 571—16.8(461A,462A). Greater offsets may be required for new commercial docks or hoists if needed to minimize boat traffic and congestion that spills over in front of other shoreline property not owned or controlled by the applicant.

16.7(2) A commercial dock on a natural lake may be permitted to extend a maximum of 300 feet from the water’s edge. However, the applicant must provide justification for a length greater than 150 feet and demonstrate that there are no appropriate alternatives available.

16.7(3) The maximum number of hoists or slips authorized by a permit for a commercial dock is one hoist or slip for every ten feet of shoreline. This limit shall not apply where a business operated on the shoreline property primarily involves boat sales, rentals, storage, or other boat services. In calculating the hoist limit, courtesy hoists shall not be counted if they are provided without charge to boaters to temporarily moor their boats while they go ashore to access services at a business on the shoreline property.

16.7(4) A permit for a commercial dock shall not be issued or the permit will include restrictions as needed to prevent uses of the dock that would be incompatible with zoning of the shoreline property from which the dock extends (including special use exceptions or variances recognized by the local governing body). However, a change in local zoning ordinance or termination of a local variance or special use exception shall not automatically be a ground for the department to revoke or refuse to renew a dock permit.

16.7(5) Authorization for roofs or sides on commercial docks or slips may be restricted as needed to minimize adverse visual impact on owners of other property and the public.

16.7(6) Each mooring site (slip) shall be marked by an identifying number or letter, in block style at least 3 inches high, of contrasting color, and located uniformly near the vessel’s bow.

571—16.8(461A,462A) Exceptions for renewal of Class III and Class IV permits for existing docks. This rule provides certain exceptions to length limits, hoist limits and platform size limits for docks and hoists that lawfully existed before the effective date of the limits. Criteria for exceptions to offset requirements are separately listed in subrule 16.8(2). Exceptions under this rule are granted at the discretion of the department.

16.8(1) Class III and Class IV permits shall include exceptions as needed to provide continuing authorization for docks and hoists that were lawfully installed and maintained before the effective date of certain requirements as set forth in this rule. Permits shall include exceptions to the length limits in subrules 16.6(2) and 16.7(2) for docks up to 300 feet long that were lawfully installed and maintained before the effective date of the length limits. Permits shall include exceptions to the hoist limit in subrules 16.6(3) and 16.7(3), and to the platform size limit in subrule 16.6(4) for docks and hoists that were lawfully installed and maintained before the effective date of the limits. Any exceptions granted for such docks will expire upon sale or transfer of the property.

16.8(2) An exception to the offset requirements in subrule 16.3(3) shall be granted if the applicant can satisfy all three of the following criteria:

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- a. The lack of offset on one side of the property is compensated for by a larger offset on the other side of the property;
- b. The applicant provides the department with a copy of the written consent of each affected adjoining property owner or an affidavit attesting that the affected adjacent property owner named in the affidavit has verbally given the applicant consent for the requested exception, or provides adequate documentation that the adjoining shoreline parcel is burdened by restrictive covenants, easements, or other valid use restrictions that impose on the owner of the parcel an obligation to tolerate docks and hoists that would otherwise violate the offset or gap requirements in subrule 16.3(3); and
- c. The applicant demonstrates that no other dock or hoist configuration is physically practical.

571—16.9(461A,462A) Initial decision and right of appeal. The decision on an application for a Class II, Class III or Class IV permit shall be provided in writing and may grant the permit, grant the permit with specific conditions, or deny the permit. If the decision is to deny the permit or to issue a permit with specific conditions that deny the application in part, the written decision shall include notice of the applicant's right to request a contested case under 571—Chapter 7. An applicant's request for a contested case may include a request for a waiver under the provisions of Iowa Code section 17A.9A and 571—Chapter 11.

571—16.10(461A,462A) Application and administrative fees.

16.10(1) The applicant for a Class II, Class III or Class IV permit shall apply via the department's website. If the applicant for a Class III or Class IV permit is not the owner of the shoreline property from which the dock extends, the applicant shall identify the contractual relationship between the applicant and each property owner and shall submit as part of the application the written consent from each owner. The application shall be accompanied by plans and drawings that accurately show the size and location of each boat hoist, slip, platform, catwalk, buoy, or other structure to be maintained in front of the shoreline property. Docks in front of nonadjoining shoreline properties on the same water body owned by the same person or legal entity may be included in one application. An application for renewal of a permit for an existing dock and hoists must specifically describe each requested modification. The applicant shall submit an administrative fee with the application. The application will be assigned to a conservation officer to investigate.

16.10(2) The Class III permit application fee shall be \$125 for one or more individual private docks. The Class IV permit application fee shall be \$250 for one or more commercial docks. A Class III permittee shall pay an annual administrative fee of \$50 for each hoist or slip in excess of a total of four hoists or slips. A Class IV permittee shall pay an annual administrative fee of \$50 for each hoist or slip in excess of a total of six hoists or slips, except for each hoist or slip designated in the permit as courtesy mooring for customers and affixed with a sign identifying it as a courtesy hoist or slip. The hoist/slip fee is due on March 1 of each year or whenever a permit is modified by adding a hoist or slip. Any fees owed to the department shall be paid in full prior to the installation of any portion of an individual private dock or commercial dock and before a boat is placed in a hoist or slip. The department may waive the permit application fee if the application is for a minor modification of an existing permit without an extension of the term of the permit.

571—16.11(461A,462A) Duration and transferability of permits; refund of application fees; suspension, modification, or revocation of permits; complaint investigation; property line location.

16.11(1) Duration and transferability of dock permits; administrative fee refunds. With the exception of Class I dock permits, each dock permit shall be issued for a term of five years unless a shorter term is needed due to specified circumstances. The administrative fee paid with an application is nonrefundable unless the application is withdrawn before the department incurs administrative expense in investigating the application. A dock permit is transferable to a new owner of the shoreline property upon request to the department by the new owner; however, if the permit contains exceptions pursuant

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to rule 571—16.8(461A,462A), those exceptions shall expire upon transfer, and the new owner shall immediately bring the dock into compliance with all current rules.

16.11(2) *Suspension, modification, or revocation of permits.* A dock permit may be modified, suspended, or revoked, in whole or in part, by written notice served in compliance with Iowa Code section 17A.18, if the director determines that the dock is a hazard to other users of the water body, that a violation of any terms or conditions of the permit has occurred, or that continuation of the permit is contrary to the public interest. Such modification, suspension, or revocation is effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may request a hearing in order to present information demonstrating that the alleged violation did not occur or that required corrective and preventative measures have been taken, or to present any other information relevant to a decision as to whether the permit should be reinstated, modified, or revoked. The hearing shall be conducted as prescribed by 571—Chapter 7. After completion of the hearing, a final decision will be made concerning the status of the permit. In the event that no hearing is requested, notices of modification and revocation shall remain in effect, and suspended permits shall be reinstated, modified, or revoked. These procedures are not intended to limit the authority of a department law enforcement officer to issue a citation for a violation of a provision of Iowa Code chapter 461A or 462A, or a provision in this chapter.

16.11(3) *Investigation of complaints.* Any person adversely affected by a permitted dock or associated boat hoist may request, in writing, an investigation and a hearing to reconsider the permit. Requests for hearings shall specify adverse effects on the complainant and shall be made in accordance with procedures described in 571—Chapter 7.

16.11(4) *Determining property boundaries.* An applicant for a permit, a permittee, and an owner of shoreline property adjoining property of an applicant or permittee are responsible for determining the accurate location of common boundaries of their respective properties.

571—16.12(461A,462A) Exemptions from winter removal requirement. This rule provides for exemptions from the general requirement in Iowa Code section 462A.27 that nonpermanent structures be removed on or before December 15 of each year. Docks and other structures subject to destruction or damage by ice movement must be removed. Where a dock may be left in ice without damage to the dock, it must have reflective material visible from all directions to operators of snowmobiles, other motorized machines, or wind-propelled vessels lawfully operated on the frozen surface of the water body. Generally, ice damage is greatest on Iowa's rivers and natural lakes. Docks must be removed by December 15 of each year unless they have the required reflective materials and are specifically exempted by a condition of a dock permit or are located in one of the areas listed as follows: artificial lakes; Upper Gar Lake; canals off West Okoboji Lake; Okoboji Harbor; Lazy Lagoon portion of Triboji dock management area; Smith's Bay on West Okoboji Lake; area between the trestle and U.S. Highway 71 bridges on Okoboji lakes; Templar Park on Big Spirit Lake; Venetian Village Canal and Harbourage Inlet on Clear Lake; Casino Bay of Storm Lake; Black Hawk Marina at Black Hawk Lake; and canals off Lake Manawa and Carter Lake. A permit shall not authorize an exception from the winter removal requirement unless the applicant provides adequate documentation that the dock will not be damaged by normal ice movement.

571—16.13(461A,462A) General conditions of all dock permits. All dock permits, unless specifically excepted by another provision of this chapter, shall include the following conditions of approval:

16.13(1) The permit creates no interests, personal or real, in the real estate below the ordinary high-water mark nor does it relieve the requirement to obtain federal or local authorization when required by law for such activity. The permit does not authorize the permittee to prevent the public from using areas of the water body adjacent to the permitted structure. However, a lawfully permitted private

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dock or commercial dock is property of the permittee. Use of the dock is reserved to the permittee and the permittee's invitees, subject to the public right of passage stated in subrule 16.3(2).

16.13(2) A permit is valid only while the permittee has the necessary permissions to use the adjoining shoreline property from which the dock projects.

16.13(3) The permittee shall not charge a fee for use of the dock or associated structure unless: the permit is for a commercial dock; the fee is expressly authorized by the permit; or the permittee is a homeowners association and the fee is for recovery of expenses incurred in providing access to association members.

571—16.14(461A,462A) Permit criteria for rafts, platforms, or other structures. A raft, platform, or other structure maintained on a public water body requires authorization in a permit. The raft, platform, or other structure may not be placed more than 250 feet from the shoreline, shall be equipped with reflectors that are visible from approaching boats, and shall be subject to the winter removal requirement unless specifically exempted by the permit.

DIVISION II
DOCK MANAGEMENT AREAS

571—16.15(461A) Designation or modification of dock management areas.

16.15(1) Purposes and status of dock management areas. The director may designate an area of public land under the commission's jurisdiction and adjoining water as a dock management area. The primary purpose of dock management areas is to accommodate requests for boating access from owners of properties that are close to a water body but do not include riparian or littoral property rights. Dock permittees have priority use of the docks for mooring of vessels. However, the docks may be used by members of the public at their own risk for fishing and emergency mooring when public use does not interfere with the permittee's use. Other uses allowed by the permittee shall be the responsibility of the permittee.

16.15(2) Criteria for designation or enlargement. In designating a dock management area or authorizing enlargement of an existing dock management area, the director shall apply the following criteria:

- a.* The shoreline property in question shall be public land and shall have been developed and managed for recreational access to water or determined by the department to be suitable for such access.
- b.* The establishment or enlargement of a dock management area shall not adversely affect other public recreational use of the water body.
- c.* A dock management area shall not be established or enlarged where depth or bottom configuration is incompatible with the placement of docks.
- d.* A dock management area shall not be established or enlarged where fish and wildlife habitat, other natural resources or scenic features would be disturbed by the presence of docks.
- e.* Documentation of need for a new or larger dock management area and the lack of adverse impacts of the proposal must be sufficient to clearly outweigh and overcome a presumption against increasing the number or size of dock management areas.

571—16.16(461A) Procedures and policies for dock site permits and hoist or slip assignments in dock management areas.

16.16(1) Application permit and slip assignment. A dock site permit authorizes a person to install and maintain a dock in a designated dock management area. Each permit shall identify the number of hoists or slips to be included for storage of boats at the dock. A separate hoist or slip assignment will be issued for each hoist or slip space at the dock. For purposes of these dock management area rules, "permittee" means the person(s) to whom a dock site permit is issued and the person(s) to whom each hoist or slip assignment is issued. Application forms for dock site permits and hoist or slip assignments in a dock management area shall be made available at a nearby DNR office.

16.16(2) Priority selection process. Dock site permits and hoist or slip assignments shall be available to all members of the public through a selection process based on the following order of priorities. A

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waiting list shall be established that follows the same order of priorities. First priority is for owners of residences adjoining or immediately across a street from the public land; second priority is for owners of other residences within the housing association or subdivision adjoining or immediately across a street from the public land; third priority is for all other Iowa residents; fourth priority is for nonresidents. The order of priorities, changes in the number of residential units per dock site, and changes in the number of vessels per residential unit will be made effective as existing permits expire. A permittee who has a valid hoist or slip assignment will not lose their assignment to a new higher priority applicant if the permit is renewed prior to it expiring at the end of the five-year term and payment is received by the deadline established in rule 571—16.19(461A). If the permittee fails to renew the permit, the permittee may be placed on the waiting list and the highest person on the waiting list will be offered the open hoist or slip assignment. Any permittee who moves to a new residence may be considered a new applicant when the current permit expires at the end of the five-year term. The permittee will be placed on the waiting list based on the new address, and the highest person on the waiting list will be offered the open hoist or slip assignment. For purposes of these dock management area rules, “residence” means a single residential living unit, which may be a rental unit. Notwithstanding these priorities, if property in the first or second priority category is redeveloped with higher density residential living units, there is no assurance that dock, hoist or slip space will be available to accommodate such increased density before other property included in the first or second priority categories.

571—16.17(461A) Standard requirements for dock management area docks. Docks in dock management areas shall conform to the following requirements:

16.17(1) Occupancy of docks. At least two residences shall share a dock. The department may require that more residences share a dock if there is a waiting list including people in the first or second priority categories established in rule 571—16.16(461A). A maximum of six residences shall share a dock.

16.17(2) Spacing and alignment. Dock sites where feasible shall be at least 50 feet apart.

16.17(3) Dimensions.

a. Length. A dock may extend the greater of 100 feet from the water’s edge or far enough so that the outer 80 feet of the dock is in 3 feet of water up to a maximum of 300 feet, but the dock shall be no longer than the length for which the applicant provides justification, and the length shall be stated in the permit.

b. Width. Docks shall be at least four feet wide and no more than six feet wide.

16.17(4) Configuration.

a. “L” or “T” segments. A dock shall have no more than one “L” or “T” segment. The total length of the “L” or “T” segment facing opposite from shore shall not be greater than 20 feet including the width of the dock. The total area of the “L” or “T” segment shall not exceed 200 square feet. That part of the main dock forming the center of a “T” segment or an extension of an “L” segment shall be included in measuring the area of the “T” or “L” segment. A smaller platform size limit may be required at locations specified by the department as having limited available space.

b. Catwalks. Catwalks shall be at least two feet wide and considered as part of the dock. The length limit for an “L” or “T” segment stated in paragraph “a” shall be applicable to each catwalk. A catwalk shall not extend beyond the width of the hoist.

c. Hoists. A hoist or other boat storage structure shall not be placed adjacent to any “L” or “T” segment of a dock or adjacent to any other part of a dock that is more than six feet wide. The hoist shall not exceed ten feet in width at locations specified by the department as having limited available space.

16.17(5) Exceptions for certain dock management areas. Notwithstanding other provisions in this rule, in artificially constructed lagoon or harbor areas, the configuration and dimensions of the docks, catwalks and hoists shall be determined by the department on an individual basis, taking into consideration the physical characteristics of the area, the mooring pattern of boats and public safety. Except at Lake Macbride, the Clear Lake Harbourage, and Lake Odessa, a maximum of two residences, each in accordance with 571—16.16(461A), shall share a single dock site.

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16.17(6) *Display of dock management area sign, DMA name and dock site number.* The end of the dock facing the water shall be marked with the DMA name and dock number as assigned by the department. Each hoist shall also be marked with the hoist assignee's last name and dock site number in two-inch block letters on one of the upright poles. The dock site permittee shall be responsible for installing and maintaining a sign provided by DNR at the landward entrance to the dock. The sign shall state that the dock is privately constructed; it shall include a caution to members of the public with the statement "use at your own risk"; and it shall include the statement "no diving" with a drawing of a diver over which is superimposed the universal no symbol (a circle with a diagonal slash through it).

16.17(7) *Other requirements.* Standard requirements found in rule 571—16.3(461A,462A) shall apply to all docks in a dock management area except requirements relating to property line offsets and display of information.

571—16.18(461A) Dock management area permit restrictions and conditions. The following conditions and restrictions shall apply to docks in a dock management area.

16.18(1) *Use of dock for mooring.* Only the persons named as permittees shall have use of the dock for mooring. All vessels must be registered to the permittees and listed on the dock management area permit. A dock site permit or hoist/slip assignment may authorize an exception to allow a vessel of a tenant of the permittee's residential rental unit.

16.18(2) *Equitable sharing of dock costs.* Permittees shall agree on the equitable sharing of the cost of construction, installation, maintenance and removal of the dock and any other component of the dock. In no case shall a dock owner collect more money from hoist/slip permittees than is needed to cover legitimate dock costs nor make a profit from operating the dock. Doing so is grounds for suspension and/or revocation of the dock permit.

16.18(3) *Number of assignments allowed.* Only one dock assignment may be allocated to a residence.

16.18(4) *Number of hoists allowed.* Each permittee may be limited to one hoist for one vessel. The number of hoists and vessels for each permittee should be limited, especially when there is a waiting list that includes people in the first or second priority category established in rule 571—16.16(461A).

16.18(5) *Nontransferability of dock permits and privileges.* Dock permits and hoist or slip assignments shall not be transferred, assigned or conveyed by the permittee to any other person.

16.18(6) *Liability insurance.* Prior to constructing a dock or installing hoists, the dock site permittee shall provide proof of a current liability insurance policy in the amount of \$1 million.

16.18(7) *Winter storage of docks, catwalks and hoists on public property.* Winter storage of docks, catwalks and hoists on public property shall not be allowed unless specifically authorized by a dock site permit or hoist assignment. Docks, hoists and catwalks shall be stored at locations determined by the state parks bureau district supervisor as appropriate for an individual dock management area. A dock, catwalk or hoist stored on public land without authorization from the department may be removed by the department at the owner's expense.

16.18(8) *Land use restrictions.* Nothing shall be constructed or placed on public land adjacent to any dock in a dock management area under this rule unless the construction or placement is a necessary appurtenance to the dock as determined by the director.

16.18(9) *Expiration of permits.* The term of a dock site permit and a hoist or slip assignment shall not exceed five years. Renewals shall be requested on a current application form. A permit expires when the permittee fails to apply for renewal prior to the current permit's expiration date.

16.18(10) *Cancellation for nonuse.* A dock site permit or hoist/slip assignment may be canceled for nonuse if the dock or hoist/slip is not used at least one time each calendar year in order to provide space for applicants on a waiting list.

16.18(11) *Other permit restrictions and conditions.* All restrictions and conditions in rule 571—16.13(461A,462A), except subrule 16.13(2), shall apply to all docks in a dock management area.

571—16.19(461A) Fees for docks in dock management areas. Payment of the annual dock site permit fee shall be made upon application. Payment of the annual hoist or slip fee shall be made upon application

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for the hoist or slip assignment. These fees may be paid in a lump sum in advance for the term of the permit or assignment. Failure to pay the annual fee by April 1 of any year may result in revocation or cancellation of the permit or assignment. Payment of any dock management area fee under this rule shall be made to the department of natural resources as specified in the permit. Annual fees are as follows:

	Dock Fee	Hoist Fee
Beed's Lake	\$100	\$50
Black Hawk Lake Marina	\$200	\$50
Black Hawk Lake/Denison	\$200	\$50
Black Hawk North Shore	\$200	\$50
Blue Lake	\$100	\$50
Clear Lake Ventura Heights	\$250	\$50
Clear Lake Harbourage	\$600	\$100 - hoist or slip fee
Clear Lake North Shore	\$250	\$50
East Okoboji Beach	\$250	\$50
Triboji Lakeshore	\$250	\$50
Triboji Lazy Lagoon	\$250	\$50 - hoist or slip fee
Pillsbury Point	\$250	\$50
Lower Pine Lake	\$100	\$50
Lake Macbride The Pines	\$600	\$100 - slip fee
Lake Macbride Lakecrest	\$600	\$100 - slip fee
Rice Lake	\$100	\$50
Union Grove	\$100	\$50
Lake Odessa	\$100	\$25

571—16.20(461A) Suspension, modification or revocation of dock management area permits. A dock management area permit may be modified, suspended, or revoked, in whole or in part, by written notice, if the director determines that the dock is not safe, that a violation of any terms or conditions of the permit or these rules has occurred, or that continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may file a notice of appeal, requesting a contested case pursuant to 571—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be reinstated.

571—16.21(461A) Persons affected by DMA permit—hearing request. Any person who claims that riparian or littoral property rights are adversely affected by a DMA dock site permit may request, in writing, a hearing to reconsider the permit. Requests for hearings shall show cause and shall be made in accordance with procedures described in 571—Chapter 7.

These rules are intended to implement Iowa Code sections 461A.4, 461A.11, 461A.18, 462A.27 and 462A.32.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7895C**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed****Rulemaking related to leases and permits**

The Natural Resource Commission (Commission) hereby rescinds Chapter 17, “Barge Fleeting Regulations,” and adopts a new Chapter 17, “Leases and Permits,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 455A.5(6)“a” and 461A.4(1)“b.”

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 461A.4, 461A.18, 461A.25 and 462A.32.

Purpose and Summary

Chapter 17 is a consolidation of prior Chapters 17, 18, and 19. The new chapter does the following:

1. Regulates the practice of barge fleeting in order to protect public and private rights and interest in Iowa’s public waters under the Commission’s jurisdiction (prior Chapter 17).
2. Provides a lease fee structure for public use of state-owned lands under Commission jurisdiction. These lands are occasionally encroached upon by members of the public, sometimes inadvertently and other times for a specific permitted purpose. The fee structure compensates the public for the occupation of state-owned land through a lease (prior Chapter 18).
3. Regulates the removal of sand and gravel from state-owned property under Commission jurisdiction. This is accomplished via a permitting and fee system that compensates the public for the commercialization of public resources and ensures that waterways do not suffer permanent damage and remain ecologically intact, and that public recreational use is not adversely affected (prior Chapter 19).

Consolidating these chapters will simplify the rules by eliminating language that is common to multiple chapters. This consolidation is consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2). The subjects of these chapters are logically grouped together because they all involve permitting activities on, or the leasing of, state-owned lands and waters.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7242C**. Public hearings were held on January 23 and January 30, 2024, at 12 noon via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17
LEASES AND PERMITS

571—17.1(461A) Purpose. The purpose of these rules is to regulate the practices of leasing of state-owned land, barge fleeting, and permitting of sand and gravel removal in order to protect public and private rights and interests in public waters of the state of Iowa under the jurisdiction of the commission; to protect public health, safety, and welfare; and to protect fish and wildlife habitat.

571—17.2(461A) Definitions. For the purposes of this chapter, the following definitions apply:

“*Commission*” means the natural resource commission.

“*Deadman*” means an anchor buried in the upland adjacent to a fleeting area.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources or the director's designee.

“*Dolphins*” means a closely grouped cluster of piles driven into the bed of a waterway and tied together so the group acts as a unit to withstand lateral forces from vessels or other floating objects.

“*Fleeting area*” means an area within defined boundaries used to provide barge mooring service and to accommodate ancillary harbor towing under care of a fleet operator. The term does not include momentary anchoring or tying off of tows in transit and under care of the line haul towboat.

“*Lease*” means a lease as authorized under Iowa Code section 461A.25.

“*Material*” means any size particle of sand, gravel, or stone.

“*Mooring barge*” means a barge held in place by anchors or spuds and used to moor other barges during their stay in the fleeting area.

“*Mooring cell*” means a sheet pile structure, usually filled with earth, stone, or concrete, used to hold barges or other vessels in place.

“*Permit*” means an agreement authorized under Iowa Code section 461A.53.

“*Person*” means any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, municipality, cooperative, estate, trust, receiver, executor, administrator, or fiduciary and any representative appointed by order of any court or otherwise acting on behalf of others.

“*Riparian rights*” means the legal rights that assure the owner of land abutting a stream or lake access to or use of the water.

“*State-owned lands and waters*” means lands and waters acquired by the state by fee title and sovereign lands and waters.

“*Watercraft*” means any vessel that through the buoyant force of water floats upon the water and is capable of carrying one or more persons.

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571—17.3(461A) Application for lease or permit. An applicant for, or a renewal of, a lease or permit shall submit an application to the department on forms provided by the department.

571—17.4(461A) Lease and permit approval. If the director determines that there is not a material issue concerning whether the application complies with applicable criteria in these rules, a lease will be presented to the commission for further consideration. Upon approval of the commission, the lease will be presented to the executive council for final consideration. Permits will be signed by the director or designee.

571—17.5(461A) Fee adjustments. Beginning January 1, 2024, and on each subsequent January 1, the lease or permit fee shall be adjusted on a cumulative basis by the percentage of the Consumer Price Index annual rate for the previous year for the Midwest Urban Region, published by the U.S. Department of Labor, Bureau of Labor Statistics. This change in fee will be applied when leases or permits are created or renewed.

571—17.6(461A) Renewals of leases or permits. The permit or lease holder shall request renewal of the lease or permit no less than six months prior to its expiration or risk loss of operator's right to the area. The appropriate application fee must accompany the application documents. A lease or permit shall remain in force during the processing of an application for renewal, including any appeals process.

571—17.7(461A) Disputes concerning leases. Contested case procedures are not applicable to disputes concerning leases under this chapter, except as set forth in rule 571—17.8(461A) and subrule 17.10(9). A commission decision whether or not to recommend a lease or a particular condition of a lease is final agency action, subject to the right of an applicant or other affected person to file with the director a written request for reconsideration by the commission. The director must receive the request for reconsideration within 30 days after the commission's decision on a proposed lease. A commission decision to recommend a lease will be forwarded to the executive council of Iowa for approval after 30 days following the commission's decision unless the director has been notified of a written request for reconsideration or the filing of a petition for judicial review of the commission's recommendation.

571—17.8(461A) Termination for cause. Permits or leases may be terminated by the director at any time if a permit or lease holder fails to fulfill the obligations under the permit or lease in a timely and proper manner, or if a permit or lease holder violates any of the terms and conditions of the permit or lease. Termination proceedings shall be in compliance with Iowa Code chapter 17A and 571—Chapter 7. Upon termination or expiration of the permit or lease, the permit or lease holder shall immediately stop all operations and remove all equipment from the lands and waters covered by the permit or lease within a time frame designated in the notice of termination. In the event of failure of the permit or lease holder to remove all equipment from the premises within such time period, the director shall have the right to remove the equipment at the expense of the permit or lease holder.

571—17.9(461A) Lease fees for state-owned property, riverbed, lakebed, and waterfront lands. The following guidelines are for the purpose of expediting the administration of applications for lease and use of land under the jurisdiction of the natural resource commission, excepting those lands leased for agricultural purposes, commercial concession agreements, and agreements covering the removal of sand, gravel, and other natural materials.

17.9(1) Annual lease fee. Beginning January 1, 2024, the fee for leases shall be \$0.0600 per square foot. Leases deemed commercial by the commission will have a minimum lease value of \$300, and those deemed nonprofit or noncommercial by the commission will have a minimum lease value of \$150.

17.9(2) Administration fee. All nonfleeting leases shall be assessed a one-time charge of 18 percent to cover the department's cost of inspecting lease sites, reviewing applications, preparing leases, and administering the lease program.

17.9(3) Exceptions to standard lease fee. When persons apply for permission to convert or have converted state property under the jurisdiction of the commission to personal use and the commission

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determines that leasing is an appropriate alternative to removal or that the above rates are not appropriate, the annual lease fee shall be determined by the commission. When determining the fee, the commission may consider availability of the property for public use, the type of personal use being made of the property, appraisal, effect on the natural resources and other items appropriate for the area involved.

571—17.10(461A) Barge fleeting regulations. The purpose of this rule is to regulate the practice of barge fleeting in order to protect public and private rights and interest in public waters of the state of Iowa under the jurisdiction of the commission.

17.10(1) Applicability. This rule is applicable to all public waters under the jurisdiction of the commission except that portion of the Mississippi River conveyed to certain cities by 1945 Iowa Acts, chapter 249; 1961 Iowa Acts, chapter 299; or special charters enacted by the Legislature in 1856 and 1857. This rule regulates the use of those waters for barge fleeting, including the installation of structures, physical site modification such as dredging, and operation of fleeting equipment and maneuvering of barges within the fleet.

17.10(2) Barge fleeting leases. A person shall not assert any exclusive privilege to conduct barge fleeting and mooring service for hire, or not for hire, and shall not prevent or obstruct any lawful use of navigable waters under the jurisdiction of the commission except within a fleeting area leased by the executive council of Iowa or at a loading or off-loading facility necessary to carry on commerce, provided the facility is constructed in compliance with Iowa department of transportation, U.S. Army Corps of Engineers, and all other applicable permits and regulations.

17.10(3) Restricted areas. Leases shall not be issued for a fleeting area in the following locations unless the department, subject to the approval of the commission, determines that fleeting in such areas is not contrary to the purpose of these rules as stated in rule 571—17.1(461A):

a. A site subject to unusual hazards including but not limited to high wind, strong current, violent ice movement, and hydraulic surges during the time fleeting operations are proposed to be carried out.

b. A site receiving high use for recreation, sport fishing, or commercial fishing, unless the fleeting area can be placed or structured to be compatible with such uses.

c. A site immediately adjacent to industries or other facilities, which, together with fleeting operations, present a substantial risk of fire, explosion, water pollution, or other serious safety hazards.

d. A site where fleeting area activities would restrict or interfere with or have a substantial adverse effect on the use and enjoyment of an area owned by federal, state, or local government, including but not limited to public parks, game refuges, forests, or recreation areas used for access to docks, slips, harbors, marinas, boat launching ramps or unique biological or physical features of the river valley itself.

e. A site immediately adjacent to or over a dam, sill, lock, breakwater, revetment, navigation aid, or wing dam.

f. A site within established navigation channels for commercial or recreational vessels.

g. A site within the approach area for a lock portion of a dam structure.

h. A site adjacent to bridges or vessel approach areas to bridges.

17.10(4) Prohibited areas. Leases shall not be issued for a fleeting area in the following locations:

a. A site that will have a substantial adverse effect on fish or wildlife (mussels, fish spawning, waterfowl, or furbearer) habitat due to dredging, propeller wash or other activity related to fleeting.

b. A site that would have an adverse impact on documented threatened and endangered species.

c. A site adjacent to national monuments or registered landmarks.

17.10(5) Riparian rights. A fleeting area shall not be leased in any location that would interfere with the rights and privileges of the riparian property owner except with written permission of the riparian property owner.

17.10(6) Standards. The following standards shall apply to operation of fleeting areas:

a. A fleeting lease shall be construed to do no more than give the operator the right to designate and improve an area to be utilized for fleeting. The lease creates no interest, personal or real, in the real estate below the ordinary high-water mark except as provided in the lease.

b. Improvements in fleeting areas shall be limited to items such as construction of dolphins, mooring cells, deadmen, mooring barge anchors, and other similar methods of ensuring retention of

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barges if approved by the department. Improvements shall be constructed in a manner consistent with engineering standards of the U.S. Army Corps of Engineers. Structures associated with barge fleeting leases will be covered by the fees of the barge fleeting lease.

c. Fleeting activities within leased fleeting areas shall be limited to barge mooring service, ancillary harbor towing and minor barge repair or servicing. No washing or cleaning of barges is permitted, unless conducted in compliance with the requirements of Iowa Code chapter 455B, the washing activities will not have a substantial adverse effect on fish or wildlife (mussels, fish spawning, waterfowl, or furbearer) habitat, and the department specifically approves the cleaning activity.

d. Barges shall not be moored to trees or other natural features of an area except with the approval of the riparian property owner or during an emergency.

e. Barge fleeting shall be conducted in a manner that minimizes bank erosion attributable to the fleeting operation.

f. Leased fleeting areas may be used for navigation and recreational pursuits such as boating and fishing only to the extent that such use does not interfere with fleeting activities. Other waterway users shall not obstruct barge fleeting activities within leased fleeting areas.

g. The right of entry of barges into a fleeting area may be refused by:

(1) The operator.

(2) The department, after conferring with the operator, when there is an imminent hazard to the public interest or to public health, safety or welfare.

h. The operator shall, at all times, be responsible for the safety and security of the barges in the fleeting area and shall take reasonable precautions to eliminate hazards to boaters or other persons in the fleeting area.

i. Lights or other warning devices as required by state and federal navigation regulations shall mark moored or fledged barges.

j. The operator shall notify the department of the current name, address, and day and evening telephone numbers of the individual directly responsible for supervising the fleeting area who is to be notified in case of emergency.

k. A lease issued under this chapter may not be exercised until all other necessary permits or approvals have been issued by local, state or federal agencies having jurisdiction over the lease area.

17.10(7) Application review and approval. The following process applies to barge fleeting lease applications:

a. Upon receipt of a barge fleeting lease application that complies with the requirements of rule 571—17.3(461A), the department will review the application to determine whether the application complies with applicable criteria in these rules. In order to determine such compliance, the applicant may be required, at the applicant's expense, to provide the department with anchor design criteria, underwater surveys, and dives necessary to determine compliance.

b. Upon determination that an application complies with applicable criteria in these rules, the department staff shall give notice of receipt of the application through publication of one public notice that will be published in a newspaper as defined in Iowa Code section 618.3 where the proposed fleeting area is located or other approved outlets. The notice shall briefly describe the location and nature of the proposed fleeting area, identify the department rules that are pertinent to the application, state whether the application is a new lease or renewal, and provide that a hearing will be scheduled if the director determines that there is a material issue concerning whether the application complies with applicable criteria in these rules. The notice shall allow interested persons 30 days from the date of publication to submit comments or a request for hearing, and shall state that a request for hearing must be supported by documentation of potential adverse effects of the proposed fleeting facility on an affected or aggrieved person. Notice will also be sent by first-class ordinary mail or an equivalent method of service to the directors of the Iowa department of transportation and the Iowa department of economic development, the Iowa secretary of agriculture, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Coast Guard.

17.10(8) Barge fleeting lease fees. The following fees shall be paid to the department by applicants and lessees:

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a. An annual lease fee based on the dimensions of the area leased as a fleeting area. Beginning January 1, 2024, the rate for the annual lease fee shall be \$4.38 per 100 square feet.

b. A fee of \$1,000 for the cost of review, issuance, and administration of a lease is required at the time of application for a new or renewal lease.

17.10(9) Nonuse. Failure by an operator to substantially exercise the rights granted in a lease issued under this chapter within a period of two years from the issuance of the lease shall render the lease null and void unless extended by the department. Failure by an operator to substantially exercise the rights granted in a lease issued under this chapter for any period of two consecutive years shall create a rebuttable presumption that the operator intends to abandon and forfeit the lease and shall be cause for a review of the lease by the department. The operator may request a contested case proceeding in accordance with Iowa Code chapter 17A and 571—Chapter 7.

571—17.11(461A) Sand and gravel permits. This rule provides the procedures for obtaining a permit for removal of sand and gravel from state-owned lands and waters under the jurisdiction of the department and the rules associated with the holding of a permit.

17.11(1) Permit applications. Applications for permits must be accompanied by an application for a sovereign lands permit pursuant to 571—Chapter 13. Applications will be accepted at any time throughout the year. The permit for sand and gravel will run concurrently with the sovereign lands permit. If more than one application for a permit site is received, issuance will be determined by written sealed bids. Bids shall be based on royalty rates. Bids submitted with a royalty rate less than the current rate will not be accepted. The permit shall be issued to the applicant submitting the highest royalty rate bid.

17.11(2) Application fee. The applicant for a sand and gravel permit shall submit a fee of \$100 for the cost of inspection and issuance of each permit.

17.11(3) Insurance. Prior to issuance of permits, approved applicants shall provide the department a certificate of insurance, covering the entire permit term, to jointly and severally indemnify and hold harmless the state of Iowa and its agencies, officials, and employees from and against all liability, loss, damage or expense that may arise in consequence of issuance of the permit.

17.11(4) Surety bonds. Prior to issuance of permits, approved applicants shall provide to the department a surety bond in the amount of \$5,000 covering the term of the permit. The surety bond shall guarantee payment to the state of Iowa for all material removed under the permit within 60 days after expiration of the permit, unless the permit holder renews the permit within 30 days of said expiration date, and for the recovery of any costs associated with reclamation or other environmental mitigation required as a condition of issued permits.

17.11(5) Permit conditions and operating procedures. The following shall apply to all sand and gravel permits:

a. Permits require a sovereign lands permit and will run concurrently with that sovereign lands permit.

b. The size and configuration of permit sites shall be as designated by the director. The maximum continuous length of a river or stream covered by each permit shall be 4,500 lineal feet.

c. Removal operations authorized by permits shall not be performed within 30 feet of the existing bank or breach the bank at any location along any lake, stream or river unless written permission is obtained from the director prior to performance of such operations.

d. Removal operations authorized by permits shall not obstruct the flow of water to the extent of preventing its ultimate passage to its usual course below the lands and waters covered by the permits and shall not prevent movement of watercraft through such waters.

e. All equipment at permit sites that is on the surface of water or above or under the water shall be marked to be visible 24 hours per day. Any structure or other device below the water must be marked to indicate to watercraft operators where safe passage may occur. All markings shall conform to the uniform waterway marking system and be provided and installed by permit holders.

f. Permit sites may be inspected by the director at any time during the permit term in order to verify compliance with permit terms and conditions, or thereafter until final payment is made under a

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terminated permit. Permit holders shall keep a daily record of the amount of material removed in the manner described by the director. All such records shall be open to inspection by the director at all times.

g. Permit holders shall furnish an itemized statement of material removal operations to the director within ten days after the last day of each calendar month. Statements shall also be filed in months when no materials are removed. Reporting procedures may be modified on a case-by-case basis at the discretion of the director, to accommodate differences in material removal or operation methods. However, reporting periods shall not be greater than one-month intervals. Permit holders shall notify the department ten days prior to the initial start of removal operations or whenever the previous monthly statement indicated no materials were removed. Each cubic yard of sand, gravel, and stone removed under permits shall be considered to weigh 3,000 pounds. Statements shall be submitted on forms furnished by the department and shall indicate the following:

- (1) Hours of removal operations performed each day on lands and waters covered by the permit.
- (2) Tons of material removed from the lands and waters covered by the permit each day.
- (3) Tons of material, from all sources, stockpiled at the operations site at the end of the month.

h. Royalty payments. Permit holders shall make royalty payments on a monthly basis for all material removed from permit sites within ten days after the last day of each calendar month. Monthly royalty payments shall be calculated using the tonnage of material removed as reported on the monthly statement. The royalty rate shall be \$0.2500 cents per ton or the rate determined by sealed bids.

These rules are intended to implement Iowa Code sections 461A.4, 461A.18, 461A.25, 461A.52, 461A.53, 461A.55 to 461A.57, and 462A.32.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7896C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to rental fee schedule and sand and gravel permits

The Natural Resource Commission (Commission) hereby rescinds Chapter 18, "Rental Fee Schedule for State-Owned Property, Riverbed, Lakebed, and Waterfront Lands," and Chapter 19, "Sand and Gravel Permits," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 455A.5(6)"a," 455A.5(6)"e," and 461A.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 461A.4, 461A.25, 462A.52, 462A.53 and 462A.55 to 462A.57.

Purpose and Summary

Chapter 18 and 19 are rescinded based on the Department of Natural Resources' (Department's) Executive Order 10 (January 10, 2023) review. However, the substance of these chapters will be retained in some form and consolidated with other related chapters.

In more detail, Chapter 18 provided a fee schedule for leases of state-owned property under the Commission's jurisdiction. Additionally, when state-owned property is encroached upon, this chapter provided the lease fee as compensation as an alternative to requiring removal of the encroachment. This chapter was edited for length and clarity and incorporated into new Chapter 17.

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Chapter 19 provided the procedures for individuals and businesses to obtain a permit for removal of sand and gravel from state-owned lands and waters under the jurisdiction of the Commission and the rules associated with the holding of a permit. The purpose of these rules is to ensure that the waterways are protected from permanent damage, that they remain ecologically intact, and that public recreational use is not adversely affected. This chapter was edited for length and clarity and incorporated into new Chapter 17.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7252C**. A public hearing was held on January 23, 2024, at 12 noon via video/conference call. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

- ITEM 1. Rescind and reserve **571—Chapter 18**.
- ITEM 2. Rescind and reserve **571—Chapter 19**.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7897C**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed****Rulemaking related to manufacturer's certificate of origin**

The Natural Resource Commission (Commission) hereby rescinds Chapter 20, "Manufacturer's Certificate of Origin," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 462A.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 462A.3, 462A.77 and 462A.79.

Purpose and Summary

Chapter 20 defines the required elements of a manufacturer's certificate of origin for vessels that must be titled within the state. It also prescribes the procedures related to use and recording of the certificate of origin by purchasers and county recorders when titling a vessel.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17.7(2), this chapter was edited for length and clarity. Specifically, provisions in this chapter that were repetitive of statute or to rules elsewhere or that referenced outdated departmental forms have been removed.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7230C**. Public hearings were held on January 16 and 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

NATURAL RESOURCE COMMISSION[571](cont'd)

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 20 and adopt the following new chapter in lieu thereof:

CHAPTER 20
MANUFACTURER'S CERTIFICATE OF ORIGIN

571—20.1(462A) Definitions. As used in this chapter, unless the context clearly requires a different meaning:

“At retail” means to dispose of a vessel to a person who will devote it to a consumer use.

“Beam or width” means the transverse distance between the outer sides of the boat at the widest point excluding handles and other similar fittings, attachments, and extensions.

“Capacity plate” means the U.S. Coast Guard capacity plate bearing the information required by federal regulations governing boats and associated equipment. It shall not mean capacity plate information furnished by the boating industry association, national marine manufacturers association, or any similar organization.

“Department” means department of natural resources.

“Essential parts” means all integral and body parts of a vessel required to be titled under Iowa Code chapter 462A, the removal, alteration, or substitution of which would tend to conceal the identity of the vessel or substantially alter its appearance, model, type, or mode or method of operation.

“Length” means the straight line horizontal measurement of the overall length from the foremost part of the boat to the aftermost part of the boat, measured from end to end over the deck excluding sheer, and measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not included in the measurement.

“Manufacturer’s certificate of origin” means a certification signed by the manufacturer or importer that the vessel described has been transferred to the person or dealer named and that the transfer is the first transfer of the vessel in ordinary trade or commerce. The terms “manufacturer’s certificate,” “importer’s certificate,” “manufacturer’s statement,” “MSO,” and “MCO” shall be synonymous with the term “manufacturer’s certificate of origin.”

“New vessel” means every vessel that has not been sold at retail and not previously titled in this state or any other state.

“Person” means an individual, partnership, firm, corporation, or association.

“Reconstructed vessel” means every vessel of a type required to be titled under Iowa Code chapter 462A materially altered by the removal, addition, or substitution of essential parts, new or used.

“Specially constructed vessel” means every vessel of a type required to be titled under Iowa Code chapter 462A, not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vessels and not materially altered from its original construction.

571—20.2(462A) Applicability. This chapter applies to all vessels required to be titled under Iowa Code chapter 462A.

571—20.3(462A) Certificate of origin—content. The following information shall be furnished, required, and stated in the certificate of origin.

20.3(1) Date of transfer.

20.3(2) Invoice number that covers the transfer of this particular vessel.

20.3(3) Name and complete address of dealer to whom the boat is being transferred.

20.3(4) Trade name and model of vessel.

20.3(5) Model year of vessel.

20.3(6) Manufacturer’s hull identification number (HIN) or serial number of hull if HIN is not available.

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20.3(7) The type of boat, hull material, propulsion type, fuel type (if applicable), and engine drive type shall be listed in accordance with current United States Coast Guard requirements as specified in the Code of Federal Regulations.

20.3(8) Length overall in feet and inches (exact measurement required). For pontoon boats and houseboats, this shall be the deck measurement.

20.3(9) U.S. Coast Guard capacity plate information (where applicable).

- a. Maximum horsepower rating.
- b. Maximum persons capacity in whole persons.
- c. Maximum weight capacity (persons, motor, gear, etc.).

20.3(10) A certification by the manufacturer that this is the first transfer of a new vessel and that all information given is true and accurate.

20.3(11) Manufacturing firm name and complete address.

20.3(12) Signature and title of authorized person.

20.3(13) Information regarding assignment of the vessel to facilitate transferring it from the dealer to the purchaser. The information shall consist of:

- a. The purchaser's name and address.
- b. Certification that the vessel is new and has never been registered in this or any other state.
- c. Signature of authorized agent or dealer.

571—20.4(462A) Procedure—dealer.

20.4(1) Upon sale of a vessel, the dealer shall complete the first assignment information required on the reverse of the certificate of origin.

20.4(2) The dealer shall deliver the certificate of origin to the purchaser along with a bill of sale or receipt showing that the person has purchased the vessel for consumer use.

571—20.5(462A) Procedure—purchaser.

20.5(1) The purchaser shall utilize the information contained on the certificate of origin to complete the information required on the application for vessel title.

20.5(2) The purchaser shall surrender the certificate of origin to the county recorder upon applying for a vessel title.

571—20.6(462A) Procedure—county recorder.

20.6(1) The county recorder shall verify that the information contained in the application and the certificate of origin correspond and shall utilize that information so far as possible in issuing the vessel title.

20.6(2) The county recorder shall retain the certificate of origin as a part of the permanent record of that vessel's title transactions.

571—20.7(462A) Vessel titling. A person shall not title a vessel after December 31, 1987, without furnishing to the county recorder a manufacturer's certificate of origin.

These rules are intended to implement Iowa Code sections 462A.3, 462A.77 and 462A.79.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7898C**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed****Rulemaking related to habitat lease program**

The Natural Resource Commission (Commission) hereby rescinds Chapter 21, “Agricultural Lease Program,” and adopts a new Chapter 21, “Habitat Lease Program,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 455A.5(6)“a,” 456A.24(5), and 456A.38.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 456A.24(2), 456A.24(5), 456A.38 and 461A.25.

Purpose and Summary

Chapter 21 regulates the Department of Natural Resources’ (Department’s) Habitat Lease and Beginning Farmer Program. The purpose of this program is to provide an economic opportunity to a local farmer while simultaneously enhancing habitat for wildlife and providing recreational opportunities to the public.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7247C**. Public hearings were held on January 23 and 30, 2024, at 12 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

NATURAL RESOURCE COMMISSION[571](cont'd)

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 21 and adopt the following **new** chapter in lieu thereof:

TITLE III
ASSISTANCE PROGRAMS
CHAPTER 21
HABITAT LEASE PROGRAM

571—21.1(456A) Purpose. The purpose of the habitat lease program is to enhance habitat for wildlife in the state of Iowa, thereby providing recreational opportunities to the public. Utilization of habitat leases provides practices that are essential to successful wildlife habitat management and vegetation management and reduces associated operating expenses.

571—21.2(456A) Definitions.

“*Cash rent*” means an agreed-upon sum of money to be paid to the department.

“*Crop share*” means a sum of money to be paid to the department based upon the value of an agreed-upon portion of the harvested crop at the local market price on the date the crop is harvested.

“*Crop year*” means a one-year period terminating each February 28.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources or a designee.

“*Land manager*” means the department employee or authorized agent responsible for managing a particular area under department jurisdiction.

“*Lease*” means the written form used to enter into an agreement whereby an operator is authorized to engage in farming operations on land under the jurisdiction of the department according to stated terms and conditions.

“*Operator*” means any party who enters into a lease with the department as provided in these rules.

“*Program*” means the lease to beginning farmers program as provided in Iowa Code section 456A.38.

“*Sovereign land*” means state-owned land within the ordinary high-water mark of meandered rivers and lakes where ownership was transferred directly from the United States to the state of Iowa upon its admission to the union.

571—21.3(456A) Habitat lease policy. The policy of the department is to lease agricultural land under its jurisdiction so as to protect and enhance natural resources and to provide public use opportunities. Generally accepted farming practices will be followed so long as they are commensurate with good resource management practices. All leases shall be in writing.

21.3(1) Agricultural land use. Leased agricultural land is subject to any practice necessary to enable the department to carry out its resource management and subject to recreational use by the public according to the laws of the state of Iowa. Operators shall not inhibit any lawful use of the land by the public including, but not limited to, use by the public for hunting and fishing as described by the rules of the department and the laws of the state of Iowa, except as otherwise may be agreed to between the department and the operator.

21.3(2) Soil conservation. Farming practices shall not exceed compliance-based soil loss limits as established by the USDA Natural Resource Conservation Service or the local soil and water conservation district.

21.3(3) Lease basis. Leases shall be in writing on a cash rent basis, except a crop share basis may be utilized when determined to be in the state’s best interest.

21.3(4) United States Department of Agriculture programs. The inclusion, by the operator, of land under lease in any U.S. Department of Agriculture program will be allowed only if it is compatible with the department’s management plan established for said land.

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571—21.4(456A) Lease to beginning farmers program.

21.4(1) *Beginning farmers program.* This program shall be implemented in accordance with Iowa Code section 456A.38.

21.4(2) *Establishing annual lease payments.* Iowa Code section 456A.38(3) “d” provides criteria the department uses to determine lease payment amounts, including, but not limited to, the cost of the establishment or maintenance of water quality practices, wildlife habitat, vegetation management, or food plots, if applicable.

571—21.5(456A) Alternative lease procedures. In the event that no beginning farmer seeks to participate in the program, or no beginning farmer is found qualified to participate in the program for a given lease, the following procedures shall be followed by the department in administering the habitat lease program.

21.5(1) *Advertising for bids.* A notice advertising for bids shall be published in at least one local newspaper.

21.5(2) *Prebid informational meeting.* A prebid informational meeting may be held when the land manager determines that a meeting is in the state’s best interest. Notice of a prebid informational meeting shall be included in the advertisement for bids and in the written instructions to bidders. The meeting shall be held no later than one week prior to the bid opening. If a prebid meeting is required, bidders must attend to qualify to submit a bid.

21.5(3) *Form of bid.* Written sealed bids shall be utilized.

21.5(4) *Public bid opening.* All sealed bids shall be publicly opened as stated in the notice for bids. The results of the bids shall be made available to any interested party.

21.5(5) *Awarding of lease.* The amount of the bid, past experience with the bidder, the bidder’s ability to comply with the terms of the lease, and the bidder’s ability to perform the required farming practices shall be considered. The department reserves the right to waive technicalities and reject any or all bids not in the best interest of the state of Iowa.

21.5(6) *Negotiated leases.* The land manager may negotiate a lease with any prospective operator, subject to approval of the director, in any of the following instances:

- a. No bids are received.
- b. Gross annual rent is \$5,000 or less.
- c. Where land acquired by the department is subject to an existing tenancy.
- d. To synchronize the lease period of newly leased areas with other leases in the same management unit.
- e. Where a proposed lease includes only land not accessible to equipment necessary to perform the required farming operations, except over privately owned land, provided the prospective operator possesses legal access to the leased land over said privately owned land.
- f. Where the director authorizes a lease as a condition of a land purchase or trade.

571—21.6(456A) Terms applicable to all habitat leases. The following terms and conditions apply to all department habitat leases entered into pursuant to rule 571—21.4(456A) or 571—21.5(456A).

21.6(1) *Final approval of award.* All awards of leases shall be approved by the director. Additionally, awards of all leases on sovereign land shall be subject to approval by the state executive council on recommendation of the natural resource commission.

21.6(2) *Payment of cash rent.* The operator shall pay a minimum of 10 percent of the total gross rent at the time of the signing of the lease and the balance for each crop year on or before December 1, or the operator shall pay 50 percent of the total annual rent each April 1 and the balance for each crop year on or before December 1. The appropriate minimum payment shall be determined by the land manager.

21.6(3) *Payment of crop share rent.* The operator shall pay the total annual rent on December 1 or at the time of harvest, whichever is later.

21.6(4) *Termination.* In accordance with Iowa Code section 562.6, the lease shall serve as the written agreement fixing the time of termination of the tenancy. The lease shall terminate at the end of the agreed-upon lease term without notice. If the department requires leased land for other conservation

NATURAL RESOURCE COMMISSION[571](cont'd)

purposes during the term of the lease, the operator shall relinquish all rights under the existing lease, upon demand by the director, at the end of the current crop year.

21.6(5) Termination for cause. If the operator fails to comply with any of the terms of the lease, the department may serve notice on the operator demanding redress within a specified period of time. If compliance is not made within the specified period, the department may proceed to collect any moneys that may be due and payable during the crop year in which the lease is terminated and may void the remainder of the lease. Further, the department may have a landlord's lien as set out by Iowa Code chapter 570.

21.6(6) Previous agreements. The department shall recognize legal agreements regarding habitat leases that are in effect at the time the department acquires jurisdiction to the land covered by those legal agreements.

21.6(7) Amendment to lease. Amendments to any lease shall be evidenced by written instruments attached to and made a part of the lease. Final approval of amendments shall be made by the director.

These rules are intended to implement Iowa Code sections 456A.24(2), 456A.24(5), 456A.38, and 461A.25.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7899C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to habitat and public access program

The Natural Resource Commission (Commission) hereby rescinds Chapter 22, "Wildlife Habitat on Private Lands Promotion Program and Habitat and Public Access Program," and adopts a new Chapter 22, "Habitat and Public Access Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 483A.3B(3)"c"(1).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 483A.3B(3).

Purpose and Summary

Chapter 22 establishes rules governing the State's popular Iowa Habitat and Access Program (IHAP). IHAP provides technical assistance for the development and management of wildlife habitat as well as financial incentives to landowners in exchange for public hunting access. Since its creation in 2011, IHAP has had 274 properties enrolled, providing 40,190 acres of public recreational access. Currently, there are approximately 238 properties enrolled, providing around 33,407 acres of access. IHAP is funded by a federal grant awarded by the U.S. Department of Agriculture and from a portion of state-based wildlife habitat fees.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7251C**. Public hearings were held on January 16 and 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one

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attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
HABITAT AND PUBLIC ACCESS PROGRAM

571—22.1(456A,483A) Purpose and authority. These rules set forth the procedures to open private lands to public hunting, while providing grant funds to create, manage, and enhance wildlife habitat.

571—22.2(456A,483A) Eligibility. In order to be eligible for this program, an applicant shall:

22.2(1) Have land in Iowa that already contains wildlife habitat or be willing to allow development of wildlife habitat;

22.2(2) Enter into an agreement with the department; and

22.2(3) Allow public access for hunting without charge on at least 40 acres.

571—22.3(456A,483A) Application procedures. Applications will be accepted only from those eligible pursuant to rule 571—22.2(456A,483A).

22.3(1) Applications. Applications must be submitted on forms furnished by the department. Landowners will be notified in writing within 30 days of submission of an application whether they have been accepted into the program.

22.3(2) Project review and selection. Projects will be selected based on the ranked scoring criteria in the application, which prioritize sites with the greatest chance of benefiting wildlife populations and providing adequate recreational hunting opportunities. The criteria include, but are not necessarily limited to, the site's habitat potential, site suitability, priority locations, and other relevant habitat and hunting access factors.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—22.4(456A,483A) Agreements.

22.4(1) The commission shall enter into an agreement with approved landowners to carry out the purposes of this program.

22.4(2) Enrolled lands are subject to game management area hunting rules as contained in 571—Chapter 51. Access and boundary signs shall be placed and maintained on enrolled lands by the department.

571—22.5(456A,483A) Cost reimbursement. Whenever a landowner has been found to be in violation of an agreement or terminates the agreement early, the landowner shall reimburse the state a prorated amount of the value of wildlife habitat improvement work completed on the property divided by the entire agreement period multiplied by the unfulfilled years of the agreement, e.g., (total dollars ÷ total years) × unfulfilled years = prorated amount owed. Additionally, the landowner may be assessed early termination penalties that the department may be required to pay a contractor performing the wildlife habitat improvement work on the property.

These rules are intended to implement Iowa Code section 483A.3B(3).

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7900C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to wildlife habitat promotion

The Natural Resource Commission (Commission) hereby rescinds Chapter 23, “Wildlife Habitat Promotion With Local Entities Program,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455A.5(6)“a.”

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 483A.3.

Purpose and Summary

Chapter 23 establishes the procedures to provide local entities with their share of wildlife habitat stamp revenues. The wildlife habitat stamp is a required purchase in conjunction with most hunting and trapping licenses. By law, the stamp dollars are to be spent, in part, via an allotment to local entities. The rules set forth a grant program to distribute these funds and specify application procedures, eligible projects, grant award criteria, payment terms, and other general grant administration terms.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7235C**. Public hearings were held on January 16 and 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

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Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23

WILDLIFE HABITAT PROMOTION WITH LOCAL ENTITIES PROGRAM

571—23.1(483A) Purpose and definition. The purpose of this chapter is to designate procedures for allotments of wildlife habitat stamp revenues to local entities. These funds must be used specifically for the acquisition of whole or partial interests in land from willing sellers for use as wildlife habitats, and the development and enhancement of wildlife lands and habitat areas. The department will administer the stamp funds for the purposes as stated in the law at both the state and local levels. The following definition applies in these rules:

“*Waiver of retroactivity*” means approval by the department for an applicant to purchase land prior to the next round of wildlife habitat fund application reviews. The waiver allows the applicant to remain eligible for the next round of wildlife habitat funds when extenuating circumstances exist that require an immediate purchase of the subject property by the applicant or a third party that will hold the property until funds become available to the applicant.

571—23.2(483A) Availability of funds. Habitat stamp funds are dependent on stamp sales. The amount of moneys available at any time will be determined by revenues received by the department. Final stamp sales for each calendar year will be determined by July 1 of the following year.

23.2(1) Local share. Funds available for local entities shall be specified in the department's budget in accordance with legislative appropriations. Funds will be made available during a fiscal year of July 1 to June 30.

23.2(2) Distribution. After deducting 5 percent to be held for contingencies, the remaining local share will be available on a semiannual basis each year.

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571—23.3(483A) Project limitations. Because of administrative costs, no application for assistance totaling less than \$3,000 (total project cost—\$4,000) will be considered.

571—23.4(483A) Eligibility for cost-sharing assistance. No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant has received a written waiver of retroactivity from the director, prior to its initiation. A project shall not be eligible for cost sharing unless public hunting and trapping will be allowed; however, the review and selection committee may recommend for commission approval projects with restrictions on hunting and trapping under exceptional circumstances, such as waterfowl refuges. Fees charged for recreational purposes will not be allowed on land purchased or developed with wildlife habitat funds. Wildlife habitat promotion funds shall not be used to fund mitigation lands or banks, or other lands, to satisfy mitigation requirements. Only the following types of project expenditures will be eligible for cost-sharing assistance:

23.4(1) Acquisition projects. Lands or rights thereto to be acquired in fee or by any other instrument shall be appraised by a competent appraiser and the appraisal approved by the department staff. Applicants whose applications have been approved for funding must submit an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions “Yellow Book” (2016). The appraisal requirements may be waived when the staff determines that they are impractical for a specific project. Cost sharing will not be approved for more than 75 percent of the approved appraised value. Acquisition projects are eligible for either cost sharing by direct payments as described in subrule 23.10(3) or by reimbursement to local entities. When a county receives or will receive financial income directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action, 75 percent of that income will be transferred to the department unless the grantee has demonstrated and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee must recommend, and the director and commission must approve, plans for the expenditure of income. In the absence of acceptable wildlife habitat development or acquisition plans, the county will transfer 75 percent of income received to the department as it is received. The department will credit that income to the county apportionment of the wildlife habitat stamp fund as described in subrule 23.2(1). The schedule of those reimbursements from a county to the state will be included in the project agreement.

23.4(2) Development and enhancement projects. Equipment purchases are not eligible. Donated labor, materials and equipment use, and force account labor and equipment use shall not be eligible for cost-sharing assistance. Force account means the agency’s own labor and equipment use. Development projects are limited to lands legally controlled by the grantee for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the public agency.

571—23.5(483A) Application for assistance.

23.5(1) Form. Applications shall be submitted on forms provided by the department.

23.5(2) Time of submission. The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days’ notice. Applications must be submitted to the department as described on the website. Local entities can obtain a waiver so that acquisition projects may be approved for retroactive payments, provided that funds are available and the project meets all other criteria.

23.5(3) Local funding. By signing the application, the applicant agency is certifying that all required match has been identified and is committed and available for the project. An applicant shall certify in writing that it has the 25 percent match committed and available, by signing on the signature block provided on the application, and shall state the means of providing for the local share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action will be completely documented in the application.

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571—23.6(483A) Project review and selection.**23.6(1) Review and selection committee.**

a. A review and selection committee, hereinafter referred to as the committee, composed of one person appointed by the director to represent the department and designated by the director as chairperson and four persons appointed by the director to represent county conservation boards shall recommend grant applications and amendments for funding. Additionally, there shall be at least two alternates designated by the director to represent the county conservation boards in the event of a conflict of interest.

b. Conflict of interest. An individual who is a member, volunteer, or employee of a county conservation board that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

23.6(2) Application rating system. The committee will apply a numerical rating system to each grant application that is considered for fund assistance that will be posted on the department's website, providing at least 90 days' notice. The following criteria, with a weight factor for each, will be considered:

Wildlife habitat needs	2
Existing or potential habitat quality	3
Species diversity	1

Each criterion will be given a score of from 0 to 10 that is then multiplied by the weight factor. Four additional criteria will be considered in the rating system:

a. Prior assistance. Any applicant who has never received a prior grant for acquisition of land will be given a bonus of five points.

b. Active projects. Any applicant who has one or more active projects at the time of application rating will be assessed five penalty points for each project that has not been completed. A project is deemed closed after the project has had a final inspection, all funds have been paid and, in the case of acquisition, the title has been transferred from the seller.

c. Urgency. Projects may be given one or two bonus points if there is a strong urgency to acquire lands that might otherwise be lost.

d. Cost-effectiveness. Projects will be given one point if the grant amount requested is at least 35 percent less than the appraised amount or two points if at least 45 percent less than the appraised amount.

All points will be totaled for each application, and those applications receiving the highest scores will be recommended for fund assistance to the extent of the allotment for each semiannual period, except that any project scoring a total of not more than 45 points will not be funded.

23.6(3) Applications not selected for fund assistance. All applications not selected for fund assistance will be retained on file for consideration and possible funding for three consecutive review periods or until a request for withdrawal is received from the applicant.

23.6(4) Rating system not used. The rating system will not be applied during any semiannual period in which the total grant request, including backlogged applications, is less than the allotment. Applications will be reviewed only to determine eligibility and overall desirability, and to ascertain that they meet minimum scoring requirements.

23.6(5) Rating of scores for tiebreakers. If two or more projects receive the same score, the committee shall use the points awarded to the highest weighted factor and so forth, beginning with existing or potential habitat quality, to determine which project has a higher rank. If after considering the existing or potential habitat quality points the project scores remain tied, the committee will then consider the points awarded for species diversity. If after considering the species diversity points the project scores remain tied, the committee will then consider the points awarded for wildlife habitat needs.

571—23.7(483A) Commission review. The commission will review committee recommendations semiannually at the next following commission meeting. The commission may accept or reject any application recommended for funding.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—23.8(483A) Grant amendments. Projects for which grants have been approved may be amended, if funds are available, to increase or decrease project scope or to increase or decrease project costs and fund assistance. Project changes must be approved by the selection committee and then by the director prior to their inception. Amendments to increase project costs and fund assistance due to cost overruns will not be approved if the work has already been performed.

571—23.9(483A) Timely commencement of projects. Projects for which grants are approved shall be commenced within six months of the date upon which the grantee is notified that the project is approved, or at another date agreed upon by both parties. Failure to do so may be cause for termination of the project and cancellation of the grant by the commission. Each project will be assigned a project period. Extensions will only be granted in case of extenuating circumstances.

571—23.10(483A) Payments.

23.10(1) Grant amount. Grant recipients will be paid 75 percent of all eligible costs incurred on a project up to the amount of the grant unless otherwise specified in the project agreement.

23.10(2) Project billings. Grant recipients shall submit billings for reimbursements or cost sharing on forms provided by the department.

23.10(3) Acquisition projects. If clearly requested in the project application and the applicant has shown good cause for such procedure, the department may approve direct payment to the seller of the state's share provided that marketable fee simple title, free and clear of all liens and encumbrances or material objections, is obtained by the local entity at the time of payments and state funds are then available.

23.10(4) Development projects. On approved development projects, payment will be made by the department only as reimbursement for funds already expended by the local entity.

571—23.11(483A) Recordkeeping and retention. A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs and direct or indirect income from other sources that normally would have been paid to the previous landowner resulting from a purchase agreement or other title transfer action. A copy of the county's audits particularly showing such income and disbursements for the grant period will be submitted to the department's budget and grants bureau. These records shall be available for audit by appropriate personnel of the department and the state auditor's office. All records shall be retained in accordance with state laws.

571—23.12(483A) Penalties. Whenever any property, real or personal, acquired or developed with habitat stamp fund assistance passes from the control of the grantee or is used for other purposes that conflict with the project purpose, it will be considered an unlawful use of the funds. The department shall notify the local entity of any such violation.

23.12(1) Remedy. Funds used unlawfully must be returned to the department for inclusion in the wildlife habitat stamp fund, or a property of equal value at current market prices and with commensurate benefits to wildlife must be acquired with local, non-cost-shared funds to replace it. Such replacement must be approved by the commission. The local entity shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided by this rule are in addition to others provided by law.

23.12(2) Land disposal. Whenever it has been determined and agreed upon by the grantee and the commission that land acquired or developed with habitat stamp fund assistance is no longer of value for the project purpose, or that the local entity has other good cause, the land, with the approval of the commission, may be disposed of and the proceeds thereof used to acquire or develop an area of equal value, or 75 percent of the proceeds shall be returned to the state for inclusion in the wildlife habitat stamp fund.

NATURAL RESOURCE COMMISSION[571](cont'd)

23.12(3) Ineligibility. Whenever a local agency is in violation of this rule or the grant agreement, it shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

These rules are intended to implement Iowa Code section 483A.3.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7901C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to bluffslands protection

The Natural Resource Commission (Commission) hereby rescinds Chapter 24, "Bluffslands Protection Program and Revolving Loan Fund," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 161A.80A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 161A.80A.

Purpose and Summary

Chapter 24 consists of rules implementing a revolving loan fund for the protection of significant bluffslands along the Mississippi and Missouri Rivers. These rules are required by state law. The rules specify loan application and approval processes, loan terms, and land management requirements.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7256C**. Public hearings were held on January 16 and 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

NATURAL RESOURCE COMMISSION[571](cont'd)

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24
BLUFFLANDS PROTECTION PROGRAM AND REVOLVING LOAN FUND

571—24.1(161A) Definitions. For the purpose of this rule:

“*Fund*” means the bluffland protection revolving fund established in Iowa Code section 161A.80A.

“*State-owned lands*” means lands in which the state holds the fee title through acquisition and lands in which the state holds title by virtue of its sovereignty, including the beds of the Mississippi River and Missouri River.

571—24.2(161A) Types of acquisitions. Acquisition must be fee simple and title to lands purchased must be free of encumbrances, unless approved by the director on the recommendation of the attorney general. Loan applicants shall submit an abstract of title to lands to be purchased with loans from the fund for examination by the attorney general prior to issuance of any loan.

571—24.3(161A) Application for loans. Conservation organizations shall apply for loans on forms available on the department's website.

571—24.4(161A) Approval of loan applications. The director shall appoint a committee to review and evaluate loan applications. The committee shall make appropriate recommendations to the director.

571—24.5(161A) Interest and other terms of loan agreements. Loans shall be for a maximum term of five years with payment due at the end of the loan term. At the end of the loan term, an appropriate conservation easement approved by the department shall be in effect unless the fee title is conveyed to a public entity in trust to be held for conservation purposes. Simple interest at an annual rate of 4 percent shall accrue on the principal amount of the loan and shall be payable with the principal at the end of the loan term. However, interest shall be waived for the period commencing with the effective date of an approved conservation easement. All interest shall be waived if the fee title is conveyed to a public entity in trust for conservation purposes. The loan agreement and documents establishing security for the loan shall be in a form approved by the department and the attorney general. The applicant shall execute and deliver a first mortgage in favor of the state of Iowa acting through the department of natural resources or provide equivalent security to secure the principal and interest due on the loan. The mortgage shall contain provisions for foreclosure in accordance with Iowa Code chapter 654.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—24.6(161A) Eligible expenditures with loan funds. Loan funds shall be limited to the following: land purchase, usual and customary incidental costs (not including personnel, staff time, and administrative overhead), land appraisal fees and land survey fees.

571—24.7(161A) Custody and management of land during loan term. Loan recipients must hold title to blufflands acquired throughout the term of the loan. Where practicable, lands purchased with loan funds shall be available for public use under terms and conditions stated in the loan agreement. If the bluffland is sold before the end of the loan term, it must first be offered to a governmental entity. If no governmental entity agrees to purchase the land, it may be sold to a private buyer provided title is first encumbered by a conservation easement granted to the conservation organization or the state of Iowa or its political subdivisions. The easements shall ensure that the natural, scenic or cultural resources of the bluffland are permanently protected. If the bluffland is sold before the end of the loan term, the loan balance shall become due immediately at the time of sale. A loan recipient may enter into agreements, at any time, with governmental entities for the care, management and public use of lands purchased with loan funds.

571—24.8(161A) Loans not to exceed appraised value. Loans from the fund shall not exceed the appraised value of the land to be acquired plus approved incidental expenses listed in rule 571—24.6(161A).

These rules are intended to implement Iowa Code sections 161A.80A and 161A.80B.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7902C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to certification of land as native prairie or wildlife habitat

The Natural Resource Commission (Commission) hereby rescinds Chapter 25, "Certification of Land as Native Prairie or Wildlife Habitat," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 427.1(23) and 427.1(24).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 427.1(23) and 427.1(24).

Purpose and Summary

Chapter 25 establishes criteria for land to qualify for native prairie and wildlife habitat property tax exemptions. It also establishes land certification and decertification procedures. The criteria and evaluation procedures ensure that tax exempt lands are providing the public and environmental benefits the tax break is intended to reward. Properties will be evaluated consistent with these rules by the Department of Natural Resources (Department) and, if eligible, officially certified. Property tax exemptions will be granted by the county assessor based on the Department's certification.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

NATURAL RESOURCE COMMISSION[571](cont'd)

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7254C**. Public hearings were held on January 16 and 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25

CERTIFICATION OF LAND AS NATIVE PRAIRIE OR WILDLIFE HABITAT

571—25.1(427) Purpose. The purpose of this chapter is to define lands that qualify for native prairie and wildlife habitat property tax exemptions and to provide procedures whereby owners may have them certified as such.

571—25.2(427) Definitions. Before lands will be certified as either “native prairie” or “wildlife habitat” under Iowa Code section 427.1, they must meet the criteria of the following definitions:

“*Native prairie*” is defined as those lands that have never been cultivated, are unimproved, and are natural or restored grasslands wherein at least 50 percent of the plant canopy is a mixture of grass and forb species that were found originally on Iowa’s prairie lands.

“*Wildlife habitat*” is defined as those parcels of agricultural land of two acres or less, composed of native species having adequate ground cover, that are devoted exclusively for use as habitat for wildlife and are protected from all other economic uses of any kind.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—25.3(427) Restrictions. Lands classified as native prairie or wildlife habitat under this rule shall not be used for economic gain of any type. This includes the storage of equipment, machinery, and crops, or receiving lease or rental payments. There shall not be any buildings, used or unused, on the tax parcel containing the exempted area.

571—25.4(427) Maintenance. Maintenance activities, including burning, chemical treatment, or selective brush removal, may be performed on native prairies if approved by the county conservation board or by the department of natural resources in areas not served by a county conservation board. Similar activities, as well as seedings and plantings, may be performed on wildlife habitats if approved by the department of natural resources.

571—25.5(427) Certification. In order to have lands certified as native prairie or wildlife habitat, the taxpayer must make an application to the department of natural resources on forms made available by the department. The application shall describe and locate the property to be exempted on a map.

571—25.6(427) Decertification. Whenever land certified as natural prairie or as wildlife habitat is used for economic gain or otherwise becomes ineligible for tax-exempt status, the Department shall notify the appropriate assessor.

These rules are intended to implement Iowa Code section 427.1.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7903C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to relocation assistance

The Natural Resource Commission (Commission) hereby rescinds Chapter 26, "Relocation Assistance," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 316.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

Chapter 26 sets forth the policy and procedures to be followed regarding relocation assistance for those being displaced by a Department of Natural Resources (Department) land acquisition. The Department has determined that the contents of this chapter are duplicative of Iowa Code chapter 316 and the federal Uniform Relocation Assistance and Real Property Acquisition Act. Rescission of this chapter has no material change on departmental policy. The Department's operations will continue to be governed by applicable state and federal laws.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7253C**. A public hearing was held on January 23, 2024, at 12 noon via

NATURAL RESOURCE COMMISSION[571](cont'd)

video/conference call. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **571—Chapter 26**.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7904C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to land and water conservation fund program

The Natural Resource Commission (Commission) hereby rescinds Chapter 27, "Lands and Waters Conservation Fund Program," and adopts a new Chapter 27, "Land and Water Conservation Fund Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455A.5(6)"a."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 456A.27 to 456A.35.

Purpose and Summary

NATURAL RESOURCE COMMISSION[571](cont'd)

Chapter 27 contains the implementation rules for the Land and Water Conservation Fund (LWCF), a federal cost-share program for outdoor recreational resources.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, there were provisions in this chapter that were outdated, duplicative, and unnecessary. These provisions have been removed from the new chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7232C**. Public hearings were held on January 30, 2024, at 12 noon and January 31, 2024, at 4 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings.

Three comments were received in response to the proposed changes. All three comments were generally supportive of the proposed rules. All three comments discussed the increase in the assistance cap. The Commission determined the amount identified in the proposed rulemaking would meet the objective of providing more funding to partners.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 27
LAND AND WATER CONSERVATION FUND PROGRAM

571—27.1(456A) Purpose. The purposes of the federal Land and Water Conservation Fund, hereinafter referred to as the LWCF, are as stated in Section 1(b) of the Land and Water Conservation Fund Act of 1965 (54 U.S.C. §200301). The Iowa department of natural resources, hereinafter referred to as the

NATURAL RESOURCE COMMISSION[571](cont'd)

department, acting through its director, will administer the LWCF for the same purposes at the state and local levels. All state and local projects will comply with the federal statute and program guidelines.

571—27.2(456A) Apportionment distribution.

27.2(1) Iowa apportionment. The state expects to receive an annual apportionment from the LWCF. This annual apportionment, after deducting any amount necessary to cover the department's costs of administering the program and state outdoor recreation planning costs, shall be divided into two shares for state and local entity grants with the local entity share being not less than 50 percent.

27.2(2) Local share. The local share of the annual LWCF apportionment shall be available for local entity grants on an annual basis.

571—27.3(456A) Eligibility requirements. The following eligibility requirements shall apply to local entities:

27.3(1) Participation in the LWCF shall be limited to county conservation boards and incorporated cities.

27.3(2) A local entity shall have assessed outdoor recreation supplies, demands and needs and shall have allowed for input by affected citizens within the service area of any proposed project. Applications shall include documentation of these planning processes.

571—27.4(456A) Assistance ceiling. Local entities are eligible to receive annual assistance from the LWCF of up to \$250,000 per proposal. No grant shall be approved that exceeds the allotment for the review period.

571—27.5(456A) Grant application submission.

27.5(1) Form of application. Grant applications for both state and local projects shall be on forms and follow guidelines provided by the department. Projects selected for funding with land and water conservation assistance must be in accordance with state comprehensive outdoor recreation plan (SCORP) priorities.

27.5(2) Application timing. For local projects, grant applications shall be reviewed and selected for funding on an annual basis as provided in subrule 27.2(2). The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. State projects will be reviewed, evaluated and submitted to the National Park Service for approval as soon as practicable upon notification of Iowa's apportionment.

27.5(3) Local funding. An applicant shall certify that it has committed its share of project costs. Cash donations must be on deposit and a bond issue must have been passed by the electorate if such passage is necessary if either or both is a source of local funding.

27.5(4) Development project application. An application for a development project grant shall include development on only one project site with the exception that an application may include development of a like nature only on several sites.

571—27.6(456A) Project review and selection.

27.6(1) Review and selection committee for local projects.

a. A five-member review and selection committee, hereinafter referred to as the committee, shall be composed of three staff members of the department as appointed by the director, one member appointed by the director with input from the Iowa association of county conservation boards, and one member appointed by the director with input from the Iowa league of cities and the Iowa parks and recreation association. Additionally, there shall be at least two alternates designated by the director with input from both associations and the league of cities. The committee shall determine which grant applications shall be selected for funding at the local level.

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b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

27.6(2) Consideration withheld. The committee will not consider any application that, on the date of the selection session, is not complete, or for which additional pertinent information has been requested and not received.

27.6(3) Open project selection process for local projects. The department will create an open project selection process in program guidelines published at least 90 days prior to a grant application due date. The project selection process rating system will include, at minimum, the following components: objective criteria and standards based on local need and priorities identified in SCORP, process for public participation, assurances that the distribution of LWCF assistance is accomplished in a nondiscriminatory manner and conformance to LWCF eligibility and evaluation criteria.

27.6(4) Open project selection process for state projects. State projects are chosen by the department based on priorities and funding.

571—27.7(456A) Public participation for local projects. All grant applicants will be advised of the time and place of the grant review session. A time period for public comment will be allowed at the review session.

571—27.8(456A) Director's review. The director will review, amend, reject, or approve committee recommendations after each review period for local projects. Appeals of the director's decision may be made to the commission.

571—27.9(456A) Federal review. All applications selected for fund assistance shall be submitted to the administering federal agency for final review and grant approval.

571—27.10(456A) Grant amendments. Projects for which grants have been approved may be amended. Amendments to increase project costs and fund assistance due to cost overruns will not be approved.

571—27.11(456A) Timely commencement of projects and project period. Grant recipients are expected to carry out their projects in an expeditious manner. Physical work on the project shall commence within one calendar year of the federal award date. Failure to do so may be cause for termination of the project and cancellation of the grant. Project period is assigned by federal statute.

571—27.12(456A) Reimbursements.

27.12(1) Grant amount. Grant recipients are reimbursed up to 50 percent of all eligible costs incurred on a project up to the amount of the grant.

27.12(2) Project billings. The following information applies to local grants only. Grant recipients shall submit billings for reimbursements on forms provided by the department or through a cover letter. No more than two project billings shall be allowed. A final billing shall be submitted within 90 days following project completion.

27.12(3) Documentation. Grant recipients shall provide documentation as required by the department to substantiate all costs incurred on a project.

571—27.13(456A) Recordkeeping and retention. A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs. These records shall

NATURAL RESOURCE COMMISSION[571](cont'd)

be available for audit by appropriate personnel of the department, the state auditor's office and the U.S. Department of the Interior.

These rules are intended to implement Iowa Code sections 456A.27 through 456A.33, 456A.34, and 456A.35.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7905C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to the all-terrain vehicle registration revenue grant program

The Natural Resource Commission (Commission) hereby rescinds Chapter 28, "All-Terrain Vehicle Registration Revenue Cost-Share Program," and adopts a new Chapter 28, "All-Terrain Vehicle Registration Revenue Grant Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 321I.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 321I.8.

Purpose and Summary

Chapter 28 sets forth the rules for the all-terrain vehicle registration grant program. The chapter identifies eligible participants (political subdivisions and incorporated private organizations), provides the procedure for the grant application and approval process, lists eligible uses, and outlines required tracking and documentation of spending.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, there were provisions in this chapter that were outdated, duplicative, and unnecessary. These provisions have been removed.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7244C**. Public hearings were held on January 30, 2024, at 12 noon and January 31, 2024, at 4 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. Three comments were received in support of the proposed changes. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

NATURAL RESOURCE COMMISSION[571](cont'd)

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 28 and adopt the following **new** chapter in lieu thereof:

CHAPTER 28
ALL-TERRAIN VEHICLE
REGISTRATION REVENUE GRANT PROGRAM

571—28.1(321I) Definitions.

“All-terrain vehicle (ATV)” means the same as defined in Iowa Code section 321I.1.

“Commission” means the same as defined in Iowa Code section 321I.1.

“Department” means the same as defined in Iowa Code section 321I.1.

“Designated riding area” means the same as defined in Iowa Code section 321I.1.

“Director” means the same as defined in Iowa Code section 321I.1.

“High-quality natural area” means an area that includes high-quality native plant communities, highly restorable native plant communities or an area that provides critical wildlife habitat. An on-site evaluation by qualified person(s) for each proposed site is necessary in making this determination.

“Local share” means those funds available for use by incorporated organizations or other public agencies through cost-sharing, grants, subgrants or contracts.

“Previously disturbed” means an area where the plant community has been severely disturbed and has not recovered or the natural (native) plant biota is nearly gone. Such an area has been so heavily disturbed that the plant community structure has been severely altered and few or no higher plants of the original community remain. Examples are newly cleared land, cropland, severely overgrazed pasture or second-growth forest, quarries, mines, and sand pits.

“Sponsor” means the incorporated organization or other public agency receiving funding from the all-terrain fund grant program through an agreement to acquire, develop, maintain or otherwise improve designated riding areas and trails.

“State share” means those funds that may be used by the state for administration, law enforcement, or other expenses related to the program.

571—28.2(321I) Purpose and intent. This program provides funds from the all-terrain vehicle registration fund to political subdivisions and incorporated private organizations for the acquisition of land, development and maintenance of designated riding areas and trails, and facilities for such use on lands which may be in other than state ownership. This chapter is intended to clarify procedures in Iowa Code section 321I.8 and to execute agreements between the department and sponsors, under the authority of the director. All designated riding areas, trails and facilities established or maintained using revenues under this program shall be open to use by the general public.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—28.3(321I) Distribution of funds. The local share of state all-terrain vehicle registration funds as established in Iowa Code section 321I.8 and this rule shall be distributed in accordance with this chapter and upon execution of agreements. The local share of the registration fund shall be at least 50 percent of appropriate registration revenues. The remaining revenues shall be known as the state share. State share funds shall not exceed 50 percent of the total registration revenue generated for the program per fiscal year.

571—28.4(321I) Application procedures.

28.4(1) Forms. Applications for local share moneys shall be made on forms available from the department. The application must be completed and signed by the chairperson or chief executive officer of the applying sponsor. The application must be accompanied by a copy of the minutes of the sponsoring organization meeting at which the request was approved.

28.4(2) Grant application submission. The process of applying for a grant shall follow guidelines, and the application shall be on form(s) provided by the department. The department shall publish on its website the date and time for submitting an application, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. Applications will be posted on the department's website, at minimum, at least once per year.

571—28.5(321I) Review and selection committee.

28.5(1) The committee responsible for reviewing, ranking and selecting projects to receive funding from the local share of the all-terrain vehicle registration revenue shall be comprised of two representatives appointed by the president of the Iowa Off-Highway Vehicle Association and three department representatives appointed by the director.

28.5(2) The review and selection committee shall meet in a manner as determined by the department within 30 days following the application deadline. Applications eligible for funding will be reviewed and ranked by the committee. The committee's recommendations will be submitted to the director for approval.

571—28.6(321I) Director's review of approved projects. The director shall review, amend, reject or approve committee selections. Appeals of the director's decision may be made to the commission. Applicants shall be notified of their grant status in writing within 30 days after the review and selection committee meeting.

571—28.7(321I) Project selection criteria. In reviewing projects to receive available funding, the following minimum criteria shall be used:

1. Projects proposing maintenance and operation of existing designated riding areas and trails.
2. Development within existing designated riding areas or trails.
3. Projects having documented local support and involvement.
4. Acquisition and development projects located in areas of high demand with preference given to projects with the most long-term, stable management plan and that have the least adverse environmental and social impacts.

571—28.8(321I) Items eligible for funding. Items listed in this rule or approved by the director which can reasonably be utilized in the operation, development, or maintenance of designated riding areas or trails shall be eligible for funding.

28.8(1) Land acquisition. Purchasing of easements or fee title land acquisition as approved by the review and selection committee and director. Title to property acquired using the local share of registration revenues shall be in the name of the sponsor unless otherwise approved by the commission. The grant may be used for prepayment or reimbursement of land acquisition expenses, including appraisals, surveys and abstracts in addition to the property cost. The grant may pay the sale price or appraised value, whichever is less. Appraisals are required and must be approved by the department. Payments may be made directly to the landowner by the department. The grant agreement may contain provisions in addition to those contained in this chapter for disposal of property if it ceases to be

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managed and used for the purpose for which it was acquired. Land acquisitions (or leases) using all-terrain registration revenues shall utilize the following specific criteria:

a. Designated riding areas shall be limited to previously disturbed areas. High-quality natural areas and historical and cultural areas shall be avoided. If a proposed riding area contains fragments of any of the aforementioned areas, those areas shall be managed and protected as off-limit sites.

b. In making the determination of whether high-quality natural areas and historical or cultural areas exist, an expert in the said field shall complete a thorough assessment utilizing all available resources, including local expertise.

c. Prior to land acquisition, a public informational meeting shall be held to address the proposed designated riding area. The meeting shall be posted in accordance with Iowa Code section 362.3, and meeting minutes shall be made available to the commission.

d. Neighboring property owners shall be notified of the proposed designated riding area. Public comment received by the department or local political subdivision will be evaluated and presented to the commission.

e. A local project sponsor shall be willing and able to maintain the designated riding area and shall implement and abide by an approved operational plan, which includes a cooperative agreement with the local sponsor and political subdivision.

f. A local sponsoring political subdivision shall support the designated riding area and may provide local input.

g. The topography and associated soil erosion potentials shall be cost-effectively manageable as determined by the review and selection committee.

h. The commission shall make the final determination whether to acquire a tract of land as a designated riding area.

i. An act of the commission can undesignate a riding area.

28.8(2) Operation and maintenance of property that has been designated as a riding area by a local political subdivision and the commission.

28.8(3) Hourly wages may be reimbursed for operation and maintenance. Labor costs shall be documented in a manner approved by the department and shall be accompanied by proof that the cost was paid by the sponsor. If labor and repair are contracted, reimbursement shall be at the amount specified in the grant agreement. The sponsor shall obtain any federal, state or local permits required for the project.

28.8(4) Actual material cost of tools, gravel, gates, bridges, culverts, and fencing supplies. Diesel fuel, propane, gasoline, oil, parts and repair bills for equipment used for area management.

28.8(5) Purchase of approved equipment to be used for maintenance of designated riding areas. Cost of leasing equipment used to maintain designated riding areas.

28.8(6) Program and facility liability insurance. Insurance shall be in place for project sponsors receiving grant funds. If insurance is purchased by the sponsor, proof of liability insurance shall be provided to the department. The state may purchase a statewide insurance policy covering all project sponsors receiving funds from the grant program, in which case a copy of the policy shall be made available to covered sponsors upon request. This insurance coverage may include liability insurance for the landowner(s) or other insurable interests. All-terrain vehicle fund moneys shall not be used to purchase insurance for special events. The total payment from the all-terrain vehicle fund shall be 100 percent of the approved actual cost. All insurance paid under this subrule must be furnished by companies licensed to do business in Iowa.

28.8(7) Cost of law enforcement for designated riding areas.

28.8(8) Developmental expenditures. Access roads, parking lots, picnicking, camping and playground facilities; sanitary facilities, shelters, and concession facilities; and utilities.

28.8(9) Pursuant to an agreement between the department and the Iowa Off-Highway Vehicle Association, miscellaneous personal expenses for an association representative may be reimbursed at a rate approved by the director. Expenses shall be documented in a manner approved by the department and submitted at the end of the term specified in the agreement.

28.8(10) Travel expenses. In-state travel reimbursement for overnight lodging, registration costs, and mileage to educational events, conferences, and meetings as approved by the review and selection

NATURAL RESOURCE COMMISSION[571](cont'd)

committee and the director. Out-of-state travel for up to three sponsors annually will be eligible. Reimbursement rates will follow department policy.

28.8(11) Direct payment to vendors. The department may establish operational procedures to facilitate direct payment to vendors for:

a. Major expenditures or specialty items, including land acquisitions, development expenses, program liability insurance fees, equipment, and trail signs.

b. Unexpected repairs, including materials or other expenses costing more than \$250 that may be necessary to operate and maintain the designated riding area in a safe manner.

571—28.9(321I) Use of funded items. Manufactured products or machinery purchased by sponsors with all-terrain vehicle fund moneys shall be used only for the purpose of establishing or maintaining designated riding areas, trails, or facilities and as emergency rescue equipment, where applicable.

571—28.10(321I) Disposal or trade of equipment, facilities or property.

28.10(1) Without prior written approval of the department, sponsors shall not dispose of or trade any manufactured products, machinery, facilities or property with a purchase value over \$5,000 if a portion or all of the actual cost was paid for with the all-terrain vehicle fund. Sponsors shall, in the case of equipment or facilities, reimburse the all-terrain vehicle fund a percentage of the disposal price received, that percentage being the percent of the original purchase price paid by the fund.

28.10(2) Real property and equipment shall be disposed of as stipulated in the grant agreement under which they were acquired. Reimbursements from the sale of real property and equipment shall be credited to the all-terrain vehicle fund.

571—28.11(321I) Recordkeeping. Sponsors receiving funds under this program shall keep adequate records relating to the administration of the grant, particularly relating to all incurred costs as stated in the grant agreement. These records shall be available for audit by appropriate personnel of the department and the state auditor's office.

571—28.12(321I) Sponsors bonded. Prior to receiving prepayment from this grant program, all nonpublic sponsors must produce proof that their chairperson and treasurer are covered under a fidelity bond, personal or surety, to the sponsor in a sum of no less than the total prepayment amount for each office.

571—28.13(321I) Competitive bids. Any equipment or development expense costing more than \$2,500 and funded by the all-terrain vehicle fund must be purchased through a competitive bid or quotation process. Documentation of such process must be submitted before funds are released by the state. Items purchased by any other means are not reimbursable by the state.

571—28.14(321I) Prepayment for certain anticipated costs. Only those expenditures contained in signed agreements may be prepaid. Program or facility liability insurance may be prepaid up to 100 percent. Approved facility and development costs and operations and maintenance costs may be prepaid up to 90 percent.

571—28.15(321I) Expense documentation, balance payment or reimbursement.

28.15(1) Documentation of expenditures eligible for prepayment or reimbursement shall be submitted in a manner approved by the department and shall be accompanied by applicable receipts. The sponsoring organization shall sign a certification stating that all expenses for which reimbursement is requested are related to the program and have been paid by the sponsor prior to requesting reimbursement. The sponsoring organization shall provide copies of canceled checks or other verification of expenditure payment.

28.15(2) The sponsor is responsible for maintaining auditable records of all expenditures of funds received whether by prepayment or on a reimbursement basis. This documentation shall include logs of

NATURAL RESOURCE COMMISSION[571](cont'd)

maintenance equipment, operation and repair. Work done under contract to the sponsor requires a copy of the contract and copies of canceled checks showing payment.

28.15(3) Documentation of expenditures under the all-terrain vehicle revenue program must be received within 60 days of the project end date as specified in the grant agreement, unless the project sponsor has requested an extension and the extension has been approved in writing by the department. Failure by the sponsor to complete projects in a timely manner may be cause for termination of the agreement or ineligibility for future grants.

28.15(4) Approved expenditures by the sponsor in excess of the prepayment amount received, up to the maximum approved amount, will be reimbursed by the department if appropriately documented. In instances where the sponsor has expended less than the amount prepaid, the sponsor shall reimburse the balance to the department to be credited back to the all-terrain vehicle fund.

571—28.16(321I) Use of funds. If a grantee desires to use the approved funds for a purpose not within the approved project scope as stated in the grant agreement, the grantee shall request an amendment to the project. If the department and review and selection committee approve a project amendment, the department shall notify the project sponsor in writing. Whenever any real or personal property acquired, developed or maintained with registration funds passes from the control of the grantee or is used for purposes other than the approved project purpose, such an act will be considered an unlawful use of the funds. Whenever the director determines that a grantee is in violation of this rule, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the department.

These rules are intended to implement Iowa Code sections 321I.1, 321I.2, and 321I.8.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7906C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to local recreation infrastructure grants

The Natural Resource Commission (Commission) hereby rescinds Chapter 29, "Local Recreation Infrastructure Grants Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in 1998 Iowa Acts, Senate File 2381.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

Chapter 29 contained rules for a local recreational facility grant fund. The grant provided state cost sharing to certain entities to fund restoration or construction of recreational complexes or facilities. Money was appropriated in 1998 to fund this grant program, and the funds were distributed in conformance with the rules. This program has been dormant for many years. Accordingly, these rules have been rescinded.

Public Comment and Changes to Rulemaking

NATURAL RESOURCE COMMISSION[571](cont'd)

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7233C**. A public hearing was held on January 16, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **571—Chapter 29**.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7907C

NATURAL RESOURCE COMMISSION[571]**Adopted and Filed****Rulemaking related to waters cost-share and grant programs**

The Natural Resource Commission (Commission) hereby rescinds Chapter 30, "Waters Cost-Share and Grant Programs," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 455A.5(6)"a," 461A.4(1)"b" and 462A.3(2).

State or Federal Law Implemented

NATURAL RESOURCE COMMISSION[571](cont'd)

This rulemaking implements, in whole or in part, Iowa Code chapters 455A, 461A and 462A and section 452A.79A.

Purpose and Summary

Chapter 30 creates a cost-share partnership between state and local public entities to acquire or develop public recreational boating accesses to Iowa waters, to plan and develop constructed water trail amenities, and to implement safety projects at low-head dams. These grant programs benefit dam owners, anglers, paddlers, boaters, tubers, and other recreational users of public waters in Iowa.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7237C**. Public hearings were held on January 23 and 30, 2024, at 12 noon via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 30 and adopt the following **new** chapter in lieu thereof:

CHAPTER 30
WATERS COST-SHARE AND GRANT PROGRAMS

DIVISION I
WATER RECREATION ACCESS COST-SHARE PROGRAM

571—30.1(452A) Title and purpose. This division provides rules for the water recreation access cost-share program. The purpose of this division is to define procedures for cost sharing between state and local public agencies to provide for the acquisition or development of public recreational boating accesses to Iowa waters.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—30.2(452A) Availability of funds. Moneys derived from the excise tax on the sale of motor fuel used in watercraft under Iowa Code section 452A.79 are deposited as a “marine fuel tax” and are subject to appropriation by the general assembly to the department of natural resources. Each year, as part of its approval of the department’s capital improvement plan, the commission may designate an amount to be available for this program.

571—30.3(452A) Eligibility of development projects. Projects proposing to develop properties or facilities for the purposes of providing or enhancing recreational boating access consistent with Iowa Code section 452A.79A may apply for funding. Additional eligibility guidance or requirements may be provided during the application process described in 571—30.9(452A).

571—30.4(452A) Eligibility of acquisition projects. Projects proposing to acquire land for recreational boating/canoeing access are eligible to apply for water access funding. Costs for a department-approved appraisal report and the cost of surveys necessary to determine acreage and establish boundaries are also eligible for assistance on those projects approved for funding. Additional eligibility guidance or requirements may be provided during the application process described in 571—30.8(452A).

571—30.5 Reserved.

571—30.6(452A) Waiver of retroactivity. In case of extreme urgency involving land acquisition, a grant applicant may formally request a written waiver of retroactivity that, if granted by the director of the department of natural resources, will permit the applicant to acquire the real property immediately without jeopardizing the applicant’s chances of receiving a grant. However, the granting of the waiver in no way implies or guarantees that any subsequent grant application covering the acquisition will be selected for funding by the water access committee. The request for the waiver must include justification regarding the urgency of the acquisition, a description of the land to be acquired, and a county map on which the land to be acquired is located. Acceptable justification would include situations in which land is to be sold at auction or by sealed bids or when the landowner requires immediate purchase.

571—30.7(452A) Establishing project priorities. The director shall appoint a six-member water access committee representing a cross section of department responsibilities for the purpose of reviewing and establishing priorities for cost sharing.

571—30.8(452A) Application procedures. Applications for funds shall be reviewed and selected for funding at least once per year. The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days’ notice. Applications must be submitted to the department as described on the website.

571—30.9(452A) Cost-sharing rates. All projects approved for assistance will normally be cost-shared at a 75 percent state/25 percent local ratio. Exceptions to the normal funding formula may occur under the following conditions:

30.9(1) Where a local public agency agrees under terms of a long-term agreement to assume maintenance and operation of a department of natural resources water access facility, the approved development or improvements needed on that facility may be funded at up to 100 percent.

30.9(2) Where feasible and practical, the department will provide funds to cover 100 percent of materials needed for a development project if the local subdivision agrees to provide 100 percent of the labor and equipment to complete that development.

30.9(3) Where joint use will be made of a project by commercial interests as well as by recreational boaters, only that portion of a project attributable to the use by recreational boaters will be cost-shared through this program.

30.9(4) When, at the discretion of the director, some alternate funding level is deemed appropriate.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—30.10(452A) Joint sponsorship. Two or more local public agencies may join together to carry out a water access project. However, for the purposes of the grant program, the committee will accept only one local agency as the prime project sponsor. Any written agreements between the local agencies involved in any joint venture will be made a part of any grant application. The application rating system will be applied only to the prime sponsor. The project agreement will be negotiated with the prime sponsor and reimbursements will be paid to it.

571—30.11(452A) Control of project site. In order for a project site to be eligible for a development grant, it must be under the physical control of the grant applicant, either by fee title, lease, management agreement, or easement. The term of a lease, management agreement, or easement must be commensurate with the life expectancy of the proposed development.

571—30.12(452A) Project agreements.

30.12(1) A cooperative agreement approved by the director between the department and the local grant recipient describing the work to be accomplished and specifying the amount of the grant and the project completion date will be negotiated as soon as possible after a grant has been approved. Maximum time period for project completion shall be two years for acquisition or development projects, unless an extension approved by the director is authorized. However, agreements covering land acquisition will be dependent upon receipt of a department-approved appraisal report since assistance will be based on the approved appraised valuation or the actual purchase price, whichever is the lesser. Approved development projects costing over \$25,000 must have plans certified by a registered engineer before an agreement will be issued.

30.12(2) Cooperative agreements between the department and the local project sponsor may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. Any increase in fund assistance will be subject to the availability of funds. Amendments to increase scope or fund assistance must be approved by the director before work is commenced or additional costs incurred. A project sponsor may request amendment of the agreement for a previously completed project to allow commercial use under the conditions specified in 30.9(3). The director shall have the authority to approve such amendments.

30.12(3) All approved projects, except those in which the project is owned by the state and managed by a local entity, having a grant request in excess of \$25,000 will be presented to the natural resource commission members for their information prior to project initiation. The commissioners may act to disapprove or modify projects.

571—30.13(452A) Reimbursement procedures. Financial assistance from the water access fund will typically be in the form of reimbursement grants, which will be made on the basis of the approved percentage of all eligible expenditures up to the amount of the approved grant.

Reimbursement requests will be submitted on project billing forms provided by the department.

30.13(1) For acquisition projects, one copy each of the following additional documentation will be required:

- a. Deed.
- b. Invoices or bills for any appraisal or survey expense.
- c. All applicable canceled checks or warrants.
- d. A certificate of title prepared by the agency's official legal officer.

30.13(2) For development projects, grant recipients shall provide documentation as required by the department to substantiate all project expenditures.

30.13(3) Reimbursements will be made on real estate contract payments using the following procedures:

- a. The grant recipient will submit to the department a copy of the real estate contract, which must stipulate that the grant recipient will get physical control of the property on or before the date the first contract payment is made.

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b. The grant recipient will submit to the department a copy of any approval that it is required to obtain from any governing body to enter into a real estate contract.

c. The grant recipient will submit to the department an up-to-date title opinion from its official legal officer indicating that the landowner has and can convey clear title to the grant recipient.

d. The grant recipient will submit a project billing with photocopy of the canceled warrant when claiming reimbursement.

e. When final payment has been made and title obtained, the grant recipient will submit to the department a copy of the deed and a certificate of title from its official legal officer. Only one reimbursement request may be submitted if the total project cost is \$10,000 or less. If more than \$10,000, no more than two reimbursement requests may be submitted.

A final reimbursement request shall be submitted within 90 days following the completion date indicated on the cooperative agreement. Failure to do so may be cause for termination of the project with no further reimbursement to the grant recipient.

Ten percent of the total reimbursement due any grant recipient for a development project will be withheld pending a final site inspection or until any irregularities discovered as a result of a final inspection have been resolved. Final site inspections will be conducted by assigned department staff within 30 days of notification by project sponsor that a project is completed.

571—30.14 to 30.50 Reserved.

These rules are intended to implement Iowa Code section 452A.79.

DIVISION II
WATER TRAILS DEVELOPMENT PROGRAM AND
LOW-HEAD DAM PUBLIC HAZARD PROGRAM

571—30.51(455A,461A,462A) Definitions. For purposes of this division, the following definitions shall apply:

“*Commission*” means the natural resource commission.

“*Coordinator*” means the staff person of the department responsible for implementing this division.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources.

“*Low-head dam*” means a uniform structure across a river or stream that causes an impoundment upstream, with a recirculating current downstream.

“*Navigable waters*” means all lakes, rivers, and streams that can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

“*Scoring committee*” means the water trails scoring committee, which consists of the coordinator, two department staff members appointed by the director, and two representatives and two alternates of the water recreation community selected by the director.

“*Sponsor*” means an eligible applicant, as described in these rules.

“*Water trail*” means a point-to-point travel system on a navigable water and a recommended route connecting the points.

571—30.52(455A,461A,462A) Purpose and intent. The water trails development program and the low-head dam public hazard program provide funds to assist development of local water trails on navigable waters of the state of Iowa and to support safety projects for low-head dams in the state of Iowa. The programs will be available to fund two types of projects: those that enhance water trails development and recreation and those that are limited to projects that primarily enhance dam safety in order to reduce drownings.

571—30.53(455A,461A,462A) Program descriptions.

30.53(1) *Water trails development program.* The department will provide funds to cities and counties in the state of Iowa to plan and develop water trails throughout the state. The goal of the water

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trails development program is to assist and encourage the development of community-driven water trails that provide features described in statewide and local plans and herein.

30.53(2) *Low-head dam public hazard program.* The department will provide funds to dam owners, including counties, cities, state agencies, cooperatives, and individuals, within Iowa to undertake projects that warn the general public about drowning hazards related to low-head dams or that remove or otherwise modify low-head dams to create a safer experience on Iowa's navigable waters and enhance fish passage, aquatic habitat, and navigation.

571—30.54(455A,461A,462A) Application. The coordinator may announce the availability of funds for the programs, designate a time and place for receiving proposals, identify any additional requirements to those enumerated in this division for successful applications, and provide at least 90 days for sponsors to submit such proposals.

571—30.55(455A,461A,462A) Grant requirements. By submitting a proposal pursuant to this division, a sponsor will agree to the following terms and conditions:

30.55(1) *Agreements.* Before funds are disbursed, the sponsor will enter into a project agreement with the department. The agreement shall detail and further define the relationship of the parties.

30.55(2) *Timely commencement of projects.* Funds must be completely expended within two years of the award. If the sponsor is not able to complete a project within the original time period, the sponsor must seek and receive a written extension from the department to receive reimbursements for expended funds. Any advanced funds must be returned after either the completion date or extension date if the department determines the project cannot be completed in a timely manner.

30.55(3) *Expenditures.* The sponsor shall expend all funds in accordance with the sponsor's governance documents, which may include applicable provisions of the Iowa Code.

30.55(4) *Recordkeeping.* The sponsor shall keep all project records for three years after the final report is completed. These records are to be available for audit by the state.

30.55(5) *Permits and licenses.* The sponsor must obtain any and all required licenses and permits from federal, state, and local authorities before commencing any activity pursuant to a grant award.

30.55(6) *Control of project site.* The sponsor must demonstrate that the project site or sites are under the physical control of the sponsor or its partners, either by fee title, lease, management agreement, or easement. The sponsor assumes long-term maintenance of the integrity of the project and shall enter into such agreements with landowners or other relevant parties as may be necessary to ensure such long-term maintenance.

571—30.56 Reserved.

571—30.57(455A,461A,462A) Proposal evaluation.

30.57(1) Proposals will be evaluated by the scoring committees for each program.

30.57(2) Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

571—30.58(455A,461A,462A) Sponsor eligibility.

30.58(1) *Water trails development program.* The water trails development program is limited to local divisions of Iowa government.

30.58(2) *Low-head dam public hazard program.* The low-head dam public hazard program is available to dam owners or their agents, including counties, cities, state agencies, cooperatives, nonprofit organizations, and individuals.

571—30.59(455A,461A,462A) Project eligibility.

30.59(1) *Water trails development program.* The scoring committee will evaluate proposals for water trails development projects. Eligible projects may include master planning, engineering, and development such as water accesses with parking and related easement and property acquisition;

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navigational, interpretive, and warning signs; portages to aid navigation or avoid hazards; related amenities adjacent to the water trail such as access roads, canoe and bike racks, restrooms, picnic areas, campsites, and water-accessible cabins; and promotional, educational, and educational materials such as mapping, brochures, kiosks, display panels, and online information.

30.59(2) *Low-head dam public hazard program.* The scoring committee will evaluate proposals for projects that enhance safety and fish passage at low-head dams on or adjacent to navigable waters in Iowa. The department may divide grants into categories and scoring criteria corresponding to project types, such as warning signage, feasibility studies, engineering, and construction.

571—30.60(455A,461A,462A) Cost-share requirements.

30.60(1) *Water trails development program.* Grant proposals for water trails development projects require a minimum of 20 percent cost share of the total project to be provided by the sponsor.

30.60(2) *Low-head dam public hazard program.* Grant proposals for low-head dam safety and mitigation projects require a minimum of 50 percent cost share of the total project to be provided by the sponsor.

571—30.61(455A,461A,462A) Evaluation criteria.

30.61(1) *Water trails development program.* The scoring committee will prioritize projects based on impacts for public use, local and private resource contributions, support of statewide and local plans and guidelines, public acceptance, safety, location on a designated or planned water trail, and annual priorities established by the coordinator.

30.61(2) *Low-head dam public hazard program.* The scoring committee will prioritize projects based on public safety, stream health, fish passage, aesthetic, recreational and navigational improvements, urgency of failure, local contributions and stakeholder support, and appropriate cost and scale.

These rules are intended to implement Iowa Code chapters 455A, 461A, and 462A and section 464A.11 and 2008 Iowa Acts, House File 2700.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7908C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to publicly owned lakes watershed program

The Natural Resource Commission (Commission) hereby rescinds Chapter 31, "Publicly Owned Lakes Program," and adopts a new Chapter 31, "Publicly Owned Lakes Watershed Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 456A.24(5) and 456A.33A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 456A.33A.

Purpose and Summary

NATURAL RESOURCE COMMISSION[571](cont'd)

Chapter 31 provides the procedure to establish a priority list of watersheds above significant public lakes where private landowners are eligible to receive cost-share moneys to establish soil and water conservation practices. For larger context, as part of annual appropriations to the Iowa Department of Agriculture and Land Stewardship, the State allocates cost-share moneys for approved soil and water conservation practices on watersheds above certain publicly owned lakes. These areas must first be identified on a priority list established by the Department of Natural Resources (Department). These practices provide a benefit to the landowner through soil conservation and to the public through improved water quality in the affected public lakes. Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7229C**. Public hearings were held on January 23 and 30, 2024, at 12 noon via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 31 and adopt the following **new** chapter in lieu thereof:

CHAPTER 31
PUBLICLY OWNED LAKES WATERSHED PROGRAM

571—31.1(456A) Purpose. The purpose of this chapter is to set forth the policy and procedures to be utilized by the department of natural resources to establish a priority list of watersheds above significant public lakes where private landowners are eligible to receive cost-share moneys to establish soil and water conservation practices pursuant to Iowa Code chapter 161A.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—31.2(456A) Definitions.

“*Commission*” means the natural resource commission.

“*Department*” means the department of natural resources.

“*Division*” means the department of agriculture and land stewardship, division of soil conservation and water quality.

“*Program*” means the publicly owned lakes watershed program.

“*Significant public lake*” means a lake meeting the criteria set forth in Iowa Code section 456A.33B(1) “c.”

“*Watershed*” means those lands that drain into a significant public lake.

571—31.3(456A) Priority of watersheds. Pursuant to Iowa Code section 456A.33A, the commission shall annually establish a priority list of watersheds above existing or proposed significant public lakes.

571—31.4(456A) Application. Applications shall be submitted annually, as specified by the division. The division will then forward received applications to the department for determination of program eligibility. The department will review applications based on compliance with application requirements.

These rules are intended to implement Iowa Code section 456A.33A.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7909C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to private open space lands

The Natural Resource Commission (Commission) hereby rescinds Chapter 32, “Private Open Space Lands,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 9H.5(1)“b” and 17A.7(2).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission is rescinding Chapter 32. The underlying statutes have changed over time, and the Department of Natural Resources’ (Department’s) historical role has been removed. Therefore, this chapter is no longer necessary.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7241C**. A public hearing was held on January 16, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

NATURAL RESOURCE COMMISSION[571](cont'd)

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **571—Chapter 32**.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7910C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to resources enhancement and protection program

The Natural Resource Commission (Commission) hereby rescinds Chapter 33, "Resource Enhancement and Protection Program: County, City and Private Open Spaces Grant Programs," and adopts a new Chapter 33, "Resource Enhancement and Protection Program: County, City, Private Open Spaces and Conservation Education Grant Programs," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 455A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 455A, subchapter II.

Purpose and Summary

Chapter 33 consolidates the processes and requirements for entities to receive funding through the private cost-sharing funds in the county, city, private open spaces, and conservation education grant

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programs of the Resource Enhancement and Protection Fund. These provisions were formerly in Chapter 12, Division I, and Chapter 33. They will now be located in the new Chapter 33.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Additionally, several provisions in the merged chapters were repetitive of underlying statute and have been removed.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7236C**. Public hearings were held on January 18 and 25, 2024, at 1:30 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33

RESOURCE ENHANCEMENT AND PROTECTION PROGRAM: COUNTY, CITY,
PRIVATE OPEN SPACES AND CONSERVATION EDUCATION GRANT PROGRAMS

DIVISION I
GENERAL PROVISIONS

571—33.1(455A) Purpose. The purpose of these rules is to define procedures for the administration of the private cost-sharing funds within the open spaces account, the county conservation account, the city park and open spaces account, and the conservation education grant program of the resource enhancement and protection (REAP) fund.

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571—33.2(455A) Resource enhancement policy. The REAP program and its various elements shall constitute a long-term integrated effort to wisely use and protect Iowa's natural resources through the acquisition and management of public lands; the upgrading of public park and preserve facilities; environmental education, monitoring, and research; and other environmentally sound means. Expenditure of funds from the county conservation account, the city park and open spaces account and the private cost-sharing portion of the open spaces account shall be in accord with this policy.

571—33.3(455A) Definition. In addition to the definitions in Iowa Code section 455A.1, the following definition shall apply to this chapter:

“Open spaces” means those natural or cultural resource areas that contain natural vegetation, fish, or wildlife, or have historic, scenic, recreation and education value. Examples of open spaces in cities and towns include, but are not limited to, parks, riverfronts and town squares. In rural areas, open spaces include, but are not limited to, such areas as woodlands, prairies, marshlands, river corridors, lake shores, parks and wildlife areas.

571—33.4(455A) Grant applications, general procedures.

33.4(1) Applications for all grant programs shall be made on forms provided by the department.

33.4(2) Applications shall provide sufficient detail as to clearly describe the scope of the project. Any application that is not complete at the time of project review and scoring, or for which additional pertinent information has been requested and not received, shall not be considered for funding.

33.4(3) Application deadlines are the same for county, city, and private open space grant programs. Applications will be reviewed and projects selected for funding at least once per year. The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website.

33.4(4) Joint applications are permitted. One entity must serve as the primary applicant. Joint projects sponsored by entities competing for funds from different REAP accounts (e.g., a joint city/county project) are allowable. Applications must clearly spell out the respective shares of project costs to be derived from various REAP accounts if the project is approved for funding. Any cooperative agreement between joint applicants must be provided as a part of the application.

33.4(5) Applicants shall not use other department grants, such as land and water conservation fund or wildlife habitat promotion with local entities, as leveraged funds for a project requesting REAP funds. Likewise, REAP funds shall not be used as matching funds for applications to other grants.

571—33.5(455A) Appraisals. Appraisal reports must be approved or disapproved in writing by the director. Grants may include incidental costs associated with the acquisition, including, but not limited to, costs for appraisals, abstracts, prorated taxes, deed tax stamps, recording fees and any necessary surveys and fencing.

571—33.6(455A) Groundwater hazard statements. Grantees must obtain a properly completed groundwater hazard statement on all proposed acquisitions before the acquisition is completed. The statement must be filed with the department and county recorder pursuant to Iowa Code section 558.69. Prior to the acquisition of any property that has an abandoned or unused well, hazardous waste disposal site, solid waste disposal site, or underground storage tank, the grantee must file with the department a plan that details how these conditions will be managed to best protect the environment. This plan must be approved in writing by the director before the land is acquired.

571—33.7(455A) Rating systems not used. During any funding cycle when total grant requests are less than the allotment available, the rating system need not be applied. All applications will be reviewed by the appropriate committee for eligibility to ensure they meet minimum scoring requirements and to ensure consistency with program policy and purposes.

571—33.8(455A) Applications not selected for grants. All applications for projects considered eligible but not scoring high enough to be awarded a grant immediately will be retained by the department

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until two months prior to the next regular submittal date during which time they may be funded. If not approved for funding by that time, applicants will be notified by the department in writing. The original application will be returned to applicants only upon request. The applicant may resubmit the project or an amended version of the project for scoring and consideration during the next application cycle by resubmitting an original or amended application and five copies by the respective deadline.

571—33.9(455A) Similar development projects. An application for a development project grant may include development on more than one area if that development is of a like type (e.g., tree and shrub plantings).

571—33.10(455A) Timely commencement and completion of projects. Grant recipients are expected to commence and complete projects in a timely and expeditious manner. A project period commensurate with the work to be accomplished will be established and included in the project agreement. Project sponsors may receive up to 90 percent of approved grant funds at the start of the project period. Failure to initiate the project or to complete it in a timely manner may be cause for termination of the project, return of unused grant funds at the time of termination, and cancellation of the grant by the department.

571—33.11(455A) Waivers of retroactivity. Normally, grants for acquisitions or developments completed prior to application scoring will not be approved. However, an applicant may make written request for a waiver of retroactivity to allow project elements to be considered for grant assistance. Waivers will be granted in writing by the director and receipt of a waiver does not ensure funding, but only ensures that the project will be considered for funding along with all other applications.

571—33.12(455A) Project amendments. Projects for which grants have been approved may be amended, if funds are available, to increase or decrease project scope or to increase or decrease project costs and grant amount. All amendments must be approved by the appropriate project review and selection committee and by the director. Amendments that result in an increase in the cost of the project in excess of \$25,000 or 25 percent of the approved cost, whichever is greater, or that involve a change in the project purpose also must be approved by the commission.

571—33.13(455A) Recordkeeping and retention. Grant recipients shall keep adequate records relating to the administration of a project, particularly relating to all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office. All records shall be retained in accordance with state laws.

571—33.14(455A) Penalties. Whenever any property, real or personal, acquired or developed with REAP funds passes from the control of the grantee or is used for purposes other than the approved project purpose, it will be considered an unlawful use of the funds. If a grantee desires to use the approved funds for a purpose other than the approved project purpose that is an approved use of funds under the provisions of Iowa Code chapter 455A and these rules, the grantee shall seek an amendment to the project purpose by following the provisions provided in this rule. The department shall notify the grantee of any such violation.

33.14(1) Remedy. Funds used without authorization, for purposes other than the approved project purpose, or unlawfully must be returned to the department for deposit in the account of the REAP fund from which they were originally apportioned. In the case of diversion of property acquired with REAP fund assistance, property of equal value at current market prices and with similar open space benefits may be acquired with local, nongrant funds to replace it. Such replacement must be approved by the appropriate review and selection committee and the director. In the case of diversion of personal property, the grantee shall remit to the department at the current valuation of the real estate. The grantee shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided in this subrule are in addition to others provided by law.

33.14(2) Land disposal. Whenever the department, and, if a city or county, the grantee, determine that land acquired or developed with REAP fund assistance is no longer of value for the program

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purposes, or that the grantee can show good cause why the land should no longer be used in accord with the approved project purpose, the land may be disposed of with the director's approval and the proceeds therefrom used to acquire or develop an area of equal value, or the grantee shall remit to the department funds at the current valuation of the real estate for inclusion in the account from which the grant was originally made. If land acquired through the private grant program is determined to be no longer of interest by the state, the proposed dispersal of the property shall be reviewed by the grantee, and the grantee shall have the first right of refusal on an option to take title to the property in question. For projects that only received developmental money, the life of the project is deemed closed after a period of 20 years from the date of the original grant; repayment of the grant will not be required.

33.14(3) *Ineligibility.* Whenever the director determines that a grantee is in violation of this rule or in violation or noncompliance with other grants administered by the department, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

571—33.15(455A) Public communications. Grant recipients shall participate in public communications activities to inform the public of the REAP program and of their particular project. The project will not be considered successfully completed, for purposes of this rule, until evidence is provided to the department REAP coordinator that the following requirements have been met. The remaining 10 percent payment of the grant total will not be issued until such evidence has been provided. Evidence includes but is not limited to photographs showing sign placement, newspaper or magazine clippings, printed brochures or flyers available to the public, exhibits for public display and other related materials. Information gathered from site inspections by the department may also be considered acceptable evidence.

33.15(1) *Signs.* Grant recipients are required to adequately display the 12-inch by 12-inch REAP signs, provided by the department at no charge, on project locations where appropriate so that users of the project can readily see that REAP is at least partially responsible for the project. The REAP signs will be maintained and replaced as necessary as long as the department has signs available.

33.15(2) *Dedication ceremony.* Grant recipients shall hold a public meeting or event to dedicate the project. Information provided during the event shall include information in regard to the REAP program and its role in supporting the project. This information shall also be provided to local news media by use of a news release. Local and state elected officials shall be invited to attend and participate.

33.15(3) *Grants include public communications plan.* A description of the public communications plan shall be included in every project submitted as a grant request. Grant recipients shall carry out the plan if their project is funded.

DIVISION II
COUNTY GRANTS

571—33.16(455A) County conservation account. All funds allocated to counties under this program may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment; except as restricted by Iowa Code section 455A.19.

33.16(1) *Expenditure guidelines.* All expenditures and restrictions shall be in accordance with Iowa Code section 455A.19. Expenditure of funds for personnel costs are allowed by Iowa Code section 455A.19, but only when personnel are clearly directed toward the purpose and policy of the REAP program. Personnel costs are not allowable under the competitive grant program. Up to 20 percent of a total project's cost may be used to cover costs of engineering and design work or other consultant fees directly associated with the project.

33.16(2) *Competitive grant project planning and review committee.*

a. The makeup of this committee is as follows: two representatives of the department appointed by the director; two county conservation board directors appointed by the director of the department with input from the Iowa association of county conservation boards; and one member selected every three years by a majority vote of the director's appointees. Additionally, there shall be at least two alternates

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designated by the director with input from the Iowa association of county conservation boards. The members shall select a chairperson at the first meeting during each calendar year. Terms of appointment to the committee shall be on a three-year staggered term basis.

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

33.16(3) *Competitive grant project selection criteria.* Under the competitive grant program, a project planning and review committee shall establish criteria and scoring systems to be utilized in project evaluation. The criteria and scoring system shall be submitted to the director and natural resource commission for approval. Criteria and scoring systems must be distributed to all counties at least 90 days prior to the project application deadline. In order to be eligible for award, an applicant must receive, at a minimum, 50 percent of the total allowable points.

33.16(4) *Availability of funds.* Those funds allocated on a per capita basis and those awarded in the competitive grant program shall be allocated only to counties dedicating property tax revenue at least equal to 22 cents per \$1,000 of the assessed value of the county's taxable property to conservation purposes. Annual certification from the county auditor of each county shall be made on forms provided by the department. The certification shall include information on total assessed value of taxable property in the county; budget of the county conservation board, including a distinction of that which is derived from sources other than property taxes; and a schedule of expenditures and staffing. A copy of this certification must be filed with the director. REAP program funds received shall not reduce or replace county tax revenues appropriated for county conservation purposes.

a. County conservation purposes include and are limited to the following activities and responsibilities:

(1) Operation and maintenance of real property and equipment under the jurisdiction and control of the county conservation board, and utilized by the public for museums, parks, preserves, parkways, playgrounds, recreational centers, county forests, county wildlife areas, establishment and maintenance of natural parks, multipurpose trails, restroom facilities, shelter houses and picnic facilities and other county conservation and recreational purposes as provided in Iowa Code section 350.4.

(2) The acquisition and development of real estate utilized for purposes authorized by Iowa Code chapter 350. The cost of planning, engineering or architectural services directly related to acquisition and development is allowable as a county conservation purpose.

(3) The county conservation board's share of joint operations of facilities and programs as described in Iowa Code section 350.7. The cost of the county's weed control program, as required by Iowa Code chapter 317, may specifically be included as a county conservation purpose if the county conservation board director or a member of the county conservation board staff is appointed county weed commissioner by the board of supervisors, and is given full authority to plan and accomplish an environmentally sound vegetative management program.

(4) The administration of the county conservation program, including and limited to the expenses of board members, salary and expenses of the county conservation board director, and related clerical, technical and support costs charged directly to the county conservation board's budget.

(5) Any reimbursement from the county conservation board's budget for the actual expense of county-owned equipment, use of county equipment operators, supplies, and materials of the county, or the reasonable value of county real estate made available for the use of the county conservation board as provided by Iowa Code section 350.7. Such reimbursements shall be supported by daily time and activity records detailing the hourly charge for equipment and operator use, the specific quantities and cost of materials used, or a fee appraisal prepared by an independent fee appraiser and approved by the director.

(6) No other costs, including indirect costs as computed for purposes of federal grant programs or distribution of general county overhead, are allowable as a county conservation purpose.

b. Reserved.

33.16(5) *Certification procedures.* The annual certification that a county is dedicating property tax revenue at least equal to 22 cents per \$1,000 of the assessed value of the county's taxable property to

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conservation purposes shall be submitted by the county auditor to the department on forms provided by the department. Certification is based upon actual expenditures for conservation purposes during the previous fiscal year. Submission of a certification by October 1 of any year will qualify the county for per capita funds held in reserve for that county and establish eligibility for participation in the competitive grant program. The certification will remain in effect through June 30 of the following year. Counties that fail to meet this requirement for any given fiscal year are ineligible for that fiscal year. A county that is ineligible can reestablish eligibility for a future fiscal year through the certification process.

a. The levy of property taxes for county conservation board purposes shall be calculated in the following manner. First, the actual expenditures for all county conservation purposes for the fiscal year shall be determined. Next, the total of all receipts derived from county conservation activities and all grants and donations received or billed for from whatever source for county conservation purposes shall be determined. The total of all receipts and grants shall then be subtracted from the total expenditures. This result shall then be divided by the total taxable value of all county property to determine the amount per thousand dollars utilized to support county conservation purposes.

b. Transfers of property tax receipts to the reserve account established under Iowa Code section 350.6 shall be included as expenditures in the fiscal year that transfers occur for purposes of the calculation of the certified levy. Withdrawals from the reserve account and expenditures and receipts reflected in the special resource enhancement account created as provided in Iowa Code section 455A.19 shall not be included in the calculation of the certified levy.

c. If a dispute arises over the appropriateness of a county expenditure as a county conservation purpose or the accuracy and correctness of the certified levy by the county auditor, the director shall notify the state auditor and request that a recommendation be included in the next audit report. Upon receipt of the audit report, the director shall make a final determination and adjust subsequent distributions to the county or request reimbursement from the county as necessary.

33.16(6) *Fund distribution schedule.* Funds from the county resource account that are distributed on a per capita and per county basis shall be distributed by the department to each eligible county quarterly.

33.16(7) *Special account.* Each county board of supervisors shall create a special resource enhancement account in the office of the county treasurer, and the county treasurer shall credit all REAP funds from the state to that account.

a. REAP funds received by the county shall not be used to fund any program or activity that was funded in prior years by other county revenues. Expansion of previously funded programs is permitted. Each county board director, as part of financial documentation regarding the special resource enhancement and reserve accounts, shall document that county expenditures of REAP funds supported only programs and activities not funded in prior years by county revenues other than REAP funds. For purposes of this documentation, expenditures from the special resource enhancement account for land acquisition shall be viewed as a new program and not a continuation of previous land acquisition programs. Expenditures from the special resource enhancement account for routine maintenance of facilities must involve only facilities previously constructed or otherwise acquired with REAP funds. REAP funds may be used for renovation, expansion or upgrading of facilities regardless of the source of funding for the original facilities, except as prohibited by Iowa Code section 455A.19. Likewise, expenditures from the special resource enhancement account for equipment, supplies, materials, or staff salaries must directly relate to the establishment or expansion of programs or activities with REAP funds, and such programs or activities shall not have been previously funded with other county revenues.

b. Failure to adequately document expenditures from the special resource enhancement account or to provide the documentation as previously described regarding these expenditures upon request by the state auditor or department staff will result in the county losing its eligibility to receive per capita and competitive grants from the REAP program for a period of one to three years. A county that loses its eligibility may reestablish its eligibility by certifying that the county tax dollars dedicated to county conservation purposes during the previous fiscal year were at least 22 cents per \$1,000 of assessed taxable property.

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DIVISION III
CITY GRANTS

571—33.17(455A) Competitive grants to cities. Fifteen percent of available funds in the REAP fund (after the \$350,000 annual allocation to the conservation education board and 1 percent of revenues to the fund are allocated to the administration fund) shall be allocated annually to the city park and open spaces grant account. That 15 percent shall be divided into three portions according to the percentage of the state's urban population in each category, with each portion available on a competitive basis to cities falling within one of the following three size categories: (1) cities of less than 2,000; (2) cities between 2,000 and 25,000; and (3) cities larger than 25,000. Funds shall be initially apportioned to each category as per this rule. If at the time of project review and scoring there are funds available in any category that exceed the requests for grants in that category, those funds may, at the director's discretion, be transferred to another category where requests exceed the funds available.

33.17(1) Eligible sponsors. Any incorporated city or town in the state may make application for a grant.

33.17(2) Grant ceilings. Incorporated cities and towns are eligible to receive annual grants from the REAP fund in accordance with the following schedule:

Population	Maximum
0 — 1,000	\$ 50,000
1,001 — 5,000	75,000
5,001 — 10,000	100,000
10,001 — 25,000	125,000
25,001 — 50,000	150,000
50,001 — 75,000	200,000
over 75,000	300,000

The grant ceiling may be waived upon approval by the director if (1) the project is regional in nature or is projected to serve a minimum of 100,000 people; or (2) the project cannot be staged over a multiyear period so that a separate grant application might be submitted each year.

33.17(3) Review and selection committee.

a. The director shall appoint a five-member review and selection committee to evaluate project applications. This committee shall include one member representing each of the three size classes of cities (e.g., one from a city of less than 2,000, one from a city of 2,000 to 25,000, and one from a city of more than 25,000). The director shall request a list of candidates from the Iowa league of cities and Iowa parks and recreation association. The remaining two members of the committee shall be a representative of the department and an at-large member. Additionally, there shall be at least two alternates designated by the director from the candidates list provided by the Iowa league of cities and the Iowa parks and recreation association. The committee shall elect its own chairperson from its members. Members shall serve three-year staggered terms.

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

33.17(4) Project selection criteria. A project planning and review committee shall establish criteria and scoring systems to be utilized in project evaluation. The criteria and scoring system shall be submitted to the director and natural resource commission for approval. Criteria and scoring systems must be distributed to all counties at least 90 days prior to the project application deadline. In order to be eligible for award, an applicant must receive, at a minimum, 50 percent of the total allowable points.

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DIVISION IV
PRIVATE GRANTS

571—33.18(455A) Private cost-sharing program. At least 10 percent of the funds placed in the open spaces account shall be made available for cost sharing with private entities for cost sharing at a maximum level of 75 percent.

33.18(1) Protection defined. Protection is defined as the purchase of all or a portion of the rights associated with ownership of real property so as to ensure that open space values associated with that property are protected in perpetuity. Protection methods, in order of preference, include, but are not limited to, fee title acquisition, purchase of easements, or other mechanisms that provide long-term assurance of open space protection. Title for acquired properties shall be vested in the state of Iowa, and projects must be consistent with priorities established by the department.

33.18(2) Eligibility to participate. Any trust, foundation, incorporated conservation organization, private individual, corporation or other nongovernmental group able to provide funds or interest in land sufficient to equal at least 25 percent of a proposed protection project may submit or cause to have submitted a project for funding consideration. Except however, a private organization established to benefit a specific governmental entity is not eligible to submit a project. Governmental entities are also not eligible to submit a project.

33.18(3) Grant amount. The department will provide grants for up to 75 percent of the appraised cost of the land plus incidental acquisition costs. Costs in excess of these must be borne by the grantee.

33.18(4) Project review and selection committee.

a. The director shall appoint a committee to review and score projects. The committee shall include the following: three persons representing the private sector and two alternates selected from a pool of potential names as submitted to the director by the various private eligible groups; administrator of the conservation and recreation division of the department, or the administrator's designee; and the bureau chiefs of the department's wildlife bureau and parks, forests, and preserves bureau or their designees. The committee shall elect its own chairperson from its members. The committee will report to the director the order in which proposed projects were ranked using criteria as specified in subrule 33.18(5).

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

33.18(5) Project selection criteria. A project planning and review committee shall establish criteria and scoring systems to be utilized in project evaluation. The criteria and scoring system shall be submitted to the director and natural resource commission for approval. Criteria and scoring systems must be distributed to all counties at least 90 days prior to the project application deadline. In order to be eligible for award, an applicant must receive, at a minimum, 50 percent of the total allowable points.

33.18(6) Department rejection of applications. The director may remove from consideration by the project review and selection committee any application for funding the acquisition of property that the department determines is not in the state's best interest for the department to manage. The department's basis for determining such interest may include, but not be limited to, inaccessibility to the project area, environmental contamination and unacceptable use restrictions, management cost, the proximity to other governmental entities that may impose use restrictions or special tax assessments on the area, or lack of conformance with priorities established by the department. Examples of use restrictions can include prohibitions on hunting, trapping, timber harvest, vegetation management, and easements that affect the range of public use and activities that could otherwise be allowed.

33.18(7) Certification of availability of funds. Applicants must certify at the time of application that sufficient funds, land, letter of credit, or other acceptable financial instrument is available from private sources to cover the private share of the project.

33.18(8) Acquisition responsibilities and process. The grantee is responsible for obtaining an appraisal that is approvable by the department and for obtaining the director's written approval of that appraisal. The grantee is responsible for negotiating an option to purchase the property with the seller.

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If the option contains any requirements for action by the department or restrictions on the use of the land, those requirements or restrictions must be approved by the director and the commission before they are incorporated into the option. The grantee is responsible for closing the transaction, recording the transaction with the appropriate county recorder, and providing the department with a copy of the deed naming the department as owner and a title vesting certificate. The director may, under special conditions, allow title to be vested in the name of a city or county. Necessary assurances may include the placement of special conditions on that title, the existence of an approved, long-term management agreement or other measures as deemed appropriate by the commission. The department may provide assistance at the request of the grantee, or at the director's recommendation.

DIVISION V
CONSERVATION EDUCATION BOARD

571—33.19(455A) Conservation education program policy. The conservation education program board shall constitute a long-term integrated effort to support conservation education for Iowa educators and students. To support this policy, the board may establish guidelines from time to time to direct applicants to priority areas for funding and shall give preference to grants that meet these guidelines. The board may provide funding for activities that expand the impact of the project and provide accessibility for widespread adoption of programs for implementation by others. The board may provide funding for tracking of project implementation and evaluation.

33.19(1) Conservation education program board. The board will review and amend, as needed, the review and selection criteria for competitive grants and policies of conduct.

33.19(2) Definitions. The following definitions shall apply to this division:

“Board” means REAP conservation education program board.

“Conservation education programs” means programs developed for formal (K-12 students), nonformal (preschool, adult and continuing education) and higher education (postsecondary and adult) programs, within the subject areas of natural resource conservation and environmental protection.

“Educator” means any person who teaches environmental/conservation education. This may apply to certified teachers, governmental or private naturalists, education specialists, or others so determined by the board.

“Environmental/conservation education materials” means materials that are developed or produced that provide knowledge, skills, processes and strategies that enhance Iowa citizens' understanding of natural resources conservation and environmental issues.

“Stipends for Iowa educators who participate in innovative conservation education programs” may include tuition costs; acceptable food and lodging costs; substitute teacher costs; mileage expenses or separate allowances when applicable for educators to attend board-approved environmental/conservation education workshops, in-service programs and conferences; and other costs as approved by the board.

571—33.20(455A) Eligibility for funds. In years in which funds are made available, grant applications may be submitted by institutions of higher learning; government agencies, including local school districts; nonpublic schools; area education agencies; organizations; and individuals with an Iowa residence. Preference shall be given to Iowa participants.

571—33.21(455A) Grant applications, general procedures.

33.21(1) Applications for all grant programs shall be made on forms provided by the department.

33.21(2) The board shall establish criteria and scoring systems to be utilized in the project evaluation and approved during a regularly scheduled board meeting. Criteria and scoring systems must be distributed to all potential applicants at least 90 days prior to the project application deadline.

33.21(3) Joint applications are permitted. One entity must serve as the primary applicant. Joint projects sponsored by entities (e.g., an organization or institution, and an area education agency) competing for funds from different REAP accounts are allowable. Applications must clearly spell out the respective shares of project costs to be derived from various REAP accounts if the project is

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approved for funding. Any cooperative agreement between joint applicants must be provided as a part of the application.

33.21(4) Similar development projects. An application for a conservation education program grant may serve more than one target population (e.g., scouting and K-6 classrooms).

571—33.22(455A) Grantee responsibilities.

33.22(1) *Timely completion of projects.* Projects are expected to be completed in a 12-month time period; however, up to 18 months may be allowed by the board for grants difficult to accomplish in 12 months. The board may consider extending the time period of a grant upon request.

33.22(2) *Recordkeeping and retention.* Grant recipients shall keep adequate records relating to the administration of a project, particularly all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office. All records shall be retained in accordance with state laws.

33.22(3) *Midterm and final reports.* Grantees shall provide midterm and final reports that include information detailing progress toward goals and objectives, expenditures and services on forms provided for those reports. The reports shall clearly identify the status of fundraising relevant to the approved project and problems that may cause a delay in completing the project within the approved project period. Failure to submit reports by the due date shall result in suspension of financial payments to the grantee until the time that the report is received. Grants are considered active until the board notifies the grantee that the grant has been terminated or completed by the terms of the grant. At the completion of the project and prior to the final payment, a final written report shall be submitted by the grantee to the board. The final 10 percent payment shall be withheld pending this report, which shall include a 75- to 100-word summary of project results. This summary will be posted on the state environmental education website. No new awards shall be made for continuation programs when there are delinquent reports from prior grants.

33.22(4) *Contract revisions.* The grantee shall immediately inform the board of any revisions in the project budget in excess of 10 percent of a line item. The board and the grantee may negotiate a revision to the contract to allow for expansion or modification of services, but shall not increase the total amount of the grant. The board retains the authority to approve or deny contract revisions.

33.22(5) *Nonapplication of copyright.* Program materials developed from REAP funds for conservation education materials shall bear the REAP logo. However, materials developed under this grant shall not be copyrighted by the grantee unless the board gives permission.

33.22(6) *Restrictions.* Funds allocated under this chapter shall not be used for out-of-state travel or equipment, such as typewriters, computers, and hardware, or for construction, renovation, or remodeling costs unless specifically approved by the board.

571—33.23(455A) Board review and approval. The board or its designee shall review and rank projects for funding, and funds shall be awarded on a competitive basis. If delegated, the reviewing, scoring and ranking of projects will be presented to the board as recommendations. The board may approve or deny funding for any project or part thereof.

33.23(1) In each year that funds are made available by the Iowa legislature, payments shall be as follows:

a. For grant periods in excess of 90 days, up to 50 percent shall be paid at the beginning of the grant period, up to 40 percent at the midpoint of the grant period, and the balance upon successful completion as determined by the board.

b. For grant periods of fewer than 90 days, 75 percent shall be paid at the beginning of the grant period and the balance at successful completion as determined by the board.

33.23(2) The board shall notify successful applicants and shall provide a contract for signature. This contract shall be signed by an official with authority to bind the applicant and shall be returned to the department prior to the award of any funds under this program.

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571—33.24(455A) Waivers of retroactivity. Normally, grant program developments completed prior to application scoring will not be approved. However, an applicant may make written request for a waiver of retroactivity to allow project elements to be considered for grant assistance. Waivers will be issued in writing by the board. Receipt of a waiver does not ensure funding, but only ensures that the project will be considered for funding along with all other applications.

571—33.25(455A) Penalties. Whenever any property, real or personal, acquired or developed with REAP funds passes from the control of the grantee or is used for purposes other than the approved project purpose, it will be considered an unlawful use of the funds. If a grantee desires to use the approved funds for a purpose other than the approved project purpose, the grantee shall seek an amendment to the project purpose. The board shall notify the grantee of any apparent violation.

571—33.26(455A) Remedy. Funds used unlawfully, without authorization, or for other than the approved project purpose shall be returned to the department within the period specified by the board or director. The remedies provided in this rule are in addition to others provided by law.

571—33.27(455A) Termination for convenience. The contract may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the future expenditure of funds. The parties shall agree upon the termination conditions, including the effective date, and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

571—33.28(455A) Termination for cause. The contract may be terminated in whole or in part at any time before the date of completion whenever it is determined by the board that the grantee has failed to comply substantially with the conditions of the contract. The grantee shall be notified in writing by the department of the reasons for the termination and the effective date. The department shall administer the conservation education grants contingent upon their availability. If there is a lack of funds necessary to fulfill the fiscal responsibility of the conservation education grants, the contracts shall be terminated or renegotiated. The board may terminate or renegotiate a contract upon 30 days' notice when there is a reduction of funds by executive order. The grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

33.28(1) Failure to initiate or complete project. Failure to initiate or complete the project in a timely manner shall be cause for termination of the project by the board. The grantee shall return unused grant funds at the time of termination.

33.28(2) Ineligibility. Whenever the board determines that a grantee is in violation of these rules, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the board.

571—33.29(455A) Responsibility of grantee at termination. Within 45 days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination. If the grantee expends moneys for other than specified budget items approved by the board, the grantee shall return moneys for unapproved expenditures.

571—33.30(455A) Appeals. Appeals to the decisions on grant awards shall be filed with the director of the department. The letter of appeal shall be filed within ten working days of receipt of notice of decision and shall be based on a contention that the process was arbitrary; was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice or was altered without adequate public notice; or involved conflict of interest by staff or board members. The director of the department shall notify the board of the appeal. The board may submit evidence in

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support of its decision within ten days of notice from the director. The director shall issue a decision within a reasonable time following receipt of the appeal.

These rules are intended to implement Iowa Code sections 455A.19 and 455A.21.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7911C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to the community forestry grant program

The Natural Resource Commission (Commission) hereby rescinds Chapter 34, "Community Forestry Grant Program (CFGP)," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455A.5(6)"a."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 461A and section 456A.24(13).

Purpose and Summary

The purpose of this chapter was to define the cost-sharing procedures between state and local public agencies or volunteer organizations to fund community tree planting projects. The Commission is rescinding this chapter because the program can be run with more flexibility without these rules under the terms of the underlying federal grants, along with the accompanying grant agreements signed by recipients and the Department of Natural Resources.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7231C**. A public hearing was held on January 23, 2024, at 12 noon via video/conference call. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

NATURAL RESOURCE COMMISSION[571](cont'd)

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **571—Chapter 34**.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7912C

NATURAL RESOURCE COMMISSION[571]**Adopted and Filed****Rulemaking related to fish habitat program**

The Natural Resource Commission hereby rescinds Chapter 35, "Fish Habitat Promotion for County Conservation Boards," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 455A.5(6)"a" and 483A.3A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 483A.3A.

Purpose and Summary

Chapter 35 implements a grant program where fishing license fee funds are used by county conservation boards to conduct projects that provide access to, protection of, or enhancement of fish habitat for anglers. The Department of Natural Resources (Department) is directed to implement this program by the Iowa Code. Counties may voluntarily participate in this grant program, incurring the costs of staff time and required cost sharing. This chapter benefits anglers by distributing grant funds for projects throughout the state.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17.7(2), this chapter was edited for length and clarity.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7240C**. Public hearings were held on January 23 and 30, 2024, at 12 noon via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

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Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 35 and adopt the following **new** chapter in lieu thereof:

CHAPTER 35

FISH HABITAT PROMOTION FOR COUNTY CONSERVATION BOARDS

571—35.1(483A) Purpose and definitions. The purpose of this chapter is to designate procedures for the allotment of fish habitat revenue to county conservation boards. These funds shall be used specifically to acquire from willing sellers whole or partial interest in land for use as or for protection of fish habitats and to develop and enhance fishable waters and habitat areas.

The following definitions apply in these rules:

“*Commission*” means the natural resource commission.

“*County*” means a county conservation board.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources.

“*District*” means a county conservation district.

571—35.2(483A) Availability of funds. Fish habitat funds are dependent on sales. Revenues received by the department determine the amount of moneys available at any time.

35.2(1) Local share. Funds available for county conservation boards shall be specified in the department's budget in accordance with legislative appropriations. At least 50 percent of the fish habitat revenue will be apportioned to county conservation boards.

35.2(2) Distribution. After deduction of 5 percent to be held for contingencies, the remaining local share will be available on an annual basis. The department shall divide fish habitat funds equally among the districts. The districts have two years to obligate fish habitat funds once the funds are made available. After two years, the department will apportion all unobligated funds equally among the districts.

571—35.3(483A) Program eligibility. All counties are eligible to participate in this program.

571—35.4(483A) Eligibility for cost-sharing assistance. A project is not eligible for cost sharing unless the commission specifically approves the project or the applicant has received a written waiver

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of retroactivity from the director prior to the project's initiation. A project must allow for public fishing to be eligible for cost sharing; however, the review and selection committee as described in subrule 35.6(1) may recommend for commission approval projects with restrictions on boating.

35.4(1) Acquisition projects. A licensed appraiser shall appraise lands or rights thereto to be acquired, and the appraisal shall be approved by department staff. The appraisal requirement may be waived when the staff determines that it is impractical for a specific project. The cost share shall not be approved for more than 90 percent of the approved appraised value. Acquisition projects are eligible for cost share either by direct payment as described in subrule 35.11(6) or by reimbursement to counties.

35.4(2) Eligible acquisition activities.

- a. Acquisition for pond and lake construction.
- b. Acquisition of fishable streams, ponds and lakes.
- c. Acquisition for watershed protection.

35.4(3) Development projects. Eligible expenditures for development projects include, but are not limited to, preliminary expenses, contracts, the purchase of materials and supplies, rentals, and extra labor that is hired only for the specific project. The purchase of equipment is not an eligible expenditure. Donated labor, materials and equipment-use and use of a county's own labor and equipment are not eligible for cost-share assistance. Development projects are limited to lands legally controlled by the county for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the county.

35.4(4) Enhancement projects. For purposes of this rule, "enhancement" is considered to be synonymous with "development." Eligible enhancement activities include:

- a. Physical placement of fish habitats in ponds, lakes, pits and streams.
- b. Armoring of pond, lake, pit and stream shores.
- c. Construction of aeration systems.
- d. Dredging of ponds or lakes.
- e. Construction of ponds and lakes.
- f. Construction of sediment-retaining basins.
- g. Repair of lake dam/outlets.
- h. Manipulation of fish populations and aquatic vegetation.
- i. Removal of dams.
- j. Construction of fish ladders.
- k. Construction of fish barriers.
- l. Construction of rock-faced jetties.

35.4(5) Project income. When, as a result of a purchase agreement or other title transfer action involving cost sharing with fish habitat funds, a county directly or indirectly receives financial income that would have been paid to the previous landowner, 90 percent of that income shall be transferred to the department unless the county has identified and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee shall recommend, and the director and commission shall approve, plans for the expenditure of income received pursuant to this subrule. In the absence of acceptable fish habitat development or acquisition plans, the county shall transfer to the department 90 percent of the income received as it is received. The department shall credit that income to the county's apportionment of the fish habitat fund as described in subrule 35.2(1). The schedule of those reimbursements from a county to the state shall be included in the project agreement.

571—35.5(483A) Application for assistance. Applications must contain sufficient detail as to clearly describe the scope of the project and how the area will be managed.

35.5(1) Form. Applications must be submitted on forms provided by the department.

35.5(2) Time of submission. Applications for funds will be reviewed and selected for funding at least once per year. The department will publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. Upon timely notice to eligible recipients, additional selection periods may

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be scheduled if necessary to expedite the distribution of funds. In emergencies, a county may request a waiver so that an acquisition project may be approved for retroactive payments if funds are available and the project meets all other criteria.

35.5(3) *Joint applications.* Joint applications are permitted. One county shall serve as the primary applicant. A joint application shall clearly describe the respective share of project costs for each county named. Any cooperative agreement between the counties named shall be provided as a part of the application.

35.5(4) *County funding.* An applicant shall certify that it has committed its share of project costs and that these funds are available and shall state the means of providing for the county share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action shall be completely documented in the application.

35.5(5) *Multiple development projects.* An application for development project assistance may include development on more than one area if the development is of a like nature.

571—35.6(483A) Project review and selection.**35.6(1) *Review and selection committee.***

a. Each district shall have a review and selection committee, hereinafter referred to as the committee. Each committee shall be composed of at least five county directors or their designees, with at least two designated alternates. Each district's committee shall determine which grant applications and amendment requests are selected for funding. For advisory purposes only, a department biologist or designee shall be present during review and selection of grant applications and amendment requests.

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project cannot serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

35.6(2) *Consideration withheld.* The committee shall not consider any application that on the date of the selection session is incomplete or for which additional pertinent information has been requested but not received.

35.6(3) *Application rating system.* The committee shall apply a rating system to each grant application considered for fund assistance. The department shall develop the rating system. The rating system shall be used to rate each application, and those applications receiving the highest ratings shall be selected for fund assistance to the extent of the allotment for each annual period. If the amount of grant moneys available exceeds that requested, applications will be reviewed only to determine eligibility.

571—35.7(483A) Commission review. The director shall present the committees' recommendations to the commission at its next meeting following the rating of projects for funding. The commission may approve or disapprove funding for any project on the list.

571—35.8(483A) Grant amendments. If funds are available, projects for which grants have been approved may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. The director shall approve project changes prior to their inception. Amendments to increase project costs and fund assistance due to cost overruns shall not be approved if funds have already been committed or the work has already been performed.

571—35.9(483A) Timely commencement of projects. Grant recipients are expected to carry out their projects in an expeditious manner. A project for which a grant is approved shall be commenced within six months of the date upon which the grantee is notified that the project is approved, or at another date agreed upon by both parties. Failure to do so may be cause for termination of the project and cancellation of the grant by the commission.

571—35.10(483A) Project period. A project period that is commensurate with the work to be accomplished shall be assigned to each project. Extensions may be granted only in case of extenuating circumstances.

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571—35.11(483A) Payments.

35.11(1) *Grant amount.* Grant recipients will be paid 90 percent of all eligible costs incurred on a project up to the amount of the grant unless otherwise specified in the project agreement.

35.11(2) *Project billings.* Grant recipients shall submit billings for reimbursement or cost sharing on forms provided by the commission.

35.11(3) *Project billing frequency.* Project billings shall be submitted on the following basis:

- a. Up to \$10,000 total project cost—one billing.
- b. Over \$10,000 total project cost—no more than two billings.

35.11(4) *Documentation.* Grant recipients shall provide documentation to substantiate all costs incurred on a project as may be required by the department.

35.11(5) *Development projects.* Eighty percent of the approved local share may be paid to the county when requested, but not earlier than start-up of the project. The department, pending successful completion and final inspection of the project, shall withhold 20 percent of the local share until any irregularities discovered as a result of a final site inspection have been resolved.

35.11(6) *Acquisition projects.* The department may make payment directly to a property seller pursuant to the following criteria:

- a. The county requests direct payment in the project application and shows good cause for such procedure;
- b. The seller provides to the county a marketable fee simple title, free and clear of all liens and encumbrances or material objections at the time of payment; and
- c. Sufficient program funds are available at the time of transfer.

571—35.12(483A) Recordkeeping and retention. A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs and direct or indirect income that normally would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action. A copy of the county's audits showing such income and disbursements for the grant period shall be submitted to the department's budget and grant bureau. These records shall be available for audit by appropriate personnel of the department and the state auditor's office. All records shall be retained in accordance with state law.

571—35.13(483A) Penalties. Whenever any real or personal property acquired or developed with fish habitat fund assistance passes from the control of the grantee or is used for other purposes that conflict with the project purpose, it shall be considered an unlawful use of the funds. The department shall notify the county of any such violation.

35.13(1) *Remedy.* Funds thus used unlawfully shall be returned to the department for inclusion in the fish habitat fund, or local, non-cost-shared funds shall be used to acquire a replacement property of equal value at current market prices and with commensurate benefits to fish. The replacement property must be approved by the commission. The county shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided by this subrule are in addition to others provided by law.

35.13(2) *Land disposal.* Whenever it has been determined and agreed upon by the grantee and the commission that land acquired or developed with fish habitat fund assistance is no longer of value for the project purpose or that the county has other good cause, the commission may authorize that the land be disposed of and the proceeds thereof used to acquire or develop an area of equal value or that 90 percent of the proceeds be returned to the state for inclusion in the fish habitat fund.

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35.13(3) Ineligibility. If the department determines that a county has unlawfully used fish habitat funds, the county shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

These rules are intended to implement Iowa Code section 483A.3A.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7913C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to state parks, recreation areas, and state forest camping

The Natural Resource Commission (Commission) hereby rescinds Chapter 61, "State Parks, Recreation Areas, and State Forest Camping," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 724 and sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 to 461A.51, 461A.57 and 723.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 724 and sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 to 461A.51, 461A.57 and 723.4.

Purpose and Summary

Chapter 61 provides guidance and definitions for citizens of Iowa and other visitors who use state parks, recreation areas, and state forests for camping, facility rentals, and other recreational uses.

Consistent with Executive Order 10 and the five-year review of rules required by Iowa Code section 17A.7(2), this chapter is edited for length and clarity. Specifically, the lists of state parks, preserves, and areas managed by other governmental agencies that are removed from the chapter are available on the Department of Natural Resources' website. Also, the rulemaking removed the word "possession" from the Mines of Spain firearm limitations consistent with Iowa law, added protected nesting periods to access parameters for hunting areas or training areas for dogs, and based damage deposit refunds on an hourly fee instead of an hourly wage of employees.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7509C**. Public hearings were held on February 13, 2024, at 12 noon and February 15, 2024, at 4 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received.

One change from the Notice has been made. "Pilot Knob State Recreation Area" was inadvertently left out of the definition of "recreation area" in rule 571—61.1(461A). "Pilot Knob State Recreation Area" has been added to that rule.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

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Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 61 and adopt the following **new** chapter in lieu thereof:

TITLE VI
PARKS AND RECREATION AREAS

CHAPTER 61

STATE PARKS, RECREATION AREAS, AND STATE FOREST CAMPING

571—61.1(461A) Definitions.

“*Bank*” or “*shoreline*” means the zone of contact of a body of water with the land and an area within 25 feet of the water’s edge.

“*Basic unit*” or “*basic camping unit*” means the portable shelter used by one to six persons.

“*Beach*” means the same as defined in rule 571—64.1(461A).

“*Beach house open shelter*” means a building located on the beach that is open on two or more sides and that may or may not have a fireplace.

“*Cabin*” means a dwelling available for rental on a nightly or weekly basis. Cabins may or may not contain restroom and kitchen facilities.

“*Camping*” means erecting a tent, hammock, or shelter of natural or synthetic material; placing a sleeping bag or other bedding material on the ground; or parking a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.

“*Centralized reservation system*” means a system that processes reservations using more than one method to accept reservations. Each method simultaneously communicates to a centralized database at a reservation contractor location to ensure that no campsite or rental facility is booked more than once.

“*Chaperoned, organized youth group*” means a group of persons 17 years of age and under, which is sponsored by and accompanied by adult representatives of a formal organization including, but not limited to, the Boy Scouts of America or Girl Scouts of America, a church, or Young Men’s or Young Women’s Christian Association. “Chaperoned, organized youth group” does not include family members of a formal organization.

“*Fishing*” means the same as described in Iowa Code sections 481A.72, 461A.42 and 481A.76.

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“Free climbing” means climbing with the use of hands and feet only and without the use of ropes, pins and other devices normally associated with rappelling and rock climbing.

“Group camp” means the camping area at Lake Keomah State Park where organized groups (e.g., family groups or youth groups) may camp. Dining hall facilities are available.

“Immediate family” means spouses, parents or legal guardians, domestic partners, dependent children and grandparents.

“Lodge” means a day-use building that is enclosed on all four sides and may have kitchen facilities such as a stove or refrigerator and that is available for rent on a daily basis. “Lodge” does not include buildings that are open on two or more sides and that contain fireplaces only.

“Modern area” means a camping area that has showers and flush toilets.

“Nonmodern area” means a camping area in which no showers are provided and that contains only pit-type latrines or flush-type toilets. Potable water may or may not be available to campers.

“Open shelter” means a building that is open on two or more sides and that may or may not include a fireplace.

“Open shelter with kitchenette” means a building that is open on two or more sides and contains a lockable, enclosed kitchen area.

“Organized youth group campsite” means a designated camping area within or next to the main campground where chaperoned, organized youth groups may camp.

“Person with a physical disability” means any of the following: an individual, commonly termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury to the spinal cord; a person who is a single or double amputee of the legs; or a person with any other physical affliction that makes it impossible to ambulate successfully in park or recreation area natural surroundings without the use of a wheeled conveyance.

“Possession” means the same as defined in Iowa Code section 481A.1(27).

“Prohibited activity” means any activity other than fishing as defined in this chapter including, but not limited to, picnicking and camping.

“Property” means personal property such as goods, money, or domestic animals.

“Recreation areas” means the following areas that have been designated by action of the commission:

Area	County
Badger Creek Recreation Area	Madison
Brushy Creek Recreation Area	Webster
Clair Wilson Park	Dickinson
Emerson Bay and Lighthouse	Dickinson
Fairport Recreation Area	Muscatine
Lower Gar Access	Dickinson
Marble Beach	Dickinson
Mines of Spain Recreation Area	Dubuque
Pilot Knob State Recreation Area	Winnebago
Pleasant Creek Recreation Area	Linn
Templar Park	Dickinson
Volga River Recreation Area	Fayette
Wilson Island Recreation Area	Pottawattamie

“Refuse” means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid or solid waste or other discarded material.

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“Rental facilities” means facilities that may be rented on a daily or nightly basis and includes open shelters, open shelters with kitchenettes, beach house open shelters, warming lodges, lodges, cabins, yurts and group camps.

“Reservation window” means a rolling period of time in which a person may reserve a campsite or rental facility.

“Scuba diving” means swimming with the aid of self-contained underwater breathing apparatus.

“State park” means areas managed by the state and designated by action of the commission and listed on the department’s website at www.iowadnr.gov.

“State park managed by another governmental entity” means areas designated by action of the commission and listed on the department’s website at www.iowadnr.gov.

“State preserve” means the areas or portions of the areas dedicated by actions pursuant to Iowa Code section 465C.10 and listed on the department’s website at www.iowadnr.gov.

“Swim” or *“swimming”* means to propel oneself in water by natural means, such as movement of limbs, and includes but is not limited to wading and the use of inner tubes or beach toy-type swimming aids.

“Walk-in camper” means a person arriving at a campground without a reservation and wishing to occupy a first-come, first-served campsite or unrented, reservable campsite.

“Yurt” means a one-room circular fabric structure built on a platform that is available for rental on a nightly or weekly basis.

571—61.2(461A) Centralized reservation system. The centralized reservation system of the department accepts and processes reservations for camping, rental facilities, and other special privileges in state parks, recreation areas, and state forests. The system is accessible through the department’s website at www.iowadnr.gov. The operating policies and procedures for the centralized reservation system are available upon request.

571—61.3(461A) Camping in state parks and recreation areas.

61.3(1) Procedures for camping registration.

a. Registration of walk-in campers occupying nonreservable campsites or unrented, reservable campsites will be on a first-come, first-served basis and will be handled by a self-registration process. Registration forms will be provided by the department. Campers shall, within one-half hour of arrival at the campground, complete the registration form, place the appropriate fee in the envelope and place the envelope in the depository provided by the department. One copy of the registration form must then be placed in the campsite holder provided at the campsite. The camping length of stay identified on the camping registration form must begin with the actual date the camper registers, pays and posts the registration at the campsite.

b. Campsites are considered occupied and registration for a campsite shall be considered complete when the requirements of paragraph 61.3(1)“a” have been met.

c. Campsite registration must be in the name of a person 18 years of age or older who will occupy the camping unit on that site for the full term of the registration.

61.3(2) Organized youth group campsite registration.

a. Registration procedures for organized youth group campsites shall be governed by paragraphs 61.3(1)“a,” “b” and “c.”

b. A chaperoned, organized youth group may choose to occupy campsites not designated as organized youth group campsites. However, the group is subject to subrules 61.3(1), 61.3(3) and 61.3(5) pertaining to the campsite the group wishes to occupy.

61.3(3) Restrictions on campsite/campground use. This subrule sets forth conditions of public use that apply to all state parks and recreation areas. Specific areas as listed in subrule 61.3(4), rule 571—61.10(461A) and rule 571—61.13(461A) are subject to additional restrictions or exceptions. The conditions in this subrule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

a. No more than six persons shall occupy a campsite except for the following:

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(1) Families that exceed six persons may be allowed on one campsite if all members are immediate family and cannot logically be split to occupy two campsites.

(2) Campsites that are designated as chaperoned, organized youth group campsites.

b. Camping is restricted to one basic unit per site except that a small tent or hammock may be placed on a site with the basic unit.

c. Each camping group shall utilize only the electrical outlet fixture designated for its particular campsite.

d. Each camping group will be permitted to park one motor vehicle not being used for camping purposes at the campsite. Unless otherwise posted, one additional vehicle may be parked at the campsite.

e. All motor vehicles, excluding motorcycles, not covered by the provision in paragraph 61.3(3) “*d*” shall be parked in designated extra-vehicle parking areas.

f. Walk-in campers occupying nonreservable campsites or unrented, reservable campsites shall register as provided in subrule 61.3(1) within one-half hour of entering the campground.

g. Campers occupying nonreservable campsites shall vacate the campground or register for the night prior to 3 p.m. daily. Registration can be for more than 1 night at a time but not for more than 14 consecutive nights for nonreservable campsites. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of three nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

h. Walk-in campers shall not occupy unrented, reservable campsites until 10 a.m. on the first camping day of their stay. Campers shall vacate the campground by 3 p.m. of the last day of their stay. Initial registration shall not exceed two nights. Campers may continue to register after the first 2 nights on a night-to-night basis up to a maximum of 14 consecutive nights, subject to campsite availability. All members of the camping party must vacate the state park, recreation area, or state forest campground after the fourteenth night and may not return to the state park, recreation area, or forest campground until a minimum of three nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

i. Campers with reservations shall not occupy a campsite before 4 p.m. of the first day of their stay. Campers shall vacate the site by 3 p.m. of the last day of their stay. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of three nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

j. Minimum stay requirements for camping reservations. From May 1 to October 31, a two-night minimum stay is required for weekends. The two nights shall be designated as Friday and Saturday nights. However, if October 31 is a Friday, the Friday and Saturday night stay shall not apply. If October 31 is a Saturday, the Friday and Saturday night stay shall apply. The following additional exceptions apply:

(1) A Friday, Saturday, and Sunday night stay is required for the national Memorial Day holiday and national Labor Day holiday weekends.

(2) A Friday, Saturday, and Sunday night stay is required for the Fourth of July holiday when the Fourth of July occurs on a Monday.

(3) Exception to the paragraph 571—61.3(3) “*j*” stay requirement. For campgrounds that are 100 percent reservable, with no walk-in sites, customers can reserve a Saturday stay if the Friday/Saturday stay is not reserved before the booking cut-off time has passed to make a Friday/Saturday stay reservation.

(4) Exception to subparagraphs 571—61.3(3) “*j*”(1) and (2) stay requirements. For campgrounds that are 100 percent reservable, with no walk-in sites, customers can reserve a Saturday or Sunday separately if the Friday/Saturday/Sunday is not reserved before the booking cut-off time has passed to make a three-night reservation.

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k. Buddy campsite reservations. Buddy campsites are between two to four individual sites that are grouped together and can only be reserved and used collectively. Campers reserving buddy campsites through the centralized reservation system must reserve both or all four of the individual sites that make up the group buddy campsite or buddy campsite.

l. In designated campgrounds, equine animals and llamas must be stabled at a hitching rail, individual stall or corral if provided. Equine animals and llamas may be hitched to trailers for short periods of time to allow for grooming and saddling. These animals may be stabled inside trailers if no hitching facilities are provided. Portable stalls/pens and electric fences are not permitted.

m. Campers shall use only straps to secure hammocks to trees on campsites. Straps must be a minimum of one inch wide.

n. Special events. The department director or director's authorized representative may authorize camping in areas outside designated campgrounds for certain special events as defined in rule 571—44.2(321G,321I,461A,462A,481A). Requests shall be reviewed on a case-by-case basis and permitted under the provisions of 571—Chapter 44.

61.3(4) Area-specific restrictions on campground use. In addition to the general conditions of public use set forth in this chapter, special conditions shall apply to specific areas listed as follows:

a. Brushy Creek Recreation Area, Webster County.

(1) In the designated equestrian campgrounds, the maximum number of equine animals to be tied to the hitching rails is six. Persons with a number of equine animals in excess of the number permitted on the hitching rail at their campsite shall be allowed to stable their additional animals in a trailer or register and pay for an additional campsite if available.

(2) In the designated equestrian campgrounds, equine animals may be tied to trailers for short periods of time to allow grooming or saddling; however, the tying of equine animals to the exterior of trailers for extended periods of time or for stabling is not permitted.

b. Recreation area campgrounds. Access into and out of designated campgrounds shall be permitted from 4 a.m. to 10:30 p.m. From 10:31 p.m. to 3:59 a.m., only registered campers are permitted in and out of the campgrounds.

c. Lake Manawa State Park, Pottawattamie County. Except for the following limitations on campground length of stay, campsite use restrictions as stated in subrule 61.3(3) shall apply to Lake Manawa. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. No person may camp at the Lake Manawa campground for more than 14 nights in any 30-day period.

d. Walnut Woods State Park, Polk County. Except for the following limitations on campground length of stay, campsite use restrictions as stated in subrule 61.3(3) shall apply to Walnut Woods. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. No person may camp at the Walnut Woods campground for more than 14 nights in any 30-day period.

61.3(5) Campground fishing. Rule 571—61.13(461A) is not intended to prohibit fishing by registered campers who fish from the shoreline within the camping area.

571—61.4(461A) State forest camping areas established and marked.

61.4(1) Areas to be utilized for camping shall be established within the following state forests:

a. Shimek State Forest in Lee and Van Buren Counties.

b. Stephens State Forest in Appanoose, Clarke, Davis, Lucas and Monroe Counties.

c. Yellow River State Forest in Allamakee County.

61.4(2) Signs designating the established camping areas shall be posted along the access roads into these areas and around the perimeter of the area designated for camping use.

61.4(3) Areas approved for backpack camping (no vehicular access) shall be marked with appropriate signs and shall contain fire rings.

571—61.5(461A) Campground reservations. Procedures and policies regarding camping reservations in established state forest campgrounds shall be the same as those cited in rule 571—61.2(461A). Reservations will not be accepted for backpack campsites.

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571—61.6(461A) Camping fees and registration.**61.6(1) Fees.**

- a. Backpack campsites. No fee will be charged for the use of the designated backpack campsites.
- b. The fees for camping in established state forest campgrounds shall be set by the department pursuant to 561—Chapter 16.

61.6(2) Procedures for camping registration.

- a. Backpack campsites. Persons using backpack campsites shall register at the forest area check station or other designated site.
- b. The procedures for camping registration in established state forest campgrounds shall be the same as those cited in paragraphs 61.3(1) “a,” “b,” and “c.”
- c. Organized youth group campsites. The procedures for camping registration for organized youth group campsites shall be the same as those cited in subrule 61.3(2).

571—61.7(461A) State forest camping restrictions—area and use.

61.7(1) Restrictions of campsite or campground use in established state forest campgrounds shall be the same as those cited in paragraphs 61.3(3) “a,” “b,” “d” through “j,” and “l” through “n.”

61.7(2) Hours. Access into and out of the established camping areas shall be permitted from 4 a.m. to 10:30 p.m. From 10:31 p.m. to 3:59 a.m., only registered campers are permitted in the campgrounds.

61.7(3) Firearms use prohibited. Except for peace officers acting in the scope of their employment, the use of firearms, fireworks, explosives, and weapons of all kinds by the public is prohibited within the established camping area as delineated by signs marking the area.

571—61.8(461A) Rental facilities.**61.8(1) Procedures for rental facility registration.**

a. Registrations for all rental facilities must be in the name of a person 18 years of age or older who will be present at the facility for the full term of the reservation.

b. Rental stay requirements for cabins and yurts.

(1) Except as provided in subparagraphs 61.8(1) “b”(2) and 61.8(1) “b”(3), cabins and yurts may be reserved for a minimum of two nights throughout the entire season.

(2) Cabins and yurts must be reserved for a minimum of three nights (Friday, Saturday, and Sunday nights) for the national Memorial Day holiday weekend, the Fourth of July holiday weekend when the Fourth of July occurs on a Monday, and the national Labor Day holiday weekend.

(3) The department may require cabins with restroom and kitchen facilities to be reserved for a minimum stay of one week (Friday p.m. to Friday a.m.) during the time period beginning with the Friday of the national Memorial Day holiday weekend and ending with the Thursday after the national Labor Day holiday.

(4) All unreserved cabins, all unreserved yurts and the group camp must be rented for a minimum of two nights on a walk-in first-come, first-served basis. No walk-in rentals will be permitted after 6 p.m.

(5) Reservations or walk-in rentals for more than a two-week stay will not be accepted for any facility.

c. Persons renting cabins, yurts or the group camp facility must check in at or after 4 p.m. on the first day of the rental period. Check-out time is 11 a.m. or earlier on the last day of the rental period.

d. Except by arrangement for late arrival with the park staff, no cabin, yurt or group camp reservation will be held past 6 p.m. on the first night of the reservation period if the person reserving the facility does not arrive. When arrangements for late arrival have been made, the person must appear prior to the park’s closing time established by Iowa Code section 461A.46 or access will not be permitted to the facility until 8 a.m. the following day. Arrangements must be made with the park staff if next-day arrival is to be later than 9 a.m.

e. Except at parks or recreation areas with camping cabins or yurts, no tents or other camping units are permitted for overnight occupancy in the designated cabin area. One small tent shall be allowed at each cabin or yurt in the designated areas and is subject to the occupancy requirements of paragraph 61.3(3) “b.”

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f. Open shelters and beach house open shelters that are not reserved are available on a first-come, first-served basis. If the open shelters with kitchenettes are not reserved, the open shelter portions of these facilities are available on a first-come, first-served basis.

g. Except by arrangement with the park staff in charge of the area, persons renting a lodge, shelter, or beach house open shelter facility and all guests shall vacate the facility by 10 p.m.

61.8(2) *Damage deposits for cabins, lodges, open shelters with kitchenettes, and yurts.*

a. Renters shall pay in full a damage deposit equal to the weekend daily or nightly rental fee for the facility or \$50, whichever is greater, by the established deadline for the facility. If a gathering with keg beer takes place in a lodge or open shelter with kitchenette, the damage deposit shall be waived in lieu of a keg damage deposit as specified in 571—subrule 63.5(3) if the keg damage deposit is greater than the lodge or open shelter with kitchenette damage deposit.

b. Damage deposits will be refunded only after authorized personnel inspect the facility to ensure that the facility and furnishings are in satisfactory condition.

c. If it is necessary for department personnel to clean up the facility or repair any damage beyond ordinary wear and tear, a log of the time spent in such cleanup or repair shall be kept. The damage deposit refund shall be reduced by the applicable hourly fee for the time necessary to clean the area or repair the damage and by the cost of any repairs of furnishings.

d. The deposit is not to be construed as a limit of liability for damage to state property. The department may take legal action necessary to recover additional damages.

571—61.9(461A) Wet and dry storage for vessels. The department may provide limited temporary vessel storage for individuals who own vessels that are actively used on waters in state parks and recreation areas.

61.9(1) *Vessel storage fees.* A person who fails to pay a vessel storage fee by the established payment due date shall forfeit the slip assignment.

61.9(2) *Storage slip assignment.*

a. Slip assignments shall be made on a first-come, first-served basis. Park staff may establish a waiting list upon receiving more requests for storage slips than the number of slips available. The waiting list shall be maintained in chronological order of the requests received.

b. Slip assignments shall be valid for one year with the option to renew annually.

c. In the event a person on a waiting list refuses a specific slip assignment, the person's name will be removed from the waiting list.

61.9(3) *Storage slip requirements and conditions.*

a. Each storage slip is limited to no more than one vessel at any given time.

b. All vessels in a storage slip must have a current boat registration.

c. Slip assignments must be in the same name of the person to whom the vessel that will occupy the slip is registered.

d. Dry storage slips shall be maintained in a clean and orderly manner. Failure to maintain the slip in a satisfactory condition will result in forfeiture of the slip assignment and any storage fees paid.

e. Slip assignments are not transferable.

571—61.10(461A) Restrictions—area and use. This rule sets forth conditions of public use that apply to all state parks and recreation areas. Specific areas as listed in subrule 61.3(4), rule 571—61.11(461A) and rule 571—61.14(461A) are subject to additional restrictions or exceptions. The conditions in this rule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

61.10(1) *Animals.*

a. The use of equine animals and llamas is limited to roadways or to trails designated for such use.

b. Animals are prohibited within designated beach areas.

c. Livestock are not permitted to graze or roam within state parks and recreation areas. The owner of the livestock shall remove the livestock immediately upon notification by department personnel in charge of the area.

d. Animals are prohibited in all park buildings, with the following exceptions:

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- (1) Service dogs and assistive animals.
- (2) Dogs in designated cabins and yurts. A maximum of two dogs of any size shall be allowed in any designated cabin or yurt.

- (3) Animals being used in education and interpretation programs.

e. Except for dogs being used in designated hunting areas during hunting season or in designated dog training areas outside of the nesting period closure from March 15 to July 15, pets such as dogs or cats shall not be allowed to run at large within state parks, recreation areas, or preserves. Such animals shall be on a leash or chain not to exceed six feet in length and shall be either led by or carried by the owner, attached to an anchor/tie-out or vehicle, or confined in a vehicle. Pets shall not be left unattended in campgrounds. Dogs shall be kenneled when left unattended in a cabin or yurt and shall not be left unattended if tied up outside of the cabin or yurt.

61.10(2) Beach use/swimming.

a. All swimming shall take place between sunrise and sunset. Swimming is prohibited between sunset and sunrise.

b. Except as provided in paragraphs 61.10(2) “*c*” and “*d*,” all swimming and scuba diving shall take place in the beach area within the boundaries marked by ropes, buoys, or signs within state parks and recreation areas. Inner tubes, air mattresses and other beach-type items shall be used only in designated beach areas.

c. Persons may scuba dive in areas other than the designated beach area provided they display the diver’s flag as specified in rule 571—41.10(462A).

d. Swimming outside beach area.

- (1) Persons may swim outside the beach area under the following conditions:

1. The swimmer must be accompanied by a person operating a vessel and must stay within 20 feet of the vessel at all times during the swim;

2. The vessel accompanying the swimmer must display a flag, which is at least 12 inches square, is bright orange, and is visible all around the horizon; and

3. The person swimming pursuant to this subparagraph must register with the park staff in charge of the area and sign a registration immediately prior to the swim.

- (2) Unless swimming is otherwise posted as prohibited or limited to the designated beach area, a person may also swim outside the beach area provided that the person swims within ten feet of a vessel which is anchored not less than 100 yards from the shoreline or the marked boundary of a designated beach. Any vessel, except one being uprighted, must be attended at all times by at least one person remaining on board.

- (3) A passenger on a sailboat or other vessel may enter the water to upright or repair the vessel and must remain within ten feet of that vessel.

e. The provisions of paragraph 61.10(2) “*a*” shall not be construed as prohibiting wading in areas other than the beach by persons actively engaged in shoreline fishing.

f. Alcoholic liquor, beer, and wine, as each is defined in Iowa Code section 123.3, are prohibited on the beaches located within Lake Macbride State Park and Pleasant Creek State Recreation Area. This ban does not apply to rental facilities located within the 200-foot buffer of land surrounding the sand or fenced-in area that have been officially reserved through the department.

61.10(3) Bottles. Possession or use of breakable containers, the fragmented parts of which can injure a person, is prohibited in beach areas of state parks and recreation areas.

61.10(4) Chainsaws. Except by written permission of the director of the department, chainsaw use is prohibited in state parks and recreation areas. This provision is not applicable to employees of the department in the performance of their official duties.

61.10(5) Firearms. The use of firearms in state parks and recreation areas as defined in rule 571—61.1(461A) is limited to the following:

- a.* Lawful hunting as traditionally allowed at Badger Creek Recreation Area, Brushy Creek Recreation Area, Pleasant Creek Recreation Area, Mines of Spain Recreation Area (pursuant to rule 571—61.12(461A)), Volga River Recreation Area and Wilson Island Recreation Area.

- b.* Target and practice shooting in areas designated by the department.

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- c. Special events, festivals, and education programs sponsored or permitted by the department.
- d. Special hunts authorized by the commission to control animal populations.

61.10(6) Fishing off boat docks within state areas. Persons may fish off all state-owned docks within state parks and recreation areas. Persons fishing off these docks must yield to boats and not interfere with boaters.

61.10(7) Garbage. Using government refuse receptacles for dumping household, commercial, or industrial refuse brought as such from private property is prohibited.

61.10(8) Motor vehicle restrictions.

a. Except as provided in these rules, motor vehicles are prohibited on state parks, recreation areas and preserves except on constructed and designated roads, parking lots and campgrounds.

b. Use of motorized vehicles by persons with a physical disability. Persons with a physical disability may use certain motorized vehicles to access specific areas in state parks, recreation areas and preserves, according to restrictions set out in this paragraph, or otherwise provided for by department other power-driven mobility device (OPDMD) processes, in order to enjoy the same recreational opportunities available to others.

(1) Reasonable accommodations. Each person with a physical disability or mobility impairment may request a reasonable accommodation to park or recreation area staff in order to use an OPDMD within state parks, recreation areas, and preserves. Reasonable accommodation requests are considered on a case-by-case basis based on the facts and circumstances and considering need, protection of the permit holder, protection of other users, and protection of natural resources consistent with relevant state and federal law.

(2) Permits. Except where areas or trails are preapproved for OPDMD use, persons with a physical disability or mobility impairment must have a permit issued by park or recreation area staff in order to use a motorized vehicle in specific, approved areas within state parks, recreation areas, and preserves.

(3) One companion may accompany the OPDMD user on the same vehicle if that vehicle is designed for more than one rider; otherwise, the companion must walk.

(4) Exclusive use. The issuance of a permit does not imply that the permittee has exclusive or indiscriminate use of an area. Permittees shall take reasonable care not to unduly interfere with the use of the area by others.

(5) Prohibited acts and restrictions.

1. Except as provided in paragraph 61.10(8) "b," the use of a motorized vehicle on any park, recreation area or preserve by a person without a valid permit or at any site not approved on a signed map is prohibited. Permits and maps shall be carried by the permittee at any time the permittee is using a motorized vehicle in a park, recreation area or preserve and shall be exhibited to any department employee or law enforcement official upon request.

2. The speed limit for an approved motorized vehicle off-road will be no more than 3 miles per hour, unless otherwise approved in writing. The permit of a person who is found exceeding the speed limit will be revoked.

3. The permit of any person who is found causing damage to cultural and natural features or abusing the privilege of riding off-road within the park will be revoked, and restitution for damages or other remedies available under the law may be sought.

61.10(9) Noise. Creating or sustaining any unreasonable noise in any portion of any state park or recreation area is prohibited at all times. The nature and purpose of a person's conduct, the impact on other area users, the time of day, location, and other factors that would govern the conduct of a reasonable, prudent person under the circumstances shall be used to determine whether the noise is unreasonable. Between the hours of 10:30 p.m. and 6 a.m., noise that can be heard at a distance of 120 feet or three campsites shall be considered unreasonable.

61.10(10) Opening and closing times. Except by arrangement or permission granted by the director or the director's authorized representative or as otherwise stated in this chapter, the following restrictions shall apply: All persons shall vacate all state parks and preserves before 10:30 p.m. each day, except authorized campers in accordance with Iowa Code section 461A.46, and no person shall enter into such parks and preserves until 4 a.m. the following day.

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61.10(11) *Paintball guns.* The use of any item generally referred to as a paintball gun is prohibited in state parks, recreation areas and preserves.

61.10(12) *Rock climbing or rappelling.* The rock climbing practice known as free climbing and climbing or rappelling activities that utilize bolts, pitons, or similar permanent anchoring equipment or ropes, harnesses, or slings are prohibited in state parks and recreation areas, except by persons or groups registered with the park staff in charge of the area. Individual members of a group must each sign a registration. Climbing or rappelling will not be permitted at Elk Rock State Park, Marion County; Ledges State Park, Boone County; Dolliver Memorial State Park, Webster County; Stone State Park, Woodbury and Plymouth Counties; Maquoketa Caves State Park, Jackson County; Wildcat Den State Park, Muscatine County; or Mines of Spain Recreation Area, Dubuque County. Other sites may be closed to climbing or rappelling if environmental damage or safety problems occur or if an endangered or threatened species is present.

61.10(13) *Speech or conduct interfering with lawful use of an area by others.*

a. Speech commonly perceived as offensive or abusive is prohibited when such speech interferes with lawful use and enjoyment of the area by another member of the public.

b. Quarreling or fighting is prohibited when it interferes with the lawful use and enjoyment of the area by another member of the public.

61.10(14) *Animal population control hunts.* Animal hunting as allowed under Iowa Code section 461A.42(1) "c" shall be designated annually by the commission. During the dates of special hunts, only persons participating in special hunts shall use the area or portions thereof as designated by the department and signed as such.

571—61.11(461A) Certain conditions of public use applicable to specific parks and recreation areas. In addition to the general conditions of public use set forth in this chapter, special conditions shall apply to the specific areas listed as follows:

61.11(1) *Hattie Elston Access and Clair Wilson Park, Dickinson County.*

a. Parking of vehicles overnight on these areas is prohibited unless the vehicle operator and occupants are actively involved in boating or are fishing as allowed under rule 571—61.14(461A).

b. Overnight camping is prohibited.

61.11(2) *Mines of Spain Recreation Area, Dubuque County.* All persons shall vacate all portions of the Mines of Spain Recreation Area prior to 10:30 p.m. each day, and no person or persons shall enter into the area until 4 a.m. the following day.

61.11(3) *Pleasant Creek Recreation Area, Linn County.* Fishing access into and out of the north portion of the area between the east end of the dam to the campground shall be closed from 10:30 p.m. to 4 a.m., except that walk-in overnight fishing will be allowed along the dam. The area known as the dog trial area shall be closed from 10:30 p.m. to 4 a.m., except for those persons participating in a department-authorized field trial. From 10:30 p.m. to 4 a.m., only registered campers are permitted in the campground.

61.11(4) *Wapsipinicon State Park, Jones County.* The land adjacent to the park on the southeast corner and generally referred to as the "Ohler property" is closed to the public from 10:31 p.m. to 3:59 a.m.

571—61.12(461A) Mines of Spain hunting, trapping and firearms use.

61.12(1) The following described portions of the Mines of Spain Recreation Area are established and will be posted as wildlife refuges:

a. That portion within the city limits of the city of Dubuque located west of U.S. Highway 61 and north of Mar Jo Hills Road.

b. The tract leased by the department from the city of Dubuque upon which the E. B. Lyons Interpretive Center is located.

c. That portion located south of the north line of Section 8, Township 88 North, Range 3 East of the 5th P.M. between the west property boundary and the east line of said Section 8.

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d. That portion located north of Catfish Creek, east of the Mines of Spain Road and south of the railroad tracks. This portion contains the Julien Dubuque Monument.

61.12(2) Trapping and archery hunting for all legal species are permitted in compliance with all open-season, license and possession limits on the Mines of Spain Recreation Area except in those areas designated as refuges by subrule 61.12(1).

61.12(3) Firearms use is prohibited in the following described areas:

a. The areas described in subrule 61.12(1).

b. The area north and west of Catfish Creek and west of Granger Creek.

61.12(4) Deer hunting and hunting for all other species are permitted using shotguns only and are permitted only during the regular gun season as established by 571—Chapter 106. Areas not described in subrule 61.10(3) are open for hunting. Hunting shall be in compliance with all other regulations.

61.12(5) Turkey hunting with shotguns is allowed only in compliance with the following regulations:

a. Only during the first shotgun hunting season established in 571—Chapter 98, which is typically four days in mid-April.

b. Only in that area of the Mines of Spain Recreation Area located east of the established roadway and south of the Horseshoe Bluff Quarry.

61.12(6) The use of a handgun or any type of rifle is prohibited on the entire Mines of Spain Recreation Area except as provided in subrule 61.12(4). Target and practice shooting with any type of firearm is prohibited.

61.12(7) All forms of hunting, trapping and firearms use not specifically permitted by rule 571—61.12(461A) are prohibited in the Mines of Spain Recreation Area.

571—61.13(461A) After-hours fishing—exception to closing time. Persons shall be allowed access to the areas designated in rule 571—61.14(461A) between the hours of 10:30 p.m. and 4 a.m. under the following conditions:

1. The person shall be actively engaged in fishing.
2. The person shall behave in a quiet, courteous manner so as not to disturb other users of the park.
3. Access to the fishing site from the parking area shall be by the shortest and most direct trail or access facility.
4. Vehicle parking shall be in the lots designated by signs posted in the area.
5. Activities other than fishing are allowed with permission of the director or an employee designated by the director.

571—61.14(461A) Designated areas for after-hours fishing. These areas are open from 10:30 p.m. to 4 a.m. for fishing only. The areas are described as follows:

61.14(1) *Black Hawk Lake, Sac County.* The area of the state park between the road and the lake running from the marina at Drillings Point on the northeast end of the lake approximately three-fourths of a mile in a southwesterly direction to a point where the park boundary decreases to include only the roadway.

61.14(2) *Clair Wilson Park, Dickinson County.* The entire area including the parking lot, shoreline and fishing trestle facility.

61.14(3) *Clear Lake State Park, Ritz Unit, Cerro Gordo County.* The boat ramp, courtesy dock, fishing dock and parking lots.

61.14(4) *Elinor Bedell State Park, Dickinson County.* The entire length of the shoreline within state park boundaries.

61.14(5) *Elk Rock State Park, Marion County.* The Teeter Creek boat ramp area just east of State Highway 14, access to which is the first road to the left after the entrance to the park.

61.14(6) *Green Valley State Park, Union County.* The shoreline adjacent to Green Valley Road commencing at the intersection of Green Valley Road and 130th Street and continuing south along the shoreline to the parking lot on the east side of the dam, and then west along the dam embankment to the shoreline adjacent to the parking lot on the west side of the spillway.

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61.14(7) *Hattie Elston Access, Dickinson County.* The entire area including the parking lot shoreline and boat ramp facilities.

61.14(8) *Honey Creek State Park, Appanoose County.* The boat ramp area located north of the park office, access to which is the first road to the left after the entrance to the park.

61.14(9) *Geode State Park, Des Moines County portion.* The area of the dam embankment that is parallel to County Road J20 and lies between the two parking lots located on each end of the embankment.

61.14(10) *Lake Keomah State Park, Mahaska County.*

a. The embankment of the dam between the crest of the dam and the lake.

b. The shoreline between the road and the lake from the south boat launch area west and north to the junction with the road leading to the group camp shelter.

61.14(11) *Lake Macbride State Park, Johnson County.* The shoreline of the south arm of the lake adjacent to the county road commencing at the intersection of Cottage Reserve Road at the north end of the north-south causeway proceeding across the causeway thence southeasterly along a foot trail to the east-west causeway, across the causeway to the parking area on the east end of that causeway.

61.14(12) *Lake Manawa State Park, Pottawattamie County.* The west shoreline including both sides of the main park road, commencing at the north park entrance and continuing south one and one-half miles to the parking lot immediately north of the picnic area located on the west side of the southwest arm of the lake.

61.14(13) *Lower Pine Lake, Hardin County.* West shoreline along Hardin County Road S56 from the beach southerly to the boat ramp access.

61.14(14) *Mini-Wakan State Park, Dickinson County.* The entire area.

61.14(15) *North Twin Lake State Park, Calhoun County.* The shoreline of the large day-use area containing the swimming beach on the east shore of the lake.

61.14(16) *Pikes Point State Park, Dickinson County.* The shoreline areas of Pikes Point State Park on the east side of West Okoboji Lake.

61.14(17) *Prairie Rose State Park, Shelby County.* The west side of the embankment of the causeway across the southeast arm of the lake including the shoreline west of the parking area located off County Road M47 and just north of the entrance leading to the park office.

61.14(18) *Rock Creek Lake, Jasper County.* Both sides of the County Road F27 causeway across the main north portion of the lake.

61.14(19) *Union Grove State Park, Tama County.*

a. The dam embankment from the spillway to the west end of the parking lot adjacent to the dam.

b. The area of state park that parallels BB Avenue, from the causeway on the north end of the lake southerly to a point approximately one-tenth of a mile southwest of the boat ramp.

61.14(20) *Upper Pine Lake, Hardin County.* Southwest shoreline extending from the boat launch ramp to the dam.

61.14(21) *Viking Lake State Park, Montgomery County.* The embankment of the dam from the parking area located southeast of the dam area northwesterly across the dam structure to its intersection with the natural shoreline of the lake.

571—61.15(461A) Vessels prohibited. Rule 571—61.14(461A) does not permit the use of vessels on the artificial lakes within state parks after the 10:30 p.m. park closing time. All fishing is to be done from the bank or shoreline of the permitted area.

571—61.16(461A,463C) Honey Creek Resort State Park. This chapter shall not apply to Honey Creek Resort State Park. Where permission is required to be obtained from the department, an authorized

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representative of the department's management company may provide such permission in accordance with policies established by the department.

These rules are intended to implement Iowa Code sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 to 461A.51, 461A.57, and 723.4 and chapters 463C and 724.

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[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7914C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to waterfowl and coot hunting seasons

The Natural Resource Commission (Commission) hereby rescinds Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 456A.24(14), 481A.134, 481A.135, 483A.1, 483A.9A and 483A.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 456A.24(14), 481A.134, 481A.135, 483A.1, 483A.9A and 483A.10.

Purpose and Summary

Chapter 91 establishes and organizes waterfowl and coot hunting seasons as required by law. Waterfowl and coot hunting are exciting recreational opportunities for licensed hunters. More importantly, Iowa relies upon hunters to help manage the state's wildlife, including migratory waterfowl, which are held in trust for the people and required by law to be managed for posterity.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Several long provisions identifying in narrative form areas that are either open or closed to hunting have been removed and replaced with a more user-friendly visual map available on the Department of Natural Resources' website.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7238C**. Public hearings were held on January 16 and 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 91 and adopt the following **new** chapter in lieu thereof:

CHAPTER 91
WATERFOWL AND COOT HUNTING SEASONS

571—91.1(481A) Duck hunting.

91.1(1) Zone boundaries. Zone boundaries are as specified in the November 2023 Waterfowl Hunting Map Book published on the department of natural resources' (department's) website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 1 "Waterfowl Hunting Zones."

91.1(2) Season dates - north zone. Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest September 30 and run for seven days. The second segment of the season will open on the Saturday nearest October 13 and continue for 53 consecutive days.

91.1(3) Season dates - central zone. Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest October 6 and run for seven days. The second segment of the season will open on the Saturday nearest October 20 and continue for 53 consecutive days.

91.1(4) Season dates - south zone. Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest October 13 and run for seven days. The second segment of the season will open on the Saturday nearest October 27 and continue for 53 consecutive days.

91.1(5) Bag limit. Bag limits for all species are as adopted by the U.S. Fish and Wildlife Service. The daily bag limit for scaup will be one for the first 15 days of the duck hunting season and two for the remaining 45 days.

91.1(6) Possession limit. For the special September teal season and for all ducks: Possession limit is three times the daily bag limit.

91.1(7) Shooting hours. For the special September teal season: Shooting hours are sunrise to sunset each day. For all ducks: Shooting hours are one-half hour before sunrise to sunset each day.

571—91.2(481A) Coots (split season).

91.2(1) Same as duck season dates and shooting hours.

91.2(2) Bag and possession limits. Daily bag limit is 15 and possession limit is three times the daily bag limit.

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571—91.3(481A) Goose hunting.

91.3(1) Zone boundaries. Zone boundaries are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 1 "Waterfowl Hunting Zones."

91.3(2) Season dates - north zone. For all geese: The first segment of the regular goose season will begin on the Saturday nearest September 23 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 13 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 13 and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(3) Season dates - central zone. For all geese: The first segment of the regular goose season will begin on the Saturday nearest September 30 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 20 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 20 and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(4) Season dates - south zone. For all geese: The first segment of the regular goose season will begin on the Saturday nearest October 6 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 27 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 27 and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(5) Bag limit. The daily bag limit for dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese) is five and may include no more than two Canada geese during the first segment of the statewide season and no more than three Canada geese during the remainder of the statewide season. The daily bag limit for light geese (white and blue-phase snow geese and Ross' geese) is 20.

91.3(6) Possession limit. The possession limit is three times the daily bag limit for Canada geese, brant and white-fronted geese. There is no possession limit for light geese.

91.3(7) Shooting hours. Shooting hours are one-half hour before sunrise until sunset each day.

91.3(8) Light goose conservation order season. Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service beginning the day after the regular goose season closes and continuing until May 1.

a. *Zone boundaries.* Statewide.

b. *Shooting hours.* One-half hour before sunrise to one-half hour after sunset.

c. *Bag limit.* No bag limit.

d. *Possession limit.* No possession limit.

e. *Other regulations.* Methods of take approved by the U.S. Fish and Wildlife Service for hunting light geese during the conservation order season shall be permitted.

91.3(9) Metropolitan goose hunting seasons and specified areas.

a. *Season dates.* The second Saturday in September for nine consecutive days.

b. *Bag limit.* Daily bag limit is five Canada geese.

c. *Possession limit.* Three times the daily bag limit.

d. *Specified areas.*

(1) Cedar Rapids/Iowa City. Areas are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 2 "Metropolitan Goose Hunting Areas."

(2) Des Moines. Areas are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 2 "Metropolitan Goose Hunting Areas."

(3) Cedar Falls/Waterloo. Areas are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 2 "Metropolitan Goose Hunting Areas."

571—91.4(481A) Closed areas. Waterfowl and coots may be hunted statewide except in specific areas.

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91.4(1) *Waterfowl and coots.* There shall be no open season for ducks, coots and geese as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 3 "Areas Closed to Waterfowl Hunting."

91.4(2) *Canada geese.* There shall be no open season on Canada geese in certain areas described as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 4 "Areas Closed to Canada Goose Hunting."

571—91.5(481A) Canada goose hunting within closed areas.

91.5(1) *Closed areas.* All areas are as described in subrule 91.4(2).

a. Purpose. The hunting of Canada geese in closed areas is being undertaken to allow landowners or tenants who farm in these closed areas to hunt Canada geese on land they own or farm in the closed area.

b. Criteria.

(1) Landowners and tenants who own or farm land in the closed areas will be permitted to hunt Canada geese in the closed areas.

(2) Landowners and those individuals named on the permit according to the criteria specified in subparagraph 91.5(1) "b"(9) will be permitted to hunt in the closed area. Tenants may obtain a permit instead of the landowner if the landowner transfers this privilege to the tenant. Landowners may choose, at their discretion, to include the tenant and those individuals of the tenant's family specified in subparagraph 91.5(1) "b"(9) on their permit. Assigned permits must be signed by both the permittee and the landowner assigning the permit.

(3) Landowners must hold title to, or tenants must farm by a rent/share/lease arrangement, at least eight acres inside the closed area to qualify for a permit.

(4) No more than one permit will be issued to corporations, estates, or other legal associations that jointly own land in the closed area. No individual may obtain more than two permits nor may an individual be named as a participant on more than two permits.

(5) Persons holding a permit can hunt with those individuals named on their permit as specified in subparagraph 91.5(1) "b"(9) on any property they own (or rent/share/lease in the case of tenants) in the closed area provided their activity complies with all other regulations governing hunting. Nothing herein shall permit the hunting of Canada geese on public property within the closed area.

(6) Persons hunting under this permit must adhere to all municipal, county, state and federal regulations that are applicable to hunting and specifically applicable to Canada goose hunting. Hunting as authorized by this rule shall not be used to stir or rally waterfowl.

(7) Hunting within the closed area will be allowed through October 31.

(8) Permit holders will be allowed to take eight Canada geese per year in the closed area.

(9) Permits will be issued only to individual landowners or tenants; however, permit holders must specify, when requesting a permit, the names of all other individuals qualified to hunt on the permit. Individuals qualified to hunt on the permit shall include the landowners or tenants and their spouses, domestic partners, parents, grandparents, children, children's spouses, grandchildren, siblings and siblings' spouses only.

c. Procedures.

(1) Permits can be obtained from the local conservation officer or wildlife unit headquarters within the closed area no later than 48 hours before the first Canada goose season opens. The permit will be issued to an individual landowner or tenant and must list the names of all individuals who may hunt with the permittee. The permit will also contain a description of the property covered by the permit. The permit must be carried by a member of the hunting party whose name is listed on the permit. Conservation officers will keep a record of permittees and locations of properties that are covered by permits.

(2) Eight consecutively numbered tags will be issued with each permit. Geese will be tagged around the leg immediately upon being reduced to possession and will remain tagged until delivered to the person's abode.

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(3) No one may attempt to take Canada geese under this permit unless the person possesses an unused tag for the current year.

(4) No landowner or tenant shall be responsible or liable for violations committed by other individuals listed on the permit issued to the landowner or tenant.

571—91.6(481A,483A) Youth waterfowl hunt. A special youth waterfowl hunt will be held the weekend before the first segment of the regular duck season in each duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48(2), and 483A.2.

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[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7915C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rulemaking related to deer hunting

The Natural Resource Commission (Commission) hereby rescinds Chapter 94, “Nonresident Deer Hunting,” and Chapter 106, “Deer Hunting By Residents,” and adopts a new Chapter 106, “Deer Hunting,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 455A.5(6)“a,” 481A.39, 481A.48, 481C.2(3), 483A.8 and 483A.24.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 481C and sections 481A.38, 481A.48, 483A.8 and 483A.24.

Purpose and Summary

Chapter 106 governs deer hunting by residents and nonresidents in the state of Iowa. This chapter sets forth season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements. Chapter 106 also addresses landowner/tenant deer license application procedure, timing, and general eligibility as well as the state’s deer depredation program.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), Chapter 94 (nonresident deer hunting) and Chapter 106 (resident deer hunting; landowner/tenant; deer depredation) are hereby merged and strategically consolidated into this new chapter. This new deer hunting chapter was also edited for overall length and clarity.

Public Comment and Changes to Rulemaking

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Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7239C**. Public hearings were held on January 16 and 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. One person attended a public hearing and had one comment. The Commission agreed with the comment. Accordingly, paragraph 106.14(1)“a” was changed to reflect state law that authorizes the permitless carrying of handguns.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 11, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **571—Chapter 94**.

ITEM 2. Rescind 571—Chapter 106 and adopt the following **new** chapter in lieu thereof:

CHAPTER 106
DEER HUNTING

PART I
DEER HUNTING

571—106.1(481A) Licenses. When hunting deer, all hunters must have in their possession a valid deer hunting license and a valid resident or nonresident hunting license and must have paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt).

106.1(1) Types of resident licenses.

a. General deer licenses. General deer licenses shall be valid for taking deer in one season selected at the time the license is purchased. General deer licenses shall be valid for taking deer of either sex except in counties designated by the natural resource commission (commission) during the first regular gun season when the general deer license will be valid for taking deer with at least one forked antler. Paid general deer licenses shall be valid statewide except where prohibited in deer population management zones established under 571—Chapter 105. Free general deer licenses shall be valid for taking deer of

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either sex only on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

b. Antlerless-deer-only licenses. Antlerless-deer-only licenses shall be valid for taking deer that have no forked antler. Paid antlerless-deer-only licenses shall be valid in one county or in one deer population management zone and in one season as selected at the time the license is purchased. Free and reduced-fee antlerless-deer-only licenses shall be valid on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

c. Bow season licenses. General deer and antlerless-deer-only licenses, paid or free, shall be valid in both segments of the bow season.

d. Regular gun season licenses. Paid general deer and antlerless-deer-only licenses shall be valid in either the first or the second regular gun season, as designated on the license. Free general deer licenses and antlerless-deer-only licenses shall be valid in both the first and second regular gun seasons.

e. Muzzleloader season licenses. General deer and antlerless-deer-only licenses, paid or free, shall be valid in either the early or the late muzzleloader season, as designated on the license.

106.1(2) January antlerless-deer-only resident licenses.

a. Population management season. Licenses for the population management January antlerless-deer-only season may be issued for counties designated by the commission following a 30-day public comment period. Population management January antlerless-deer-only licenses shall be issued for a county only when a minimum of 100 antlerless-deer-only licenses, as described in 106.10(5), remain unsold in that county as of the third Monday in December. If 100 or more antlerless-deer-only licenses remain unsold for a given county as of the third Monday in December, those remaining antlerless-deer-only licenses shall be made available for the population management January antlerless-deer-only season in that county until the relevant antlerless-deer-only quota as described in 106.10(5) is met.

b. Excess tag season. Licenses for the excess tag January antlerless-deer-only season may be issued in any county. Excess tag January antlerless-deer-only licenses shall be issued for a county only when a minimum of one antlerless-deer-only license, as described in 106.10(5), remains unsold for a given county through January 10. Remaining antlerless-deer-only licenses shall be made available starting on January 11 for the excess tag January antlerless-deer-only season in that county until the relevant antlerless-deer-only quota as described in 106.10(5) is met.

106.1(3) Types of nonresident licenses.

a. Any-deer licenses. Any-deer licenses shall be valid for taking deer of either sex in the zone and season designated by the hunter when the application is submitted as described in 571—106.8(483A).

b. Mandatory antlerless-deer-only licenses. Each hunter who is successful in drawing an any-deer license must also purchase an antlerless-deer-only license for the same zone and season as the any-deer license. If the hunter is unsuccessful in drawing an any-deer license, neither the any-deer nor antlerless-deer-only license will be issued. Antlerless-deer-only licenses shall be valid for taking deer that have no forked antler.

c. Optional antlerless-deer-only licenses. A hunter who is not successful in drawing an any-deer license may purchase an antlerless-deer-only license as described in 571—106.8(483A).

d. Bow season license. Bow and arrow deer licenses shall be valid for deer of either sex or antlerless deer during the bow season and in the zone designated by the hunter at the time the application is submitted.

e. Regular gun season license. Regular gun season licenses will be issued for deer of either sex or antlerless deer. Regular gun season licenses will be issued by zone and season and will be valid in the zone and season designated by the hunter when the application is submitted.

f. Muzzleloader season license. Muzzleloader season licenses will be issued for deer of either sex or antlerless deer and shall be valid only during the muzzleloader season and in the zone designated by the hunter when the application is submitted.

g. Excess tag January antlerless-deer-only license. Beginning on January 11, nonresident hunters may obtain antlerless-deer-only licenses for the excess tag January antlerless-deer-only season specified in 106.2(4). Licenses will be available only in those counties specified in 106.10(3) until the

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quota provided in 106.10(5) is filled. All regulations specified in Chapter 106 for the January antlerless deer season for resident hunters including limits, shooting hours, method of take, tagging and reporting requirements will also apply to nonresident hunters during this season.

h. Special licenses. The commission shall issue licenses in conformance with Iowa Code section 483A.24(12) to nonresidents 21 years of age or younger who have a severe physical disability or who have been diagnosed with a terminal illness. A person applying for this license must provide a completed form obtained from the department of natural resources. The application shall be certified by the applicant's attending physician with an original signature and declare that the applicant has a severe physical disability or a terminal illness using the criteria listed in 571—Chapter 15. A medical statement from the applicant's attending physician that specifies criteria met shall be on 8½" × 11" letterhead stationery. The attending physician shall be a currently practicing doctor of medicine, doctor of osteopathy, physician assistant or nurse practitioner.

571—106.2(481A) Season dates. Deer may be taken only during the following seasons:

106.2(1) Bow season. Deer may be taken in accordance with the type of license issued from October 1 through the Friday before the first Saturday in December and from the Monday following the third Saturday in December through January 10 of the following year.

106.2(2) Regular gun seasons. Deer may be taken in accordance with the type, season and zone designated on the license from the first Saturday in December and continuing for five consecutive days (first regular gun season) or from the second Saturday in December and continuing for nine consecutive days (second regular gun season).

106.2(3) Muzzleloader seasons. Deer may be taken in accordance with the type, season and zone designated on the license from the Saturday closest to October 14 and continuing for nine consecutive days (early muzzleloader season) or from the Monday following the third Saturday in December through January 10 of the following year (late muzzleloader season).

106.2(4) Resident population management and excess tag January antlerless-deer-only seasons. Deer may be taken in accordance with the type, season, and zone designated on the license from January 11 through the second Sunday following that date.

571—106.3(481A) Shooting hours. Legal shooting hours shall be from one-half hour before sunrise to one-half hour after sunset in all seasons.

571—106.4(481A) Limits.

106.4(1) Bow season. The daily bag limit is one deer per license. The possession limit is one deer per license.

106.4(2) Muzzleloader seasons. The daily bag limit is one deer per license. The possession limit is one deer per license.

106.4(3) Regular gun seasons. The bag limit is one deer per license. The possession limit is one deer per license.

106.4(4) Resident population management and excess tag January antlerless-deer-only seasons. The bag limit is one deer per license. The possession limit is one deer per license.

106.4(5) Maximum annual possession limit. The maximum annual possession limit for a deer hunter is one deer for each legal license and transportation tag obtained.

571—106.5(481A) Areas closed to hunting. There shall be no open seasons for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly. There shall be no open seasons for hunting deer on all portions of rights-of-way on Interstate Highways 29, 35, 80 and 380.

571—106.6(483A) Nonresident zones open to hunting. Licenses will be valid only in designated areas as follows:

NATURAL RESOURCE COMMISSION[571](cont'd)

106.6(1) Nonresident zone boundaries. As specified in the nonresident deer hunting zones map (dated December 2023) published on the department's website (www.iowadnr.gov/Hunting/Deer-Hunting) "Nonresident Deer Hunting Zones."

106.6(2) Reserved.

571—106.7(483A) Nonresident license quotas. A limited number of nonresident deer licenses will be issued in zones as follows:

106.7(1) Zone license quotas. Nonresident license quotas are as follows:

	Any-sex licenses		Mandatory Antlerless-deer-only	Optional Antlerless-deer-only
	All Methods	Bow		
Zone 1	90	31	90	
Zone 2	90	31	90	
Zone 3	560	196	560	
Zone 4	1280	448	1280	
Zone 5	1600	560	1600	
Zone 6	800	280	800	
Zone 7	360	126	360	
Zone 8	240	84	240	
Zone 9	880	308	880	
Zone 10	100	35	100	
Total	6000	2099	6000	3500

106.7(2) Quota applicability. The license quota issued for each zone will be the quota for all bow, regular gun and muzzleloader season licenses combined. No more than 6,000 any-deer licenses and 6,000 mandatory antlerless-deer-only licenses will be issued for all methods of take combined, for the entire state. Of the 6,000 any-deer and 6,000 mandatory antlerless-deer-only licenses, no more than 35 percent in any zone can be bow licenses. A maximum of 4,500 optional antlerless-deer-only licenses will be issued on a county-by-county basis. The licenses will be divided between the counties in the same proportion as resident antlerless-deer-only licenses. Hunters must designate a zone or county and season when purchasing the license and hunt only in that zone or county and season.

571—106.8(483A) Nonresident application procedure. Applications for nonresident deer hunting licenses must be made through the electronic licensing system for Iowa (ELSI) telephone order system or the ELSI Internet license sales website.

106.8(1) Any-deer licenses. Applications for any-deer and mandatory antlerless-deer-only licenses will be accepted from the first Saturday in May through the first Sunday in June. No one may submit more than one application during the application period. Hunters may apply as individuals or as a group of up to 15 applicants. All members of a group will be accepted or rejected together in the drawing. If applications have been sold in excess of the license quota for any zone or season, a drawing will be held to determine which applicants receive licenses. Licenses or refunds of license fees will be mailed to applicants after the drawing is completed. License agent writing fees, department administrative fees and telephone order charges will not be refunded. If any zone's license quota for any-deer and mandatory antlerless-deer-only licenses has not been filled, the excess any-deer and mandatory antlerless-deer-only licenses will be sold on a first-come, first-served basis through the ELSI telephone ordering system or the ELSI Internet license sales website. Excess any-deer and mandatory antlerless-deer-only licenses will be sold beginning the last Saturday in July until the quota has been filled or the last day of the hunting period for which the license is valid, whichever occurs first. Members of a group that are rejected may purchase licenses individually if excess any-deer and mandatory antlerless-deer-only licenses or optional antlerless-deer-only licenses are available.

NATURAL RESOURCE COMMISSION[571](cont'd)

106.8(2) *Optional antlerless-deer-only licenses.* Optional antlerless-deer-only licenses must be purchased through the ELSI telephone ordering system or the ELSI Internet license sales website. Licenses for taking only antlerless deer will be available on the same date as excess any-deer licenses are sold as explained in 106.8(1). Optional antlerless-deer-only licenses will only be issued for one of the two regular gun seasons and for qualified disabled hunters (571—106.15(481A)). They will be sold first-come, first-served until the county quota is filled, or until the last day of the season for which a license is valid. If optional antlerless-deer-only licenses are still available on December 15, they may be purchased by nonresidents to hunt during the period from December 24 through January 2. These licenses will be available to nonresidents who have not purchased a nonresident deer license during one of the current deer seasons. The hunter must have in possession a valid nonresident small game hunting license and proof of having paid the current year's wildlife habitat fee. Optional antlerless-deer-only licenses will be valid only in the season and county designated by the hunter at the time the license is purchased.

a. Nonresident landowners. Nonresidents who own land in Iowa will have preference in obtaining optional antlerless-deer-only licenses. Nonresidents must qualify as landowners following the criteria stated in 106.17(1) and 106.17(3) through 106.17(6), except that nonresident tenants and family members of nonresident landowners and tenants do not qualify and nonresident optional antlerless-deer-only licenses will not be free of charge. If a farm unit is owned jointly by more than one nonresident, only one owner may claim landowner preference in the same year. Nonresidents who own land jointly with a resident do not qualify for preference. Nonresidents who have provided proof to the department that they own land in Iowa and meet the qualifying criteria may purchase an optional antlerless-deer-only license for one of the two regular gun seasons when excess any-deer licenses go on sale or for the holiday season beginning December 15. Such proof must be provided before an optional antlerless-deer-only license can be purchased and must be resubmitted each year in which an optional antlerless-deer-only license is purchased. These licenses do not count against the county quota.

b. Nonresident proof of land ownership. Nonresidents who request preference for optional antlerless-deer-only licenses will be required to submit a copy of their state of Iowa property tax statement for the current year or sign an affidavit that lists the legal description of their land, date purchased, and book and page number, or instrument number, where the deed is recorded.

106.8(3) *Preference points.* Each individual applicant who is unsuccessful in the drawing for an any-deer license will be assigned one preference point for each year that the individual is unsuccessful. If a person who was unsuccessful in the drawing purchases a leftover license within four weeks, the person will receive a refund for the cost of the preference point. Preference points will not accrue in a year in which an applicant fails to apply, but the applicant will retain any preference points previously earned. Preference points will apply only to obtaining any-deer licenses. Once an applicant receives an any-deer nonresident deer hunting license, all preference points will be removed until the applicant is again unsuccessful in a drawing or purchases a preference point as described in 106.8(4). Preference points will apply to any zone or season for which a hunter applies. The first drawing for any-deer licenses each year will be made from the pool of applicants with the most preference points. If licenses are still available after the first drawing, subsequent drawings will be made from pools of applicants with successively fewer preference points and continue until the any-deer license quota is reached or all applicants have received licenses. Applicants who apply as a group will be included in a pool of applicants with the same number of preference points as that of the member of the group with the fewest preference points assigned.

106.8(4) *Purchasing preference points.* A nonresident who does not want to hunt in the current year may purchase one preference point per calendar year. The preference point will apply to the next year's drawing for any-deer licenses. The preference point will be treated in the same manner as preference points obtained by hunters who are unsuccessful in the any-deer license drawing. A nonresident may not purchase a preference point and apply for an any-deer license in the same calendar year. Preference points may be purchased only during the application period for any-deer licenses.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—106.9(481A) Free and reduced-fee deer licenses for resident landowners and tenants. A maximum of one free general deer license, two free antlerless-deer-only licenses, and two reduced-fee antlerless-deer-only licenses may be issued to a qualifying landowner or eligible family member and a qualifying tenant or eligible family member. Eligibility for licenses is described in 571—106.17(481A). The free general deer license shall be available for one of the following seasons: the youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons. One free antlerless-deer-only license shall be available for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons. The second free antlerless-deer-only license shall be valid only for the January antlerless-deer-only season and will be available only if a portion of the farm unit lies within a county where paid antlerless-deer-only licenses are available during that season. Each reduced-fee antlerless-deer-only license shall be valid for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, first and second regular gun seasons, or January antlerless-deer-only seasons. January antlerless-deer-only licenses will be available only if a portion of the farm unit is located in a county where paid antlerless-deer-only licenses are available in that season.

571—106.10(481A) Resident paid deer license quotas and restrictions. Paid deer licenses, including antlerless-deer-only licenses, will be restricted in the type and number that may be purchased.

106.10(1) Paid general deer licenses. Residents may purchase no more than two paid general deer licenses, one for the bow season and one for one of the following seasons: early muzzleloader season, late muzzleloader season, first regular gun season, or second regular gun season. No more than 7,500 paid statewide general deer licenses will be sold for the early muzzleloader season. Fifty additional paid early muzzleloader season licenses will be sold through and will be valid only for the Iowa Army Ammunition Plant. There will be no quota on the number of paid general deer licenses issued in the bow season, late muzzleloader season, first regular gun season, or second regular gun season.

106.10(2) Paid antlerless-deer-only licenses. Paid antlerless-deer-only licenses have quotas for each county and will be sold for each county until quotas are reached.

a. Paid antlerless-deer-only licenses may be purchased for any season in counties where licenses are available, except as outlined in 106.10(2)“*b.*” A license must be used in the season, county or deer population management area selected at the time the license is purchased.

b. No one may obtain paid licenses for both the first regular gun season and second regular gun season regardless of whether the licenses are valid for any deer or antlerless deer only. Paid antlerless-deer-only licenses for the early muzzleloader season may only be purchased by hunters who have already purchased one of the 7,500 paid statewide general deer licenses. Hunters who purchase one of the 7,500 paid statewide general deer licenses for the early muzzleloader season may not obtain paid antlerless licenses for the first or second regular gun season.

c. Prior to September 15, a hunter may purchase one antlerless-deer-only license for any season for which the hunter is eligible. Beginning September 15, a hunter may purchase an unlimited number of antlerless-deer-only licenses for any season for which the hunter is eligible, as set forth in 106.10(2)“*b.*” until the county or population management area quotas are filled. Licenses purchased for deer population management areas will not count in the county quota.

106.10(3) Population management and excess tag January antlerless-deer-only seasons. Only antlerless-deer-only licenses, paid or free, are available in counties pursuant to the conditions described in 106.1(2). A license must be used during the population management or excess tag January antlerless-deer-only season as described in 106.2(4) and in the county or deer population management area selected at the time the license is purchased. Free antlerless-deer-only licenses shall be available only in the portion of the farm unit located in a county where paid antlerless-deer-only licenses are available during the population management or excess tag January antlerless-deer-only season.

106.10(4) Free resident landowner/tenant licenses. A person obtaining a free landowner/tenant license may purchase any combination of paid bow and paid gun licenses available to persons who are not eligible for landowner/tenant licenses as described in 571—106.17(481A).

NATURAL RESOURCE COMMISSION[571](cont'd)

106.10(5) Antlerless-deer-only licenses. Paid antlerless-deer-only licenses shall be available by county as designated annually by the commission. Prior to the commission designating the quotas, the department shall publish on its website (www.iowadnr.gov/Hunting/Deer-Hunting) a proposed allocation and accept public comments for at least 30 days.

571—106.11(481A) Method of take. Permitted weapons and devices vary according to the type of season.

106.11(1) Bow season. Only longbow, compound, or recurve bows shooting broadhead arrows are permitted during the bow season. Arrows must be at least 18 inches long.

a. Crossbows, as described in 106.11(1) “*b*,” may be used during the bow season in the following two situations:

- (1) By persons with certain afflictions of the upper body as provided in 571—15.22(481A); and
- (2) By persons over the age of 65 with an antlerless-deer-only license as provided in Iowa Code section 483A.8B.

b. Crossbow means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire a bolt, arrow, or quarrel by the release of the bow string, which is controlled by a mechanical trigger and a working safety. Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead.

c. No explosive or chemical device may be attached to any arrow, broadhead or bolt.

106.11(2) Regular gun seasons. Only the following shall be used in the regular gun season: 10-, 12-, 16-, and 20-gauge shotguns shooting single slugs; any handgun or rifle as described in Iowa Code section 481A.48; and any muzzleloaders as described in 106.11(3).

106.11(3) Muzzleloader seasons. Only muzzleloading rifles, muzzleloading muskets, muzzleloading pistols, and muzzleloading revolvers will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloading rifle, muzzleloading musket, muzzleloading pistol, muzzleloading revolver, any handgun as defined in 106.11(2), crossbow as described in 106.11(1) “*b*,” or bow as described in 106.11(1). All muzzleloaders as described in this subrule shall only shoot a single projectile between .44 and .775 of an inch.

106.11(4) January antlerless-deer-only seasons.

a. Population management January antlerless-deer-only season. Bows, crossbows, shotguns, muzzleloaders, and handguns, as each is described in this rule, and rifles as described in Iowa Code section 483A.8(9) may be used during the population management January antlerless-deer-only season.

b. Excess tag January antlerless-deer-only season. Only rifles as described in Iowa Code section 483A.8(9) shall be used during the excess tag January antlerless-deer-only season.

106.11(5) Prohibited weapons and devices. The use of dogs, domestic animals, bait, firearms except as provided for in this chapter, crossbows except as provided in 106.11(1), automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. “Bait” means grain, fruit, vegetables, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. “Paraplegic” means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to carry or have in possession a rifle except as provided in 106.11(2) or 106.11(3). Only handguns as described in 106.11(2) may be used to hunt deer and only when a handgun is a lawful method of take.

106.11(6) Discharge of firearms from roadway. No person shall discharge a rifle, including a muzzleloading rifle or musket, or a handgun from a highway while deer hunting. In addition, no person shall discharge a shotgun shooting slugs from a highway north of U.S. Highway 30. A “highway” means the way between property lines open to the public for vehicle traffic, including the road ditch, as defined in Iowa Code section 321.1(78).

NATURAL RESOURCE COMMISSION[571](cont'd)

106.11(7) *Hunting from blinds.* No person shall use a blind for hunting deer during the regular gun deer seasons as defined in 106.2(2), unless such blind exhibits a solid blaze orange marking that is a minimum of 144 square inches in size and is visible in all directions. Such blaze orange shall be affixed directly on or directly on top of the blind. For the purposes of this subrule, the term “blind” is defined as an enclosure used for concealment while hunting, constructed either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122.

571—106.12(481A) Procedures to obtain licenses. All resident deer hunting licenses must be obtained using the ELSI. Licenses may be purchased from ELSI license agents, or online at www.iowadnr.com, or by calling the ELSI telephone ordering system.

106.12(1) *Licenses with quotas.* All paid deer hunting licenses for which a quota is established may be obtained from the ELSI system on a first-come, first-served basis beginning August 15 until the quota fills, or through the last day of the hunting period for which the license is valid.

106.12(2) *Licenses without quotas.* All deer hunting licenses that have no quota may be obtained from the ELSI system beginning August 15 through the last day of the hunting period for which a license is valid.

106.12(3) *Providing false information.*

a. Any person who provides false information about the person’s identity or eligibility for any paid or free landowner/tenant deer license and tag and who attests that the information is correct by accepting and signing the license or tag shall have the person’s hunting license revoked as a part of the sentencing for such criminal conviction, and the person shall not be issued a hunting license for one year pursuant to the authority of Iowa Code section 483A.24(2) “*f*” and 571—15.6(483A).

b. In addition to any legal penalties that may be imposed, the obtaining of a license in violation of this rule shall invalidate that deer license and transportation tag and any other deer hunting license and transportation tag obtained during the same year.

571—106.13(481A) Transportation tag.

106.13(1) *Use of transportation tag.* A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of each antlerless deer or on the main beam between two points, if present, on one of the antlers of an antlered deer in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the deer within 15 minutes of the time the deer carcass is located after being taken or before the carcass is moved to be transported by any means from the place where the deer was taken, whichever occurs first. No person shall tag a deer with a transportation tag issued to another person or with a tag that was purchased after the deer was taken. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to the deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility or until the deer has been processed for consumption. The hunter who killed the deer must tag the deer using the transportation tag issued in that person’s name unless lawfully party hunting.

106.13(2) *Party hunting.*

a. Resident party hunting. During the first and second regular gun seasons and the January antlerless-deer-only seasons, any resident hunter present in the hunting party may use their tag on a deer harvested by another resident.

b. Nonresident party hunting. Party hunting is not allowed by nonresidents.

571—106.14(481A) Resident youth deer and severely disabled hunts.

106.14(1) *Licenses.*

NATURAL RESOURCE COMMISSION[571](cont'd)

a. Youth deer hunt. A youth deer license may be issued to any Iowa resident who is not over 15 years old on the day the youth obtains the license. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free general deer license for which the youth's family is eligible.

Each participating youth must be accompanied by an adult who possesses a regular hunting license and has paid the habitat fee (if the adult is normally required to have a hunting license and to pay the habitat fee to hunt). Only one adult may participate for each youth hunter. The accompanying adult must not possess a long gun, bow, or crossbow and must be in the direct company of the youth at all times.

A person may obtain only one youth general deer license but may also obtain any other paid or free general deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only licenses must be obtained in the same manner with which other hunters obtain them, as described in 106.10(2).

b. Severely disabled hunt. Any severely disabled Iowa resident meeting the requirements of Iowa Code section 321L.1(8) may be issued one general deer license to hunt deer during the youth season. A person applying for this license must either possess a disability parking permit or provide a completed form from the department of natural resources. The form must be signed by a physician verifying that the person's disability meets the criteria defined in Iowa Code section 321L.1(8). The attending physician shall be currently practicing medicine and shall be a medical doctor, a doctor of osteopathy, a physician assistant, or a nurse practitioner. Forms are available online at www.iowadnr.gov, by visiting the Department of Natural Resources office at the Wallace State Office Building, Des Moines, Iowa, or any district office, or by calling 515.725.8200. A person between 16 and 65 years of age must also possess a regular hunting license and have paid the habitat fee to obtain a license (if normally required to have a hunting license and to pay the habitat fee to hunt). A severely disabled person obtaining this license may obtain any other paid and free general deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only licenses must be obtained in the same manner by which other hunters obtain them, as described in 106.10(2).

106.14(2) Season dates. Deer of either sex may be taken statewide for 16 consecutive days beginning on the third Saturday in September. A person who is issued a youth deer hunting license and does not take a deer during the youth deer hunting season may use the deer hunting license and unused tag during any subsequent deer seasons. The license will be valid for the type of deer and in the area specified on the original license. The youth must follow all other rules specified in this chapter for each season, including method of take. If the tag is filled during any of the seasons, the license will not be valid in subsequent seasons.

106.14(3) Shooting hours. Legal shooting hours will be one-half hour before sunrise to one-half hour after sunset each day regardless of weapon used.

106.14(4) Limits and license quotas. An unlimited number of licenses may be issued. The daily and season bag and possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.14(5) Method of take and other regulations. Deer may be taken with shotguns, bows, handguns, rifles, or muzzleloaders as permitted in 571—106.11(481A). Youth hunters using a handgun must be accompanied and under direct supervision throughout the hunt by a responsible person with a valid hunting license who is at least 21 years of age, with the consent of a parent or guardian. The responsible person with a valid hunting license who is at least 21 years of age shall be responsible for the conveyance of the pistol or revolver while the pistol or revolver is not actively being used for hunting. "Direct supervision" means the same as defined in Iowa Code section 483A.27A(4). All participants must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for obtaining licenses or hunting deer shall apply.

106.14(6) Procedures for obtaining licenses. Paid and free youth season licenses and licenses for severely disabled hunters may be obtained through ELSI beginning August 15 through the last day of the youth season.

571—106.15(481A) Nonresident deer hunting season for severely disabled persons.

NATURAL RESOURCE COMMISSION[571](cont'd)

106.15(1) Licenses. A nonresident meeting the requirements of Iowa Code section 321L.1(8) may apply for or purchase a nonresident deer hunting license to participate in a special deer hunting season for severely disabled persons. Nonresidents applying for this license must have on file with the department of natural resources either a copy of a disabilities parking permit issued by a state department of transportation or an Iowa department of natural resources form signed by a physician that verifies their disability.

106.15(2) Season dates. Any deer or antlerless deer may be taken in the hunting zone indicated on the deer license during 16 consecutive days beginning the third Saturday in September.

106.15(3) Shooting hours. Legal shooting hours will be from one-half hour before sunrise until one-half hour after sunset each day regardless of the type of weapon used.

106.15(4) Limits. Daily bag and possession limit is one deer. A person may shoot and tag only one deer by utilizing the license and tag issued in the person's name.

106.15(5) License quotas. Licenses for the special hunting season for severely disabled persons shall be issued from the quotas established in 571—106.7(483A). A special quota will not be set aside for severely disabled persons.

106.15(6) Method of take and other regulations. Deer may be taken with shotgun, bow, muzzleloading rifle or pistol as defined in 571—106.11(483A). All participants must meet the hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for taking deer with a gun or bow shall apply.

106.15(7) Application procedures. Persons meeting the requirements for this season must apply following the procedures described in 571—106.12(483A). A person who does not have a form on file to verify a disability will not be entered into the drawing or be allowed to purchase a license and will have the license fee refunded, less a \$10 administrative fee to cover the cost of handling the application as provided in 571—subrule 15.8(1). License agent writing fees, department administrative fees, Internet sales charges and telephone order charges will not be refunded.

These rules are intended to implement Iowa Code sections 481A.38, 481A.48, 483A.8, and 483A.24.

PART II
DEER DEPREDATION

571—106.16(481A) Deer depredation management. The deer depredation management program provides assistance to producers through technical advice and additional deer licenses and permits where the localized reduction of female deer is needed to reduce damage. Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

106.16(1) Method of take and other regulations. Legal weapons and restrictions will be governed by 571—106.11(481A). For deer shooting permits only, there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93. The producer or designee must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122.

106.16(2) Eligibility. Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nursery stock, and commercially grown nuts) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.

b. Excessive damage is defined as crop losses exceeding \$1,000 in a single growing season, or the likelihood that damage will exceed \$1,000 if preventive action is not taken, or a documented history of at least \$1,000 of damage annually in previous years.

c. Producers who lease their deer hunting rights are not eligible for the deer depredation management program.

NATURAL RESOURCE COMMISSION[571](cont'd)

106.16(3) Depredation management plans. Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage. If deer damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a depredation management plan will be developed by depredation biologists in consultation with the producer.

a. The goal of the management plan will be to reduce damage to below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, temporary fencing, permanent fencing costing less than \$1,000, allowing more hunters, increasing the take of antlerless deer, and other measures.

(2) Depredation permits to shoot deer may be issued to Iowa residents to reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

b. Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the depredation biologist and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

106.16(4) Depredation permits. Two types of permits may be issued under a depredation management plan.

a. Deer depredation licenses. Deer depredation licenses may be sold to resident hunters only for a fee of \$5 for use during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued up to the number specified in the management plan.

(2) The landowner or an eligible family member, which shall include the landowner's spouse or domestic partner and juvenile children, may obtain one depredation license for each season established by the commission.

(3) Depredation licenses will be valid only for hunting antlerless deer, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(4) All other regulations for the hunting season specified on the license apply.

(5) Depredation licenses are valid only on the land where damage is occurring and the immediately adjacent property unless the land is within a designated block hunt area as described in 106.16(4)"a"(6). Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

(6) Block hunt areas are areas designated and delineated by wildlife biologists of the wildlife bureau to facilitate herd reduction in a given area where all producers may not qualify for the depredation program or in areas of persistent deer depredation. Depredation licenses issued to producers within the block hunt area are valid on all properties within the delineated boundaries. Individual landowner permission is required for hunters utilizing depredation licenses within the block hunt area boundaries. Creation of a given block hunt area does not authorize trespass.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation) and to other agricultural producers who have an approved department deer depredation plan, and on areas such as airports where public safety may be an issue.

(1) Deer shooting permits will be issued for a fee of \$5 to the applicant.

(2) The applicant or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops or agricultural crops may be valid for taking deer outside of a hunting season depending on the nature of the damage. The number

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and type of deer to be killed will be determined by a department depredation biologist and will be part of the deer depredation management plan.

(4) Permits issued due to public safety concerns may be used for taking any deer, as necessary, to address unpredictable intrusion that could jeopardize public safety. Permits may be issued for an entire year (January 1 through December 31) if the facility involved signs an agreement with the department.

(5) All deer killed must be recovered and processed for human consumption.

(6) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

(7) Antlers from all deer recovered must be turned over to the conservation officer within 48 hours. Antlers will be disposed of according to department rules.

(8) For out-of-season shooting permits, there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93.

c. Depredation licenses and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

d. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd. This restriction does not apply in situations where shooting permits are issued for public safety concerns.

e. A person who receives a depredation permit pursuant to this paragraph shall pay a \$1 fee for each license that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger (HUSH) program administered by the commission and a \$1 writing fee for each license to the license agent.

571—106.17(481A) Eligibility for free landowner/tenant deer licenses.

106.17(1) *Who qualifies for free deer hunting licenses.*

a. Owners and tenants of a farm unit and the spouse and juvenile child of an owner or tenant who reside with the owner or tenant are eligible for free deer licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

b. Juvenile child defined. “Juvenile child” means a person less than 18 years of age or a person who is 18 or 19 years of age and is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma or a high school equivalency diploma. A person 18 years of age or older who has received a high school diploma or high school equivalency diploma does not qualify.

106.17(2) *Who qualifies as a tenant.* A “tenant” is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner’s family, including in some circumstances the landowner’s spouse or child, or a third party who is not a family member. The tenant does not have to reside on the farm unit.

106.17(3) *What “actively engaged in farming” means.* Landowners and tenants are “actively engaged in farming” if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or in kind. A farm manager or other third party who operates a farm for a fee or a laborer who works on the farm for a wage and is not a family member does not qualify as a tenant.

106.17(4) *Landowners who qualify as active farmers.* These landowners:

a. Are the sole operator of a farm unit (along with immediate family members), or

b. Make all decisions about farm operations, but contract for custom farming or hire labor to do some or all of the work, or

c. Participate annually in decisions about farm operations such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or

d. Raise specialty crops from operations such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or

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e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or

f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

106.17(5) *Landowners who do not qualify.* These landowners:

a. Use a farm manager or other third party to operate the farm, or

b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

106.17(6) *Where free licenses are valid.* A free license is valid only on that portion of the farm unit that is in a zone open to deer hunting. “Farm unit” means all parcels of land in tracts of two or more contiguous acres that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant regardless of how that land is subdivided for business purposes. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. “Agricultural purposes” includes but is not limited to field crops, livestock, horticultural crops (e.g., from nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

106.17(7) *Registration of landowners and tenants.* Landowners and tenants and their eligible family members who want to obtain free deer hunting licenses must register with the department before the free licenses will be issued. Procedures for registering are described in 571—95.2(481A).

571—106.18(481A) Harvest reporting. Each hunter who bags a deer must report that kill according to procedures described in 571—95.1(481A).

These rules are intended to implement Iowa Code chapter 481C.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7917C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to licensure

The Board of Behavioral Science hereby rescinds Chapter 31, “Licensure of Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, and Assistant Behavior Analysts,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapters 17A, 147, 154D and 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 154D and 272C.

Purpose and Summary

This rulemaking sets minimum standards for entry into the professions of mental health counselors, marital and family therapists, behavior analysts and assistant behavior analysts. Iowa residents, licensees and employers benefit from the rulemaking because it articulates the processes by which individuals apply for licensure in these professions in the state of Iowa, as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety by

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ensuring that any individual entering the profession has minimum competency. Requirements include the application process, minimum educational qualifications, and examination requirements.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7293C**. Public hearings were held on February 13 and 14, 2024, at 9:40 a.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings.

The Board received comments from the Iowa Mental Health Counselors Association expressing support for the efforts to reduce barriers to licensure. The Association also sought clarification on proposed changes to licensure by endorsement requirements. The American Association for Marriage and Family Therapy requested the Board remove the requirement for verifying an official transcript for licensure by endorsement applicants.

After discussion, the Board felt that keeping the requirement for an official transcript was appropriate. No changes from the Notice have been made based on the public comments.

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 14, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 31 and adopt the following **new** chapter in lieu thereof:

BEHAVIORAL SCIENTISTS

- | | |
|------------|--|
| CHAPTER 31 | LICENSURE OF MARITAL AND FAMILY THERAPISTS, MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT BEHAVIOR ANALYSTS |
| CHAPTER 32 | CONTINUING EDUCATION FOR MARITAL AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS |
| CHAPTER 33 | DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS, MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT BEHAVIOR ANALYSTS |

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

CHAPTER 31

LICENSURE OF MARITAL AND FAMILY THERAPISTS, MENTAL HEALTH COUNSELORS,
BEHAVIOR ANALYSTS, AND ASSISTANT BEHAVIOR ANALYSTS

645—31.1(154D) Definitions. For purposes of these rules, the following definitions shall apply:

“*ACA*” means the American Counseling Association.

“*Active license*” means a license that is current and has not expired.

“*AMFTRB*” means the Association of Marital and Family Therapy Regulatory Boards.

“*AMHCA*” means the American Mental Health Counselors Association.

“*BACB*” means the Behavior Analyst Certification Board.

“*Board*” means the board of behavioral science.

“*CCE*” means the Center for Credentialing and Education, Inc.

“*Course*” means three graduate semester credit hours.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*Licensee*” means any person licensed to practice as a marital and family therapist, mental health counselor, behavior analyst, or assistant behavior analyst in the state of Iowa.

“*License expiration date*” means September 30 of even-numbered years for marital and family therapists and mental health counselors, and means the expiration date of the certification issued by the Behavior Analyst Certification Board for behavior analysts and assistant behavior analysts.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is or has been licensed in another state.

“*Mental health setting*” means a behavioral health setting where an applicant is providing mental health services including the diagnosis, treatment, and assessment of emotional and mental health disorders and issues.

“*NBCC*” means the National Board for Certified Counselors.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—31.13(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

“*Temporary license*” means a license to practice marital and family therapy or mental health counseling under direct supervision of a qualified supervisor as determined by the board by rule to fulfill the postgraduate supervised clinical experience requirement in accordance with this chapter.

645—31.2(154D) Requirements for permanent and temporary licensure as a mental health counselor or marriage and family therapist. The following criteria shall apply to licensure:

31.2(1) The applicant shall submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.3(147,154D).

31.2(2) The applicant for a mental health counseling license shall submit two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). The cost of the criminal history background check by the DCI and the FBI shall be assessed to the applicant.

31.2(3) No application will be considered by the board until official copies of academic transcripts sent directly from the school to the board of behavioral science have been received by the board or an equivalency evaluation completed by the CCE has been received by the board. The applicant shall present proof of meeting the educational requirements. Documentation of such proof shall be on file in the board office with the application and include one of the following:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. For licensure as a marital and family therapist, an official transcript verifying completion of a marital and family therapy program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) as defined in subrule 31.5(1) or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in subrule 31.5(2).

b. For licensure as a mental health counselor, an official transcript verifying completion of a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) as defined in subrule 31.6(1) or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in subrule 31.6(2).

31.2(4) The applicant is required to take the examination(s) provided in rule 645—31.3(1).

31.2(5) The applicant for permanent licensure shall submit the required attestation of supervision forms documenting clinical experience as required in rule 645—31.7(154D).

31.2(6) The applicant for temporary licensure must submit a supervision plan to the board prior to licensure. Within 30 days of completion of the supervised clinical experience, the attestation of the completed supervised experience must be submitted to the board office. The temporary licensee shall remain under supervision until a permanent license is issued.

31.2(7) A temporary license is only valid for the purpose of fulfilling the postgraduate supervised clinical experience requirement. It is valid for three years and may be renewed at the discretion of the board.

31.2(8) A licensee who was issued an initial permanent license within six months prior to the renewal shall not be required to renew the license until the renewal date two years later.

31.2(9) An application for a temporary or permanent license will be considered active for two years from the date the application is received. If the applicant does not submit all materials within this time period or if the applicant does not meet the requirements for the license, the application shall be considered incomplete. An applicant whose application is filed incomplete must submit a new application, supporting materials, and the application fee. The board shall destroy incomplete applications after two years.

645—31.3(154D) Examination requirements for mental health counselors and marital and family therapists. The following criteria shall apply to the written examination(s):

31.3(1) The applicant will take and pass the following examinations in order to qualify for licensing:

a. For a marital and family therapist license, the AMFTRB Examination in Marital and Family Therapy.

b. For a mental health counselor license or a temporary mental health counselor license, the National Counselor Examination (NCE) of the NBCC or the National Clinical Mental Health Counselor Examination (NCMHCE) of the NBCC. For a temporary mental health counselor license, the NCE of the NBCC or the NCMHCE of the NBCC.

c. For a mental health counselor license, the NCMHCE of the NBCC.

31.3(2) The passing score on the written examination shall be the passing point criterion established by the appropriate national testing authority at the time the test was administered.

31.3(3) An applicant who is requesting approval to take the licensure examination prior to graduation shall:

a. Submit a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.3(147,154D).

b. Have a letter on official school letterhead sent directly from the program director to the board indicating that the applicant is in good academic standing; that the applicant will graduate from the program within three months of the date on the letter; and the applicant's anticipated date of graduation.

645—31.4(147) Professional counselor licensing compact. The rules of the Counseling Compact Commission are incorporated by reference.

645—31.5(154D) Educational qualifications for marital and family therapists. The applicant must complete the required semester credit hours, or equivalent quarter hours, of graduate level coursework

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in each of the content areas identified in subrule 31.5(2); no course may be used more than once. The applicant must present proof of completion of the following educational requirements for licensure as a marital and family therapist:

31.5(1) Accredited program. Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in marital and family therapy from a program accredited by the COAMFTE from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

31.5(2) Content-equivalent program. Applicants must present an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in marital and family therapy, behavioral science, or a counseling-related field from a college or university accredited by an agency recognized by the United States Department of Education, which is content-equivalent to a graduate degree in marital and family therapy. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. Graduates from non-COAMFTE-accredited marital and family therapy programs shall provide an equivalency evaluation of the graduates' educational credentials by the CCE, website cce-global.org.

645—31.6(154D) Educational qualifications for mental health counselors. The applicant must complete three semester credit hours, or equivalent quarter hours, of graduate level coursework in each of the content areas identified in subrule 31.6(2); no course may be used to fulfill more than one content area. The applicant must present proof of completion of the following educational requirements for licensure as a mental health counselor:

31.6(1) Accredited program. Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or equivalent quarter hours) or a doctoral degree in counseling with emphasis in mental health counseling from a mental health counseling program accredited by the CACREP from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, 2012, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent; or

31.6(2) Content-equivalent program. Applicants must present an official transcript verifying completion of a master's degree or a doctoral degree from a college or university accredited by an agency recognized by the United States Department of Education that is content-equivalent to a master's degree in counseling with emphasis in mental health counseling. Graduates from non-CACREP accredited mental health counseling programs shall provide an equivalency evaluation of their educational credentials by the CCE, website cce-global.org.

31.6(3) Foreign-trained marital and family therapists or mental health counselors. Foreign-trained marital and family therapists or mental health counselors shall:

a. Provide an equivalency evaluation of their educational credentials by the following: International Education Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone 310.258.9451; website www.ierf.org or email at info@ierf.org. A candidate shall bear the expense of the curriculum evaluation.

b. Receive a final determination from the board regarding the application for licensure.

645—31.7(154D) Supervised clinical experience. An applicant for licensure as a mental health counselor or marital and family therapist must complete a supervised clinical experience as set forth in this rule.

31.7(1) Minimum requirements. The supervised clinical experience must satisfy all of the following requirements:

a. Timing. The supervised clinical experience cannot begin until after all graduate coursework has been completed with the exception of the thesis.

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- b. Duration.* The supervised clinical experience must be for a minimum of two years.
- c. Minimum number of hours.* The supervised clinical experience must consist of at least 3,000 hours of practice.
- d. Minimum number of direct client hours.* The supervised clinical experience will consist of at least 1,500 hours of direct client contact.
- e. Minimum number of direct supervision hours.* The supervised clinical experience will consist of at least 110 hours of direct supervision equitably distributed throughout the supervised clinical experience, including at least 24 hours of live or recorded direct observation of client interaction. A maximum of 50 hours of direct supervision may be obtained through group supervision. Direct supervision can occur in person or by using videoconferencing. After 110 hours of direct supervision are complete, ongoing direct supervision will continue to occur for the remainder of the supervised clinical experience.
- f. Number of supervisors.* A supervisee may utilize a maximum of four supervisors at any given time. A supervisee is responsible for notifying each supervisor if another supervisor is also being utilized to allow for coordination as appropriate.
- g. Number of supervisees.* A supervisor will determine the number of supervisees who can be supervised safely and competently and will not exceed that number.
- h. Content.* The supervised clinical experience must involve performing psychosocial assessments, diagnostic practice using the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) published March 2022, and providing treatment, including the establishment of treatment goals, psychosocial therapy using evidence-based therapeutic modalities, and differential treatment planning. The supervised clinical experience will prepare the supervisee for independent practice and must include training on practice management, ethical standards, legal and regulatory requirements, documentation, coordination of care, and self-care.

31.7(2) Eligible supervisors. A supervisor must satisfy all of the following requirements:

- a.* Hold an active license as an independent level social worker, mental health counselor, or marital and family therapist in Iowa.
- b.* Have a minimum of three years of independent practice.
- c.* Have completed at least a six-hour continuing education course in supervision or one graduate-level course in supervision.
- d.* Be knowledgeable of the applicable ethical code and licensing rules governing the supervisee.

Any request for a supervisor who does not meet these requirements must be approved by the board before supervision begins.

31.7(3) Supervision plan. Prior to beginning supervision, the supervisee will submit a written supervision plan to the board using the current form published by the board. The supervisee will also submit a written supervision plan to the board prior to beginning supervision with a new supervisor.

31.7(4) Supervision report. When supervision is complete, or when a supervisor ceases providing supervision to the supervisee, the supervisee will ensure a completed supervision report using the current form published by the board is submitted to the board. If the supervisor reports that the supervisee is not adequately prepared for independent licensure, or reports violations of the board's rules or applicable ethical code, the board may require the supervisee to complete additional supervision or training as deemed appropriate prior to licensure.

31.7(5) Supervised clinical experience in other states. An applicant who completed some or all of the supervised clinical experience in another state without obtaining licensure in that state should contact the board to determine whether some or all of the supervised clinical experience that has been completed can be used to qualify for licensure in Iowa.

31.7(6) Grandfather clause. Any new or additional requirements imposed by this rule do not apply to supervision that started prior to July 20, 2022.

645—31.8(154D) Licensure by endorsement for mental health counselors and marital and family therapists. An applicant who has been a licensed marriage and family therapist or mental health

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

counselor under the laws of another jurisdiction may file an application for licensure by endorsement with the board office.

31.8(1) The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

a. Meets the requirements of rule 645—31.2(154D); and

b. Provides verification of license from the jurisdiction in which the applicant has been most recently licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

31.8(2) In lieu of meeting the requirements of subrules 31.2(4) and 31.2(5), applicants who meet the qualifications below may instead submit documentation demonstrating how each of the qualifications below is satisfied:

a. The applicant possesses a master's degree or higher in mental health counseling or marital and family therapy or an equivalent counseling-related field; and

b. The applicant does not have any past or pending disciplinary action from any state licensing boards related to any mental health counseling or marital and family therapy license currently or previously held by the applicant.

31.8(3) A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

645—31.9(147) Licensure of behavior analysts and assistant behavior analysts.

31.9(1) The applicant must submit a completed application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.3(147,154D).

31.9(2) For licensure as a behavior analyst, the applicant shall submit proof of current BACB certification as a board-certified behavior analyst or board-certified behavior analyst-doctoral. For licensure as an assistant behavior analyst, the applicant shall submit proof of current BACB certification as a board-certified assistant behavior analyst.

645—31.10(147) License renewal for mental health counselors and marriage and family therapists.

31.10(1) The biennial license renewal period for a license to practice marital and family therapy or mental health counseling shall begin on October 1 of an even-numbered year and end on September 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

31.10(2) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—32.2(272C). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

31.10(3) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting as required by Iowa Code section 232.69(3) "b" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 31.10(3) "d."

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b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) “*b*” in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 31.10(3) “*d*.”

c. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs 31.10(3) “*a*” and “*b*,” including program date(s), content, duration, and proof of participation.

d. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 4.

e. The board may select licensees for audit of compliance with the requirements in paragraphs 31.10(3) “*a*” to “*d*.”

31.10(4) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

31.10(5) A person licensed to practice as a marital and family therapist or mental health counselor shall keep the person’s license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

31.10(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 5.3(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

31.10(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice mental health counseling or marital and family therapy in Iowa until the license is reactivated. A licensee who practices mental health counseling or marital and family therapy in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—31.11(272C) Initial licensing, reactivation, and license renewal for behavior analysts and assistant behavior analysts.

31.11(1) An initial license for a behavior analyst or assistant behavior analyst shall be issued with the same expiration date as the applicant’s current certification issued by BACB.

31.11(2) The biennial license renewal period for a behavior analyst or assistant behavior analyst shall run concurrent with the licensee’s BACB certification. Each license renewed shall be given the expiration date that is on the licensee’s current BACB certification. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

31.11(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements required by BACB to renew a certification.

b. Maintain current certification as a board-certified behavior analyst, board-certified behavior analyst-doctoral, or board-certified assistant behavior analyst issued by BACB.

c. Submit the completed renewal application and renewal fee before the license expiration date.

31.11(4) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a license. In the event the board receives adverse information on the renewal

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

31.11(5) A person licensed as a behavior analyst or assistant behavior analyst shall keep the person's license certificate and renewal displayed in a conspicuous public place at the primary site of practice.

31.11(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.3(5). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

31.11(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not engage in the practice of applied behavior analysis for which a license is required in Iowa until the license is reactivated. A licensee who practices applied behavior analysis in a capacity that requires licensure in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

31.11(8) Reactivation. To apply for reactivation of an inactive license, a licensee shall submit a completed renewal application and proof of current certification and shall be assessed a reactivation fee as specified in 645—subrule 5.3(6).

645—31.12(147) Licensee recordkeeping.

31.12(1) A licensee shall maintain sufficient, timely, and accurate documentation in client records.

31.12(2) For purposes of this rule, “client” means the individual, couple, family, or group to whom a licensee provides direct clinical services.

31.12(3) A licensee's records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

31.12(4) Clinical services. A licensee who provides clinical services in any employment setting, including private practice, shall:

a. Store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all client records for a minimum of seven years after the date of the client's discharge or death, or, in the case of a minor, for three years after the client reaches the age of majority under state law or seven years after the date of the client's discharge or death, whichever is longer.

b. Maintain timely records that include subjective and objective data, an assessment, a treatment plan, and any revisions to the assessment or plan made during the course of treatment.

c. Provide the client with reasonable access to records concerning the client. A licensee who is concerned that a client's access to the client's records could cause serious misunderstanding or harm to the client shall provide assistance in interpreting the records and consultation with the client regarding the records. A licensee may limit a client's access to the client's records, or portions of the records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both the client's request for access and the licensee's rationale for withholding some or all of a record shall be documented in the client's records.

d. Take steps to protect the confidentiality of other individuals identified or discussed in any records to which a client is provided access.

31.12(5) Electronic recordkeeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

31.12(6) Correction of records.

a. Hard-copy records. Original notations shall be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in the original record, it must be crossed out with a single, nondeleting line and be initialed and dated by the licensee.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

31.12(7) Confidentiality and transfer of records. Marital and family therapists or mental health counselors shall preserve the confidentiality of client records in accordance with their respective rules of conduct and with federal and state law. Upon receipt of a written release or authorization signed by the client, the licensee shall furnish such therapy records, or copies of the records, as will be beneficial for the future treatment of that client. A fee may be charged for duplication of records, but a licensee may not refuse to transfer records for nonpayment of any fees. A written request may be required before transferring the record(s).

31.12(8) Retirement, death or discontinuance of practice.

a. If a licensee is retiring or discontinuing practice and is the owner of a practice, the licensee shall notify in writing all active clients and, upon knowledge and agreement of the clients, shall make reasonable arrangements with those clients to transfer client records, or copies of those records, to the succeeding licensee.

b. Upon a licensee's death:

(1) The licensee's employer or representative must ensure that all client records are transferred to another licensee or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The licensee's employer or representative shall notify each active client that the client's records will be transferred to another licensee or entity that will retain custody of the records and that, at the client's written request, the records will be sent to the licensee or entity of the client's choice.

31.12(9) Nothing stated in this rule shall prohibit a licensee from conveying or transferring the licensee's client records to another licensed individual who is assuming a practice, provided that written notice is furnished to all clients.

645—31.13(17A,147,272C) License reactivation for mental health counselors and marital and family therapists. To apply for reactivation of an inactive license, a licensee shall:

31.13(1) Submit a reactivation application.

31.13(2) Pay the reactivation fee that is due as specified in 645—Chapter 5.

31.13(3) Provide:

a. Verification of license from the jurisdiction in which the applicant has been most recently licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license; and

b. Verification of a current active license in another jurisdiction at the time of application or verification of completion of continuing education taken within two years of the application. If the license has been inactive for less than five years, the applicant must submit verification of 40 hours of continuing education, and if the license has been inactive for more than five years, the applicant must submit verification of 80 hours of continuing education.

645—31.14(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—31.13(17A,147,272C) or subrule 31.11(8) prior to practicing mental health counseling, marital and family therapy, or applied behavior analysis in this state.

645—31.15(154D) Marital and family therapy and mental health counselor services subject to regulation. Marital and family therapy and mental health counselor services provided to an individual

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

in this state through telephonic, electronic or other means, regardless of the location of the marital and family therapy and mental health counselor, shall constitute the practice of marital and family therapy and mental health counseling and shall be subject to regulation in Iowa.

645—31.16(154D) Temporary licensees. A temporary licensee shall engage only in the practice of marital and family therapy or mental health counseling as part of an agency or group practice with oversight over the temporary licensee. The agency or group practice shall have at least one independently licensed mental health provider. A temporary licensee shall not practice as a solo practitioner or solely with other temporary licensees.

These rules are intended to implement Iowa Code chapters 17A, 147, 154D and 272C.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7918C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to continuing education

The Board of Behavioral Science hereby rescinds Chapter 32, "Continuing Education for Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapters 17A, 147, 154D and 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 154D and 272C.

Purpose and Summary

This rulemaking sets forth continuing education requirements for mental health counselors and marital and family therapists. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that mental health counselors and marital and family therapists maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7294C**. Public hearings were held on February 13 and 14, 2024, at 9:40 a.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings.

The Board received two comments. The Iowa Mental Health Counselors Association expressed no concerns with the proposed revisions. A licensee proposed a revision to replace "approved by the board" with "meets the requirements of this chapter." The suggested edit provides clarity that continuing education courses do not have to have a Board approval process and that the courses only need to meet the requirements in Chapter 32.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The Board revised subrule 32.2(1) to replace “approved by the board” with “meets the requirements of this chapter.”

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 14, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 32 and adopt the following **new** chapter in lieu thereof:

CHAPTER 32
CONTINUING EDUCATION FOR MARITAL AND
FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS

645—32.1(272C) Definitions. For the purpose of these rules, the following definitions will apply:

“*Active license*” means the license is current and has not expired.

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Board*” means the board of behavioral science.

“*Continuing education*” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee in actual attendance at and completion of approved continuing education activity.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“*Independent study*” means a continuing education program or activity that a licensee pursues autonomously that includes a posttest and meets the general criteria in subrule 32.3(1).

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice marital and family therapy or mental health counseling in the state of Iowa.

645—32.2(272C) Continuing education requirements.

32.2(1) The biennial continuing education compliance period shall extend for a 25-month period beginning on September 1 of the even-numbered year and ending on September 30 of the next even-numbered year. Each biennium, each person who is licensed to practice as a licensee in this state is required to complete a minimum of 40 hours of continuing education that meets the requirements of this chapter.

32.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired any time from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

32.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

32.2(4) No hours of continuing education will be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

32.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—32.3(154D,272C) Standards.

32.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters which integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters.

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

32.3(2) *Specific criteria.* Continuing education hours of credit may be obtained by completing the following:

a. Attendance at workshops, conferences, symposiums and webinars.

b. Academic courses. Official transcripts indicating successful completion of academic courses which apply to the field of mental health counseling or marital and family therapy, as appropriate, will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

c. Completion of independent study courses that meet the general criteria in subrule 32.3(1).

d. A maximum of 20 hours of continuing education credit may be granted for any of the following activities not to exceed a combined total of 20 hours:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(1) Presenting professional programs which meet the criteria in rule 645—32.3(272C). Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit. Presentation at a professional program does not include teaching a class at an institution of higher learning at which the applicant is regularly and primarily employed. Presentations to lay public are excluded.

(2) Scholarly research or other activities, the results of which are published in a recognized professional publication such as a refereed journal, monograph or conference proceedings. The scholarly research must be integrally related to the practice of the professions.

(3) Publication in a refereed journal. The article in a refereed journal for which the licensee is seeking continuing education credit must be integrally related to the practice of the professions.

(4) Teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of the course.

(5) Authoring papers, publications, and books. The licensee will receive 5 hours of credit per page with a maximum of 20 hours of credit.

(6) Serving on a state or national professional board. The licensee will receive a maximum of three hours of credit.

32.3(3) Required specific criteria:

a. Three hours of the 40 continuing education hours will be in ethics.

b. Effective with the biennial continuing education compliance period that begins October 1, 2022, persons serving in a supervisory role must complete three hours of continuing education in supervision.

c. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats adults in Iowa shall complete, within six months of employment or prior to the expiration of a current certification, an initial two-hour course in dependent adult abuse training for mandatory reporters offered by the department of health and human services. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certification.

d. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats children in Iowa shall complete, within six months of employment or prior to the expiration of a current certification, an initial two-hour course in child abuse training for mandatory reporters offered by the department of health and human services. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certification.

These rules are intended to implement Iowa Code section 272C.2 and chapter 154D.

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ARC 7919C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to discipline

The Board of Behavioral Science hereby rescinds Chapter 33, "Discipline for Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, and Assistant Behavior Analysts," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapters 17A, 147, 154D and 272C.

State or Federal Law Implemented

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 154D and 272C.

Purpose and Summary

This rulemaking provides protection to Iowans because it publicly defines disciplinary options when a mental health counselor, marital and family therapist, behavior analyst, or assistant behavior analyst fails to provide the standard of care. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, a licensee can be subject to discipline against a license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the Board of Behavioral Science and are therefore excluded from the general disciplinary chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7295C**. Public hearings were held on February 13 and 14, 2024, at 9:40 a.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings.

Three members of the public and the Iowa Mental Health Counselors Association requested the addition of the American Mental Health Counselors Association Code of Ethics to paragraph 33.1(1)“b.”

No changes from the Notice have been made. The Board could not reach a consensus on the suggested change. The Board agreed to finalize this version of the rulemaking and revisit the potential change to the Code of Ethics at a future date.

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 14, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Rescind 645—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33
DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS,
MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS,
AND ASSISTANT BEHAVIOR ANALYSTS

645—33.1(154D,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—33.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

33.1(1) Failure to comply with the national association's code of ethics.

a. Marital and family therapists. Failure to comply with the current American Association for Marriage and Family Therapy (AAMFT) Code of Ethics revised January 2015, which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the AAMFT's website.

b. Mental health counselors. Failure to comply with the current Code of Ethics of the American Counseling Association (ACA) published 2014, which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the ACA website.

c. Behavior analysts and assistant behavior analysts. Failure to comply with the current Behavior Analyst Certification Board (BACB) Professional and Ethical Compliance Code for Behavior Analysts published January 2023, which is hereby adopted by reference. Copies of the Professional and Ethical Compliance Code may be obtained from the BACB website.

33.1(2) Sexual relationships.

a. Current clients. A licensee shall not engage in sexual activities or sexual contact with a client, regardless of whether such contact is consensual or nonconsensual.

b. Former clients. A licensee shall not engage in sexual activities or sexual contact with a former client within the five years following termination of the client relationship. A licensee shall not engage in sexual activities or sexual contact with a former client, regardless of the length of time elapsed since termination of the client relationship, if the client has a history of physical, emotional, or sexual abuse or if the client has ever been diagnosed with any form of psychosis or personality disorder or if the client is likely to remain in need of therapy due to the intensity or chronicity of a problem.

c. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's spouse or significant other.

d. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's relative within the second degree of consanguinity (client's parent, grandparent, child, grandchild, or sibling) when there is a risk of exploitation or potential harm to a client or former client.

e. A licensee shall not provide clinical services to an individual with whom the licensee has had prior sexual contact.

33.1(3) Physical contact. A licensee shall not engage in physical contact with a client when there is a possibility of psychological harm to the client as a result of the contact. A licensee who engages in appropriate physical contact with a client is responsible for setting clear, appropriate, and culturally and age-sensitive boundaries which govern such contact.

This rule is intended to implement Iowa Code chapters 17A, 147, 154D and 272C.

[Filed 4/1/24, effective 6/5/24]

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ARC 7920C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to licensure

The Board of Barbering and Cosmetology Arts and Sciences hereby rescinds Chapter 60, “Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences,” and adopts a new Chapter 60, “Licensure of Barbers and Cosmetologists, Electrologists, Estheticians, Nail Technologists, and Instructors of Barbering and Cosmetology Arts and Sciences,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 147.36, 157.14, 272C.2A, 272C.3, 272C.4 and 272C.10 and Executive Order 10 (January 10, 2023).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 157 and 272C; 2022 Iowa Acts, House File 652; and Executive Order 10 (January 10, 2023).

Purpose and Summary

This rulemaking sets minimum standards of entry into the barbering and cosmetology arts and sciences professions. Iowa residents, licensees, and employers benefit from the rulemaking because the rulemaking clarifies the processes by which licensees may apply for licensure as a barber and cosmetologist, nail technician, esthetician, electrologist, or instructor as directed in statute. This includes the process for initial licensure, renewal, and reinstatement. These requirements ensure public safety through review of the integrity and competence of the practitioner. Requirements include the application process, educational qualifications, and examination requirements. The rulemaking also articulates the merger of the Board of Barbering with the Board of Cosmetology Arts and Sciences, providing guidance for legacy license holders.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7537C**. Public hearings were held on February 13 and 14, 2024, at 1:50 p.m. 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings.

Proposed paragraph 60.5(1)“c” provided that shaving, defined by rule as the manual removal of hair from the face, head or neck by cutting it close to the skin, could only be performed with disposable straight edge razors. The Board received a public comment expressing concern about the proposed prohibition on fixed-blade, reusable straight edge razors. On review, the Administrative Rules Review Committee deferred this matter to the full Board. During public session, the Board discussed potential health and safety concerns relating to fixed blade, reusable straight edge razors compared to disposable razors. The Board ultimately voted 6-1 to remove the proposed paragraph, concluding that public health and safety would not be jeopardized by permitting fixed blade, reusable straight edge razors to be used for shaving.

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 28, 2024.

Fiscal Impact

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

Jobs Impact

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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 rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 1, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 60 and adopt the following **new** chapter in lieu thereof:

COSMETOLOGISTS

CHAPTER 60	LICENSURE OF BARBERS AND COSMETOLOGISTS, ELECTROLOGISTS, ESTHETICIANS, NAIL TECHNOLOGISTS, AND INSTRUCTORS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES
CHAPTER 61	LICENSURE OF ESTABLISHMENTS AND SCHOOLS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES
CHAPTER 62	RESERVED
CHAPTER 63	INFECTION CONTROL FOR ESTABLISHMENTS AND SCHOOLS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES
CHAPTER 64	CONTINUING EDUCATION FOR BARBERING AND COSMETOLOGY ARTS AND SCIENCES
CHAPTER 65	DISCIPLINE FOR BARBERING AND COSMETOLOGY ARTS AND SCIENCES LICENSEES, INSTRUCTORS, AND SCHOOLS

CHAPTER 60

LICENSURE OF BARBERS AND COSMETOLOGISTS, ELECTROLOGISTS, ESTHETICIANS, NAIL TECHNOLOGISTS, AND INSTRUCTORS OF BARBERING AND COSMETOLOGY ARTS AND SCIENCES

645—60.1(157) Definitions. In addition to the definitions included in Iowa Code sections 157.1 and 84D.2 and 29 Code of Federal Regulations (CFR) §29.5 as amended on December 19, 2016, the following definitions apply to terms used in this chapter:

“*Active license*” means a license that is current and has not expired.

“*Core curriculum*” means the basic core life sciences curriculum that is required for completion of any course of study of barbering and cosmetology arts and sciences except for manicuring.

“*Examination*” means any of the tests used to determine minimum competency prior to the issuance of a barbering and cosmetology arts and sciences license.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Legacy curriculum*” means a course of study and curriculum offered by barbering schools or cosmetology arts and sciences schools that, as applicable, comply with the administrative rules issued by the Iowa board of barbering or by the Iowa board of cosmetology arts and sciences that were in effect on June 30, 2023.

“*Licensee*” means any person or entity licensed to perform practice disciplines governed by the board of barbering and cosmetology arts and sciences pursuant to Iowa Code chapter 157 and 645—Chapters 60 through 65.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice barbering and cosmetology arts and sciences to an applicant who is or has been licensed in the District of Columbia or in another state, territory, province or foreign country and who has held an active license under the laws of such other jurisdiction for at least 12 months during the past 24 months.

“*Mentor*” means a licensee providing guidance in a mentoring program.

“*Mentoring*” means a program allowing students to experience barbering and cosmetology arts and sciences in a licensed establishment under the guidance of a mentor.

“*NIC*” means the National-Interstate Council of State Boards of Cosmetology, Inc.

“*Pedicuring*” means the practice of cleaning, shaping or polishing the toenails.

“*Practice discipline*” means the practice of electrology, esthetics, nail technology, or barbering and cosmetology as recognized by the board of barbering and cosmetology arts and sciences.

“*Prescribed practice*” means an area of specialty certified by the board within the scope of barbering and cosmetology arts and sciences.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—60.9(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

“*Shaving*” means the manual removal of hair from the face, head or neck by cutting it close to the skin.

“*Testing service*” means a national testing service selected by the board.

645—60.2(157) Initial licensure.

60.2(1) Requirements for licensure. All persons providing services in one or more practice disciplines shall hold a license issued by the board. The applicant shall:

a. Submit a completed online application and pay the nonrefundable fee specified in 645—subrule 5.5(1).

b. Demonstrate professional competence in one of the following ways:

(1) A person who is licensed in another jurisdiction may complete the licensure by endorsement application. If the applicant is licensed in another jurisdiction as an electrologist, nail technologist or esthetician, then a successful applicant will receive a license in such practice discipline. If the applicant is licensed in another jurisdiction as a barber or as a cosmetologist, and the applicant is requesting licensure in the practice discipline of barbering and cosmetology, then a successful applicant will receive a license as a barber and cosmetologist. All applicants must provide a verification of license from the jurisdiction in which the applicant has most recently been licensed, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction’s board office if the verification includes:

1. Licensee’s name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(2) A person who is licensed in another jurisdiction who is unable to satisfy the requirements of licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

(3) An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

c. Provide proof of completion of education.

(1) If the applicant graduated from a school that is licensed by the board, the applicant is to direct the educational program to submit to the board a diploma or an official transcript indicating date of graduation and completion of required hours in each practice discipline for which the applicant is requesting licensure.

If an applicant graduates from a licensed school after completing a course of study constituting a legacy curriculum as prescribed in 645—subrule 61.14(6), such graduation will satisfy the education requirement for the applicable practice discipline for which the applicant is requesting licensure. For purposes of this subrule, a legacy curriculum in barbering or a legacy curriculum in cosmetology will be sufficient proof of education for an applicant requesting a license to practice barbering and cosmetology.

(2) If the applicant graduated from a school that is not licensed by the board, the applicant is to direct the school to provide an official transcript showing completion of a course of study that meets the requirements of rule 645—61.14(157).

(3) If the applicant has graduated from an apprenticeship program, the applicant must direct the Iowa office of apprenticeship registered apprenticeship program to submit a certificate of completion.

(4) If the applicant was educated outside the United States, the applicant is to attach an original evaluation of the applicant's education from any accredited evaluation service.

60.2(2) *Requirements for an instructor's license.* An applicant for an instructor's license shall:

a. Submit a completed application for licensure and the appropriate fee to the board;

b. Be licensed in the state of Iowa in the prescribed practice discipline to be taught or be licensed as a barber and cosmetologist who possesses the skill and knowledge required to instruct in that practice discipline;

c. Provide documentation of completion of 1,000 hours of instructor's training or two years' active practice in the field of barbering and cosmetology, esthetics, electrology, or nail technology within six years prior to application;

d. For an instructor of electrology license, submit proof of 60 hours of practical experience, excluding school hours, in the area of electrolysis prior to application;

e. Pass an instructor's national examination, which, effective January 1, 2008, shall be the NIC instructor examination unless the applicant is applying for an instructor's license by endorsement as outlined in paragraph 60.2(1)"*b.*"

60.2(3) *Conditions.* The following conditions apply for all licenses:

a. Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.

b. Licensees who were issued their initial licenses within six months prior to the license renewal beginning date are not required to renew their licenses until the renewal month two years later.

c. The board may issue a single license number and expiration date to licensees who hold licenses in multiple practice disciplines.

645—60.3(157) Examination requirements.

60.3(1) An applicant shall pass a national examination prescribed by the board for the particular practice discipline with a score of 75 percent or greater.

The applicant shall submit the test registration fee directly to the test service. NIC examinations are administered according to guidelines set forth by the NIC.

60.3(2) If applying for licensure by endorsement, an applicant who graduated from a barber or cosmetology school prior to January 1, 2000, shall have passed the state written and practical examination required by the state in which the applicant was originally licensed.

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60.3(3) An applicant who graduated from a barber or cosmetology school after January 1, 2000, shall have passed a national theory examination for the discipline in which the applicant seeks licensure.

60.3(4) An applicant for the barbering and cosmetology license who graduated from a barber or cosmetology school after July 1, 2023, shall have passed a national theory examination. Shaving with a razor requires additional certification by the board.

645—60.4(157) Criteria for licensure in prescribed practice disciplines.

60.4(1) A barbering and cosmetology license is not a requirement for an electrology, esthetics, or nail technology license.

60.4(2) Core life sciences curriculum hours shall be transferable in their entirety from one practice discipline to another practice discipline.

60.4(3) Theory hours earned in each practice discipline of barbering and cosmetology arts and sciences may be used in applying for a barbering and cosmetology license.

60.4(4) A barber and cosmetologist licensed after July 1, 2005, is not eligible to be certified in chemical peels, microdermabrasion, laser or intense pulsed light (IPL) and shall not provide those services.

60.4(5) Licensees must hold a shaving certificate, or the license will be restricted from the practice of shaving. An individual who was licensed as an Iowa barber prior to July 1, 2023, is not required to hold a shaving certificate.

60.4(6) Pedicuring shall only be done by a licensee who possesses the skill and knowledge required to perform the service in a professionally competent manner in compliance with 645—Chapter 63.

60.4(7) Waxing shall only be done by a licensee who possesses the skill and knowledge required to perform the service in a professionally competent manner in compliance with 645—Chapter 63.

60.4(8) An initial license to practice manicuring shall not be issued by the board after December 31, 2007. A manicurist license issued on or before December 31, 2007, may be renewed subject to licensure requirements identified by statute and administrative rule unless the license becomes inactive. A manicurist license that becomes inactive cannot be reactivated or renewed.

60.4(9) Any person previously licensed as a barber prior to July 1, 2024, pursuant to 645—Chapter 21 will, upon successful renewal of such license, receive a barbering and cosmetology license.

60.4(10) Any person previously licensed as a cosmetologist prior to July 1, 2024, pursuant to this chapter will, upon successful renewal of such license, receive a barbering and cosmetology license.

645—60.5(157) Prescribed practice training requirements. As outlined below, the board may approve a licensee to provide the prescribed practice services of shaving, microdermabrasion, chemical exfoliation, laser services, and IPL hair removal treatments once a licensee has complied with training requirements and submitted a completed application, the required supporting evidence, and applicable fees as specified in these rules. The applicant shall receive a certification following board approval. Machine-, product-, model- or device-specific certifications do not need renewal.

60.5(1) Shaving for hair removal.

a. Shaving shall only be performed by a barber and cosmetologist who is certified by the board to perform those services. A barber licensed before July 1, 2023, is exempt from this requirement.

b. Shaving shall only be used for hair removal on the scalp, face or neck.

c. In order to receive board certification and be eligible to perform shaving for hair removal services, the licensee must complete a shaving program or pass an exam as outlined below:

(1) Provide evidence of passing the NIC barber practical exam or a national barber practical exam, or

(2) Complete a 40-hour shaving program from an Iowa licensed school, or a program sponsored by an Iowa licensed school, that is conducted by a licensed instructor who has specialized education, training and experience by reason of which said licensed instructor should be considered qualified concerning the subject matter of the program, then:

1. Obtain from the program a certification of training that contains the following information:

- Date, location, and course title;

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- Name and license number of the instructor;
- Name and license number of the school;
- Number of contact hours;
- Evidence that the training program includes a safety training component that provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of skin care, blood-borne pathogens and infection control.

2. Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 5.5(14). The fee is nonrefundable.

60.5(2) Microdermabrasion.

a. Microdermabrasion shall only be performed by a licensed, certified esthetician or a cosmetologist who was licensed prior to July 1, 2005, and is certified by the board.

b. To be eligible to perform microdermabrasion services, the licensee shall:

(1) Complete 14 contact hours of education specific to the material or apparatus used for microdermabrasion. Before an additional material or apparatus is utilized in the licensee's practice, the licensee shall provide official certification of training on the material or apparatus.

(2) Obtain from the program a certification of training that contains the following information:

1. Date, location, and course title;
2. Number of contact hours;
3. Specific identifying description of the microdermabrasion machine covered by the course; and
4. Evidence that the training program includes a safety training component that provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of potential hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 5.5(14). The fee is nonrefundable.

60.5(3) Chemical exfoliation.

a. Chemical exfoliation shall only be performed by a cosmetologist who was licensed prior to July 1, 2005, and is certified by the board to perform those services. Additional certification is not required for licensed estheticians.

b. Chemical exfoliation procedures are limited to the removal of surface epidermal cells of the skin by using only non-medical-strength cosmetic preparations consistent with labeled instructions and as specified by these rules. This procedure is not intended to elicit viable epidermal or dermal wounding, injury, or destruction.

c. To be eligible to perform chemical peels, a cosmetologist who was licensed prior to July 1, 2005, shall:

(1) Complete 21 hours of training specific to the process and products to be used for chemical peels. Before an additional process or product is utilized in the licensee's practice, the licensee shall provide official certification of training on the new process or product.

(2) Obtain from the program a certification of training that contains the following information:

1. Date, location, and course title;
2. Number of contact hours;
3. Specific identifying description of the chemical peel process and products covered by the course; and

4. Evidence that the training program includes a safety training component that provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of potential hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 5.5(15). The fee is nonrefundable.

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60.5(4) Laser services.

- a. A cosmetologist licensed after July 1, 2005, shall not use laser products.
- b. An electrologist shall only provide hair removal services when using a laser.
- c. Estheticians and cosmetologists shall use a laser for cosmetic purposes only.
- d. Cosmetologists licensed prior to July 1, 2005, electrologists and estheticians must be certified to perform laser services.
- e. When a laser service is provided to a minor by a licensed cosmetologist, esthetician or electrologist who has been certified by the board, the licensee shall work under the general supervision of a physician. The parent or guardian shall sign a consent form prior to services being provided. Written permission shall remain in the client's permanent record for a period of five years.
- f. To be eligible to perform laser services, a cosmetologist who was licensed on or before July 1, 2005, an electrologist, or an esthetician shall:
 - (1) Complete 40 hours of training specific to each laser machine, model or device to be used for laser services. Before an additional machine, model or device is utilized in the licensee's practice, the licensee shall submit official certification of training on the new machine, model or device.
 - (2) Obtain from the program a certification of training that contains the following information:
 1. Date, location, and course title;
 2. Number of contact hours specific to the laser machine, model or device;
 3. Name of the approved manufacturer or institute of laser technology that provided the training;
 4. Specific identifying description of the laser equipment; and
 5. Evidence that the training program includes a safety training component that provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.
 - (3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 5.5(14). The fee is nonrefundable.

60.5(5) IPL hair removal treatments.

- a. A cosmetologist licensed after July 1, 2005, shall not use IPL devices.
- b. An IPL device shall only be used for hair removal.
- c. Cosmetologists licensed prior to July 1, 2005, electrologists and estheticians must be certified to perform IPL services.
- d. When IPL hair removal services are provided to a minor by a licensed cosmetologist, esthetician or electrologist who has been certified by the board, the licensee shall work under the general supervision of a physician. The parent or guardian shall sign a consent form prior to services being provided. Written permission shall remain in the client's permanent record for a period of five years.
- e. To be eligible to perform IPL hair removal services, a cosmetologist who was licensed on or before July 1, 2005, an electrologist, or an esthetician shall:
 - (1) Complete 40 hours of training specific to each IPL machine, model or device to be used for IPL hair removal services. Before an additional machine, model or device is utilized in the licensee's practice, the licensee shall submit official certification of training on the new machine, model or device.
 - (2) Obtain from the program a certification of training that contains the following information:
 1. Date, location, and course title;
 2. Number of contact hours specific to the laser machine, model or device;
 3. Name of the approved manufacturer or institute of laser technology that provided the training;
 4. Specific identifying description of the IPL hair removal equipment; and
 5. Evidence that the training program includes a safety training component that provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

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(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 5.5(14). The fee is nonrefundable.

60.5(6) Health history and incident reporting.

a. Prior to providing laser or IPL hair removal, microdermabrasion or chemical peel services, the cosmetologist, esthetician, and electrologist shall complete a client health history of conditions related to the application for services and include it with the client's records. The history shall include but is not limited to items listed in paragraph 60.5(6) "b."

b. A licensed cosmetologist, esthetician, or electrologist who provides services related to the use of a certified laser product, IPL device, chemical peel, or microdermabrasion shall submit a report to the board within 30 days of any incident in which provision of such services resulted in physical injury requiring medical attention. Failure to comply with this requirement shall result in disciplinary action by the board. The report shall include the following:

- (1) A description of procedures;
- (2) A description of the physical condition of the client;
- (3) A description of any adverse occurrence, including:
 1. Symptoms of any complications including, but not limited to, onset and type of symptoms;
 2. A description of the services provided that caused the adverse occurrence;
 3. A description of the procedure that was followed by the licensee;
- (4) A description of the client's condition on termination of any procedures undertaken;
- (5) If a client is referred to a physician, a statement providing the physician's name and office location, if known;
- (6) A copy of the consent form.

60.5(7) Failure to report. Failure to comply with paragraph 60.5(6) "b" when the adverse occurrence is related to the use of any procedure or device noted in the attestation may result in the licensee's loss of authorization to administer the procedure or device noted in the attestation or may result in other sanctions provided by law.

60.5(8) A licensee shall not provide any services that constitute the practice of medicine.

645—60.6(157) Licensure restrictions relating to practice.

60.6(1) A certified laser product or an intense pulsed light device shall only be used on surface epidermal layers of the skin except for hair removal.

60.6(2) A laser hair removal product or an intense pulsed light device shall not be used on a minor unless the minor is accompanied by a parent or guardian and then shall be used only under general supervision of a physician.

60.6(3) Persons licensed under Iowa Code chapter 157 shall not administer any practice of removing skin by means of a razor-edged instrument.

60.6(4) Persons licensed under this chapter who provide hair removal, manicuring and nail technology services shall not administer any procedure in which human tissue is cut, shaped, vaporized, or otherwise structurally altered, except for the use of a cuticle nipper.

60.6(5) Board-certified licensees providing shaving, microdermabrasion, chemical peels, laser or IPL hair removal treatments in an establishment shall not include any practice, activity, or treatment that constitutes the practice of medicine, osteopathic medicine, chiropractic or acupuncture.

60.6(6) Barbers and cosmetologists licensed prior to July 1, 2005, and licensed estheticians shall only perform medical aesthetic services in a medical spa under the delegation and supervision of a medical director as set forth by the Iowa board of medicine in rule 653—13.8(148,272C). The Iowa board of barbering and cosmetology arts and sciences does not license medical aestheticians.

60.6(7) Persons licensed under this chapter who provide apprenticeship programs must hold an active license sufficient to provide on-the-job training, must operate in an actively licensed establishment, and must comply with relevant Iowa office of apprenticeship laws and regulations for the operation of an apprenticeship program.

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60.6(8) Licensees may only perform those services for which they possess the skill and knowledge required to perform the service in a professionally competent manner as set forth in Iowa Code chapter 157 and the related administrative rules and regulations.

645—60.7(157) Consent form requirements. A licensed esthetician, barber and cosmetologist, or electrologist, prior to providing services relating to a certified laser product, intense pulsed light device, chemical peel, or microdermabrasion, shall obtain from a client a consent form that:

1. Specifies in general terms the nature and purpose of the procedure(s);
2. Lists known risks associated with the procedure(s) if reasonably determinable;
3. States an acknowledgment that disclosure of information has been made and that questions asked about the procedure(s) have been satisfactorily answered;
4. Includes a signature of either the client for whom the procedure is performed or, if that client for any reason lacks legal capacity to consent, includes the signature of a person who has legal authority to consent on behalf of that client in those circumstances.

645—60.8(157) License renewal.

60.8(1) The biennial license renewal period for a license to practice cosmetology arts and sciences shall begin on April 1 of one year and end on March 31 two years later. All licensees shall renew on a biennial basis.

a. The board may send a renewal notice by regular mail to each licensee at the address on record prior to the expiration of the license.

b. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

c. A new or reactivated license granted by the board to a licensee who holds a current license in another practice discipline in barbering and cosmetology arts and sciences may have the same license expiration date as the licensee's other license(s). If the licensee does not have another active license with the board, the license expiration date shall be in the current renewal period unless the license is issued within six months of the end of the renewal cycle and subrule 60.8(2) applies.

60.8(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

60.8(3) License renewal.

a. A licensee seeking renewal shall:

(1) Meet the continuing education requirements of rule 645—64.2(157). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

(2) Submit the completed online renewal application and renewal fee and upload certificate(s) of completion for related continuing education before the license expiration date.

b. Licensees currently licensed in Iowa but practicing exclusively in another state or serving honorably as active duty military or the spouse of active duty military service personnel may comply with Iowa continuing education requirements for license renewal by meeting the continuing education requirements of the state where the licensee practices. Those licensees living and practicing exclusively in a state that has no continuing education requirement for renewal of a license shall not be required to meet Iowa's continuing education requirement but shall pay all renewal fees when due (Iowa Code section 272C.2(4)).

60.8(4) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

60.8(5) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.5(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

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60.8(6) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice barbering and cosmetology arts and sciences in Iowa until the license is reactivated. A licensee who practices barbering and cosmetology arts and sciences in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

60.8(7) Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used.

645—60.9(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

60.9(1) Submit a reactivation application on a form provided by the board.

60.9(2) Pay the reactivation fee that is due as specified in rule 645—5.5(147,157).

60.9(3) Provide verification of current competence to practice barbering and cosmetology arts and sciences by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of six hours of continuing education that meet the continuing education standards defined in rule 645—64.3(157,272C) within two years of application for reactivation; or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 12 hours of continuing education that meet the continuing education standards defined in rule 645—64.3(157,272C) within two years of application for reactivation.

60.9(4) Licensees who are instructors of barbering and cosmetology arts and sciences shall obtain an additional six hours of continuing education in teaching methodology as prescribed in 645—Chapter 64.

645—60.10(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license

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in accordance with rule 645—60.9(17A,147,272C) prior to practicing barbering and cosmetology arts and sciences in this state.

These rules are intended to implement Iowa Code chapters 157 and 272C.

[Filed 4/1/24, effective 7/1/24]

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ARC 7921C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to licensure of salons and schools

The Board of Barbering and Cosmetology Arts and Sciences hereby rescinds Chapter 61, "Licensure of Salons and Schools of Cosmetology Arts and Sciences," and adopts a new chapter 61, "Licensure of Establishments and Schools of Barbering and Cosmetology Arts and Sciences," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 147.36, 157.14, 272C.2A, 272C.3, 272C.4 and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 157 and 272C.

Purpose and Summary

This rulemaking clarifies the processes by which an individual may apply for licensure of establishments and schools in order to provide barbering and cosmetology arts and sciences services, as directed in statute. The rulemaking outlines the process for licensure, including renewal and reinstatement, for fixed and readily movable establishments. The rulemaking ensures public safety through identification of the limited services allowed outside of a licensed establishment and the requirement to inform the public when services are provided by nonlicensees, such as blow-dry stylists, students and apprentices, where applicable.

For the schools, the rulemaking describes the application process, course of study requirements, and physical requirements for schools of barbering and cosmetology arts and sciences, including minimum equipment requirements, classroom use, public notices, recordkeeping for student attendance, accelerated learning policies, and mentoring contracts.

The rulemaking also provides guidance for legacy license holders and legacy schools following the merger of the Board of Barbering with the Board of Cosmetology Arts and Sciences.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7538C**. Public hearings were held on February 13 and 14, 2024, at 1:50 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings.

Proposed rule 645—61.23(157) provided that, in accordance with Iowa Code section 157.8A, licensed schools of barbering and cosmetology arts and sciences were authorized by rule to use their facilities for purposes unrelated to instruction so long as the activities do not disrupt classes. The proposed rule provided several nonexhaustive examples of disruptive activities. The Board received a public comment suggesting that the rule was unnecessary regulation. The public comment also suggested that Iowa Code section 157.8A was intended to allow licensed instructors at schools to provide services to the public

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unrelated to instruction without requiring the school to obtain a separate establishment license and that the Board's proposed rule would frustrate this intention.

The Board disagreed with the public comment and decided to keep proposed rule 645—61.23(157) without modifications. First, the Board determined that Iowa Code section 157.8A required the Board to prescribe administrative rules implementing the Iowa Code provision; therefore, the Board was required to issue this rule, and the Board concluded that providing a nonexhaustive list of potentially disruptive activities would be more effective than attempting to prescribe every conceivable disruptive activity that could occur in schools.

Second, the Board concurred with the commenter that Iowa Code section 157.8A and the proposed rule would allow instructors to engage in services unrelated to instruction either during or after school hours so long as the services do not disrupt classes. However, the Board disagreed that this legal change means that such practices would be exempt from the requirement to obtain an establishment license. The Board determined that Iowa Code chapter 157 requires all establishments to be licensed and that any place where the barbering and cosmetology arts and sciences are practiced requires an establishment license; the Iowa Code separately provides that licensed schools are exempt from licensing as establishments if students practice the barbering and cosmetology arts and sciences at the schools. The Board interprets these statutes to mean that if licensed instructors engage in the practice of barbering and cosmetology arts and sciences in school facilities for purposes unrelated to student instruction, then the school would need a separate establishment license. The enactment of Iowa Code section 157.8A may permit instructors to perform such services during or after school hours in a nondisruptive way, but this legal change did not provide that these activities were thereby exempt from any licensure requirements that may be applicable to the activity in question. Therefore, even if the Board did not adopt proposed rule 645—61.23(157), the elimination of this rule would not result in the outcome that the commenter may have desired.

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 28, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 1, 2024.

The following rulemaking action is adopted:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Rescind 645—Chapter 61 and adopt the following new chapter in lieu thereof:

CHAPTER 61

LICENSURE OF ESTABLISHMENTS AND SCHOOLS OF BARBERING AND COSMETOLOGY
ARTS AND SCIENCES

645—61.1(157) Definitions. In addition to the definitions included in Iowa Code sections 157.1 and 84D.2 and 29 Code of Federal Regulations (CFR) §29.5 as amended on December 19, 2016, the following definitions apply to terms used in this chapter:

“*Change in ownership*” means any of the following: a new owner of a sole proprietorship; the addition, removal, or replacement of any co-owner(s) in a partnership; or a change of controlling interest in any corporation.

“*Clinic area*” means the area of the school where the paying customers will receive services.

“*Dispensary*” means a separate area to be used for storing and dispensing of supplies and sanitizing of all implements.

“*Establishment license*” means a license issued to an Iowa establishment, as defined in Iowa Code section 157.1(10A), to provide barbering and cosmetology arts and sciences services.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Legacy curriculum*” means a course of study and curriculum offered by barbering schools or cosmetology arts and sciences schools that, as applicable, comply with the administrative rules issued by the Iowa board of barbering or by the Iowa board of cosmetology arts and sciences that were in effect on June 30, 2023.

“*Mentor*” means a licensee providing guidance in a mentoring program.

“*Mentoring*” means a program allowing students in a school to experience barbering and cosmetology arts and sciences in a licensed establishment under the guidance of a mentor.

“*On-the-job trainer*” means the individual providing instruction and supervision of the apprenticeship program practical hours. This individual must be a licensee of the board in the discipline for which the individual is training, and the training must occur in a licensed establishment.

“*School*” means a school of barbering and cosmetology arts and sciences.

“*School license*” means a license issued to an establishment that is a fixed location for the instruction of students in barbering and cosmetology arts and sciences.

645—61.2(157) Establishment licensing. No person shall operate an establishment unless the owner has obtained a license issued by the board. A separate enclosed area inside an establishment that is operated as an independent business for the purpose of providing barbering and cosmetology services shall be considered its own establishment and shall not operate unless an establishment license is obtained. To determine what defines an independent contractor versus an employee, persons should contact the Iowa division of labor.

61.2(1) The owner shall complete a board-approved application form accompanied by the appropriate fees payable by check or money order to the board of barbering and cosmetology arts and sciences. The fees are nonrefundable. The application shall be completed according to the instructions contained in the application and submitted 30 days prior to the anticipated opening day. If the application is not completed according to the instructions, the application will not be reviewed by the board.

61.2(2) Each establishment shall meet the requirements for sanitary conditions established in 645—Chapter 63 to be eligible for licensing. The establishment may be inspected for compliance with sanitation rules within 12 months following the issuance of the establishment license.

a. The establishment license may be for a fixed location or a location that is readily movable.

(1) Stationary establishment. A stationary establishment license shall be issued for a specific location. A change in location or site of a stationary establishment shall result in the cancellation of

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

the existing license and necessitate application for a new license and payment of the fee required by 645—subrule 5.2(7). A change of address without a change of actual location shall not be construed as a new site.

(2) Readily movable establishment. A readily movable establishment license shall be issued for a permanent physical address. The licensee is required to provide a permanent physical address for board correspondence. A readily movable establishment may operate in a legal parking spot or on private property, with the permission of the owner or the owner's designee, anywhere in the state of Iowa, provided the readily movable establishment is operating in compliance with applicable federal and state transportation, environmental, and sanitary regulations, including those in this chapter and in 645—Chapter 63.

b. Establishment owner's contact information. The listed owner of either a stationary or readily movable establishment must update the board within 30 days of a change in contact information, which includes telephone number, email address, and mailing address.

61.2(3) Business may commence at the establishment following activation of the license.

61.2(4) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records will be maintained after two years only if the applicant submits a written request to the board.

61.2(5) An establishment license is not transferable.

a. A change in ownership of an establishment shall require the issuance of a new license.

b. An establishment cannot be sold if disciplinary actions are pending.

c. If an establishment owner sells the establishment, that owner must send the license certificate and a report of the sale to the board within ten days of the date on which the sale is final. The owner of the establishment on record shall retain responsibility for the establishment until the notice of sale is received in the board office.

d. The board may request legal proof of the ownership transfer.

e. If the name or the address of an establishment changes, the owner shall notify the board within 30 days of such change. Additionally, the owner shall return the current certificate and pay the reissued certificate fee as specified in rule 645—5.5(147,157).

645—61.3(157) Readily movable establishment. A mobile home, motor home, trailer, or other recreational vehicle may be used as a readily movable establishment if it complies with the following:

61.3(1) The owner shall possess a current readily movable establishment license issued by the board.

61.3(2) The owner shall complete a board-approved application.

61.3(3) The readily movable establishment's owner's telephone number, email address, and permanent address must be included on the application for licensure and must be updated and accurate.

61.3(4) No service may be performed on a client in a moving vehicle. Services shall be performed in a readily movable establishment that is parked in a legal parking spot.

61.3(5) Readily movable establishments must provide:

a. A supply of hot and cold water;

b. Adequate lighting;

c. A floor surface in the service area that is nonabsorbent and easily cleanable;

d. Work surfaces that are easily cleanable;

e. Cabinets secured with safety catches wherein all chemicals shall be stored when the vehicle is moving;

f. A first-aid kit that includes adhesive dressing, gauze and antiseptic, tape, triple antibiotics, eyewash, and gloves.

61.3(6) A readily movable establishment must comply with all rules in 645—Chapter 63, "Infection Control for Establishments and Schools of Barbering and Cosmetology Arts and Sciences," except rules 645—63.6(157) through 645—63.8(157).

645—61.4(157) Establishment license renewal.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

61.4(1) The biennial license renewal period for an establishment license shall begin on January 1 of every odd-numbered year and end on December 31 two years later.

61.4(2) A renewal of license notice shall be electronically mailed to the owner of the establishment prior to the expiration of the license. Failure to receive the renewal notice shall not relieve the owner of the obligation to pay the biennial renewal fee on or before the renewal date.

61.4(3) An establishment that is issued a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

61.4(4) The establishment owner shall submit the completed application with the renewal fee to the board office before the license expiration date.

61.4(5) An establishment shall be in full compliance with this chapter and 645—Chapter 63 to be eligible for renewal. When all requirements for license renewal are met, the establishment shall be issued a license renewal.

61.4(6) If the renewal fee and renewal application are received in the office after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

645—61.5(272C) Inactive establishment license.

61.5(1) An establishment that has not renewed the establishment license within the required time frame will have an inactive license and shall not provide barbering and cosmetology arts and sciences services until the license is reactivated.

61.5(2) To reactivate an establishment license, the reactivation application and fee shall be submitted to the board office.

645—61.6(157) Display requirements for establishments.

61.6(1) Every establishment shall have a sign visible outside the entrance designating the place of business.

61.6(2) The most current establishment license proof of renewal shall be posted in the establishment front entrance area to provide the public a full, unobstructed view of the license.

61.6(3) The most current license proof of renewal for each licensee working in the establishment shall be posted in the establishment front entrance area to provide the public a full, unobstructed view of the license.

61.6(4) If the licensee works in more than one establishment, the current proof of renewal shall be posted in the primary place of practice, and the licensee shall be able to provide the renewal upon request.

61.6(5) If a licensed establishment is operating an apprenticeship program, a sign shall be clearly displayed in the entrance of such establishment that indicates in prominent lettering that apprentices are employed at the establishment and may perform services under the supervision of a licensed apprenticeship supervisor.

61.6(6) If any blow-dry stylist(s) engage in the practice of blow-dry styling at a licensed establishment, a sign shall be clearly displayed in the entrance of such establishment that indicates in prominent lettering that blow-dry stylist(s) perform limited services, as defined in Iowa Code section 157.12C, in the licensed establishment.

61.6(7) Each licensee, blow-dry stylist and apprentice shall have a valid U.S. government-issued photo ID to provide to an agent of the board upon request as proof of identity.

645—61.7(147) Duplicate certificate for establishments.

61.7(1) A duplicate certificate shall be required if the current certificate is lost, stolen or destroyed. A duplicate certificate shall only be issued under such circumstances.

61.7(2) A duplicate establishment certificate shall be issued upon receipt of a completed application and receipt of the fee as specified in 645—subrule 5.5(5).

61.7(3) If the board receives a completed application stating that the owner of the establishment has not received the certificate within 60 days after the certificate is mailed by the board, no fee shall be required for issuing the duplicate certificate.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—61.8(157) Licensure for schools of barbering and cosmetology arts and sciences.

61.8(1) An application for a school license shall be submitted 90 days prior to the anticipated opening day of the school. Prior to board review, the application shall include:

a. The exact location of the proposed school including a copy of the essential parts of the lease or other documents to provide proof that the owner of the school has occupancy rights for a minimum of one year; a complete plan of the physical facilities; and an explanation detailing how the facilities will be utilized relative to classrooms, clinic space, and a mentoring program;

b. A list of the names of licensed instructors including the school director(s) for the proposed school if the instructors and school director(s) have been hired by the school at the time of application;

c. Copies of the catalog, brochure, enrollment contract, student policies, and cancellation and refund policies that will be used by the school or distributed by the school to students and the public; and

d. The school's course of study and curriculum, which shall meet the course of study requirements outlined in rule 645—61.14(157).

61.8(2) Prior to issuance of the school license, the school shall:

a. Submit a final list of licensed instructors and director(s) hired for the school. The number of instructors must meet the requirement outlined in Iowa Code section 157.8, with the exception of instructors for the mentoring program; and

b. Meet the requirements of this chapter and 645—Chapter 63 and pass the board's inspection of the facility.

61.8(3) The school owner may be interviewed by the board during the review of the application.

61.8(4) After all criteria have been met, the school license shall be granted for the location identified in the school's application.

61.8(5) Instruction of students shall not begin until the school license is activated.

61.8(6) The school must provide proof of registration with the Iowa college student aid commission.

61.8(7) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records shall be maintained after two years only if the applicant submits a written request to the board.

61.8(8) Existing school license, new location. A change of location shall require submission of an application for a new school license and payment of the license fee 90 days in advance of the anticipated date of opening. A change of address without a change of actual location shall not be construed as a new site.

61.8(9) Existing school license, new name. The owner shall notify the board in writing of a change of name within 30 days after the occurrence. In addition, the owner shall return the current certificate and pay the reissued certificate fee as specified in rule 645—5.5(147,157).

61.8(10) Existing school license, change of ownership. A school license is not transferable. A change in ownership of a school shall require the issuance of a new license. A school cannot be sold if disciplinary actions are pending.

a. The board may request legal proof of the ownership transfer.

b. If a school owner sells the school, that owner must send the license certificate and a report of the sale to the board within ten days of the date on which the sale is final. The owner of the school on record shall retain responsibility for the school until the new school owner has been issued an active school license.

c. The new school owner shall follow all requirements as outlined in rule 645—61.8(157).

61.8(11) Any school licensed as a barber school under rule 645—23.2(158) prior to July 1, 2024, will, upon successful renewal, receive a license as a school of barbering and cosmetology arts and sciences. Any school licensed as a cosmetology arts and sciences school under this chapter prior to July 1, 2024, will, upon successful renewal, receive a license as a school of barbering and cosmetology arts and sciences.

This rule is intended to implement Iowa Code sections 147.80, 157.6 and 157.8.

645—61.9(157) School license renewal.

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61.9(1) The annual license renewal period for a school license shall begin on July 1 and end on June 30 one year later.

a. The online renewal application and renewal fee shall be submitted before the license expiration date.

b. Schools shall be in full compliance with this chapter and 645—Chapter 63 to be eligible for renewal. When all requirements for license renewal are met, the school shall be issued a license renewal.

c. Schools shall successfully complete the annual inspection pursuant to Iowa Code sections 157.6 and 157.8.

61.9(2) A school that is issued a license within six months of the license renewal date will not be required to renew the license until the next renewal one year later.

61.9(3) If the renewal fee and renewal application are submitted after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

645—61.10(272C) Inactive school license.

61.10(1) If the renewal application and fee are not received in the office within 30 days after the license expiration date, the school license is inactive. To reactivate the school license, the reactivation application and fee shall be submitted to the board.

61.10(2) A school that has not renewed the school license within the required time frame will have an inactive license and shall not provide schooling or services until the license is reactivated.

645—61.11(157) Display requirements for schools.

61.11(1) Every school shall have a sign visible outside the entrance designating the place of business.

61.11(2) A school license and the current proof of renewal shall be posted in the school's front entrance area to provide the public a full unobstructed view of the license.

61.11(3) The current license proof of renewal for each instructor working at the school shall be posted in the school's front entrance area to provide the public a full unobstructed view of the license.

61.11(4) Advertisements for a school of barbering and cosmetology arts and sciences shall indicate that all services are performed by students under the supervision of instructors.

61.11(5) A sign shall be clearly displayed in the entrance of a school of barbering and cosmetology arts and sciences that indicates in prominent lettering that students perform all services under the supervision of instructors.

645—61.12(157) Physical requirements for schools of barbering and cosmetology arts and sciences.

The school shall meet the following physical requirements:

61.12(1) The school premises shall have a minimum floor space of 3,000 square feet.

61.12(2) Each school shall provide a minimum of 100 square feet per student. When the enrollment in a school exceeds 30 students, additional floor space of 30 square feet shall be required for each additional student enrolled in the school.

61.12(3) Each licensed school offering a full barbering and cosmetology arts and sciences curriculum shall provide the following:

a. At least one clinic area where the paying public will receive services. The clinic area shall be confined to the premises occupied by the school.

b. A theory classroom(s) separate from the clinic area.

c. A library that is maintained for students and consists of textbooks, current trade publications and business management materials.

d. A separate area that shall be used as a dispensary. The dispensary shall be equipped with a lavatory, shelves or drawers for storing chemicals, cleansing agents and items, sterilization equipment and any other sanitation items required by 645—Chapter 63. Clean items and dirty items in the dispensary must be kept separated as required by 645—Chapter 63.

e. Two restrooms that are equipped with toilets, lavatories, soap and disposable paper towel dispensers.

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f. A laundry room that is separated from the clinic area by a full wall or partition. Students may not lounge, eat, practice or study in the laundry room.

g. A separate room that is equipped for the practice of esthetics and electrology.

h. An administrative office.

61.12(4) Each licensed school offering a single discipline barbering and cosmetology arts and sciences curriculum shall provide the same physical space as outlined in subrule 61.12(3). Single discipline schools are exempt from paragraph 61.12(3) “g” if the board did not originally approve an electrology or esthetics course of study in the curriculum.

This rule is intended to implement Iowa Code sections 157.6 and 157.8.

645—61.13(157) Minimum equipment requirements. Each school of barbering and cosmetology arts and sciences shall have the following minimum equipment:

1. Workstations equipped with chair, workstation, closed drawer or container for sanitized articles, and mirror (maximum of two students per unit);
2. Treatment room(s) when electrology or esthetics or both are offered;
3. One set of hard-copy or electronic textbooks for each student and instructor;
4. Adequate number of shampoo bowls and chairs with headrests located in the clinic area and readily accessible for students and clients if the school offers a curriculum course in barbering and cosmetology;
5. Adequate equipment to perform all services in a safe and sanitary manner;
6. Audiovisual equipment available for each classroom;
7. Chair and table area for each student in the classroom;
8. One set of files maintained for all required records; and
9. Labeled bottles and containers showing intended use of the contents.

This rule is intended to implement Iowa Code sections 157.6 and 157.8.

645—61.14(157) Course of study requirements. A school of barbering and cosmetology arts and sciences shall not be approved by the board of barbering and cosmetology arts and sciences unless it complies with the course of study requirements as provided below.

61.14(1) Requirements for hours.

a. Barbering and cosmetology curriculum. Supervised practical instruction, theory and demonstrations totaling 1,550 hours must include core life sciences hours and all practices within the scope of Iowa Code section 157.1(1).

Core life sciences	150 hours
Barbering and cosmetology theory (including business and management related to the practice of barbering and cosmetology)	440 hours
Total core life sciences and barbering and cosmetology theory:	590 hours
Applied practical instruction	960 hours
Total course of study	1550 hours (51 semester credit hours)

b. Electrology curriculum. Supervised practical instruction, theory and demonstrations totaling 425 hours must include core life sciences hours and all practices within the scope of Iowa Code section 157.1(10).

Core life sciences	150 hours
Electrology theory	50 hours
Applied practical instruction	225 hours
Total course of study	425 hours (14 semester credit hours)

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

c. Esthetics curriculum. Supervised practical instruction, theory and demonstrations must include core life sciences hours and all practices within the scope of Iowa Code section 157.1(13).

Core life sciences	150 hours
Esthetics theory	115 hours
Applied practical instruction	335 hours
Total course of study	600 hours (20 semester credit hours)

d. Nail technology curriculum. Supervised practical instruction, theory and demonstrations must include core life sciences hours and all practices within the scope of Iowa Code section 157.1(25).

Core life sciences	150 hours
Nail technology theory	50 hours
Applied practical instruction	125 hours
Total course of study	325 hours (11 semester credit hours)

Proof of curriculum requirements may be submitted to the board by either the clock hour or semester credit hour standard. Semester credit hours or the equivalent thereof shall be determined pursuant to administrative rules and regulations promulgated by the U.S. Department of Education.

61.14(2) Curriculum requirements.

a. Theory instruction shall be taught from a standard approved textbook but may be supplemented by other related textbooks. Online coursework is allowed for theory instruction.

b. Course subjects taught in the school curriculum, including skills and business management, shall relate to the specific practice discipline.

c. Required hours for theory and applied practical hours do not have to be obtained from one school.

d. Core life sciences curriculum hours shall be transferable in their entirety from one practice discipline to another practice discipline. Online coursework is allowed for core life sciences instruction.

e. Clock hours may be converted to credit hours using a standard, recognized method of conversion. Only hours from accredited or board-approved school programs will be accepted.

61.14(3) Core life sciences curriculum. The core life sciences curriculum shall contain the following instruction:

- a.* Human anatomy and physiology:
Cell, metabolism and body systems,
Human anatomy;
- b.* Bacteriology;
- c.* Infection control practices:
Universal precautions,
Sanitation,
Sterilization,
Disinfection;
- d.* Basic chemistry;
- e.* Matter;
- f.* Elements:
Compounds and mixtures;
- g.* Basic electricity;
- h.* Electrical measurements:
Reproduction of light rays,
Infrared rays,
Ultraviolet rays,
Visible rays/spectrum;
- i.* Safety;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- j.* Hygiene and grooming:
Personal and professional health;
- k.* Professional ethics;
- l.* Public relations; and
- m.* State and federal law, administrative rules and standards.

61.14(4) The school shall maintain a copy of the curriculum plan as directed by the school's accrediting agency or, if not subject to an accrediting agency, for a minimum of three years after the curriculum plan was taught by the school.

61.14(5) A school initially licensed after July 1, 2024, must offer a curriculum and course of study for one or more practice disciplines as prescribed in subrules 61.14(1) through 61.14(3).

61.14(6) For a school licensed prior to July 1, 2024, the following provisions apply:

- a.* Students enrolling in the school on or after August 1, 2024, must be taught a curriculum and course of study for one or more practice disciplines as prescribed by subrules 61.14(1) through 61.14(3).
- b.* Students enrolling in the school prior to August 1, 2024, may either be taught:
 - (1) A curriculum and course of study for one or more practice disciplines as prescribed by subrules 61.14(1) through 61.14(3); or
 - (2) A legacy curriculum in one or more practice disciplines. Any student graduating from a school after completing a legacy curriculum pursuant to this subrule will satisfy the education requirement for licensure as provided in 645—subparagraph 60.2(1)“c”(1).

645—61.15(157) Instructors. All instructors in a school of barbering and cosmetology arts and sciences shall be licensed by the department.

61.15(1) An instructor teaching a course in electrology, esthetics or nail technology shall also hold a license in that practice discipline or hold a barbering and cosmetology license that shows proof of having completed training in those practices equivalent to that of a license holder in that practice.

61.15(2) An instructor teaching a course in shaving, microdermabrasion, chemical peels, intense pulsed lights (IPLs) and lasers shall be certified by the state of Iowa to provide each of the services, as set forth in rule 645—60.4(157). An individual who was licensed as an Iowa barber prior to July 1, 2023, is not required to hold an Iowa board-issued shaving certificate.

61.15(3) A minimum of two instructors shall be employed on a full-time basis for up to 30 students and an additional instructor for each additional 15 students.

- a.* The number of instructors for each school of barbering and cosmetology arts and sciences shall be based upon total enrollment.
- b.* A student instructor shall not be used to meet licensed instructor-to-student ratios.
- c.* A school with less than 30 students enrolled may have one licensed instructor on site in the school if offering only clinic services or only theory instruction in a single classroom and less than 15 students are present.
- d.* If a school is offering clinic services and theory instruction simultaneously to less than 15 students, at least two licensed instructors must be on site.
- e.* Area community colleges operating a school prior to September 1, 1982, with only one instructor per 15 students are not subject to this subrule and may continue to operate with the ratio of one instructor to 15 students. A student instructor shall not be used to meet licensed instructor-to-student ratios.

61.15(4) An instructor shall:

- a.* Be responsible for and in direct charge of all physical and virtual core and theory classrooms and practical classrooms and clinics at all times;
- b.* Familiarize students with the different standard supplies and equipment used in establishments; and
- c.* Not perform barbering and cosmetology arts and sciences services, with or without compensation, on the school premises except for demonstration purposes, such as continuing education classes consistent with rule 645—61.23(157).

This rule is intended to implement Iowa Code chapter 157.

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645—61.16(157) Student instructors. A student instructor shall be a license holder in the barbering and cosmetology arts and sciences. Each student instructor shall be under the direct supervision of a licensed instructor at all times.

645—61.17(157) Students.

61.17(1) A school of barbering and cosmetology arts and sciences shall, prior to the time a student is obligated for payment, inform the student of all provisions set forth in Iowa Code section 714.25. The school shall retain a copy of the signed statement for two years following the student's graduating or leaving the program.

61.17(2) Students shall:

- a.* Wear clean and neat uniforms at all times during school hours and during the mentoring program;
- b.* Be supervised by a licensed instructor at all times except in a mentoring program when the students shall be under the guidance of a mentor;
- c.* Be provided regularly scheduled breaks and a minimum of 30 minutes for lunch;
- d.* Attend school no more than eight hours a day. Schools may offer additional hours to students who submit a written request for additional hours;
- e.* Receive no compensation from the school for services performed on clients;
- f.* Provide services to the public only after completion of a minimum of 10 percent of the course of study;
- g.* Not be called from theory class to provide services to the public;
- h.* Not be required to perform janitorial services or be allowed to volunteer for such services. Sanitation of the bathroom area shall be limited to replacing products and disinfecting the vanity and mirror surfaces. Sanitation of the toilet and bathroom floor areas is not to be performed by the student and is excluded from student sanitation duty; and
- i.* Receive no credit or hours for decorating for marketing or merchandising events or for participating in demonstrations of barbering and cosmetology arts and sciences when the sole purpose of the event is to recruit students and the event is outside the curriculum course.

645—61.18(157) Attendance requirements.

61.18(1) A school of barbering and cosmetology arts and sciences shall have a written, published attendance policy.

61.18(2) Schools shall ensure:

- a.* Students complete the hours required for each course of study set forth in rule 645—61.14(157).
- b.* Student attendance policies are applied uniformly and fairly for all physical and virtual classes.
- c.* Appropriate credit is given for all hours earned.
- d.* All retake tests and projects to be redone are completed without benefit of additional hours earned. Time scheduled for such work will be scheduled at the school's discretion.
- e.* Hours or credit is not added to the cumulative student record as an award or deducted from the cumulative student record as a penalty.
- f.* Work that must be done for missed hours must be allowed. The student must be given full credit for hours earned.

61.18(3) Pursuant to the federal Department of Education and accrediting standards agency, the school may adopt an absence policy not to exceed 10 percent of required coursework for doctor's excuses and life events. In no way shall this policy create a penalty for the student nor excuse the student from the remaining 10 percent of required coursework.

This rule is intended to implement Iowa Code chapter 157.

645—61.19(157) Accelerated learning.

61.19(1) A school may adopt an accelerated learning policy that includes the acceptance of life experience, prior knowledge learned and test-out procedures.

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61.19(2) If the school has an accelerated learning policy, the policy shall be a written, published policy that clearly outlines the criteria for acceptance and hours or credit granted or for test-out procedures. The hours or credit granted for accelerated learning shall not exceed 20 percent of the student's entire course of study and shall be documented in the participating student's file.

a. After completion of all entrance requirements, a student may elect to sit for one or more academic written tests to evaluate the knowledge about subject matter gained from life experience or prior learning experience.

b. A student in a barbering and cosmetology arts and sciences course of study may be allowed to test out of a subject by sitting for final examinations covering the basic knowledge gained by a student who attends class sessions, or the school may accept and grant hours for prior or concurrent education and life experience.

c. A student who wishes to receive test-out credit or be granted hours for prior or concurrent education or life experience shall have maintained the academic grades and attendance policy standards set by the school.

d. The school may limit the number of times a student is allowed to sit for a test-out examination of a subject.

645—61.20(157) Mentoring program. Each barbering and cosmetology arts and sciences school must have a contract between the student, the school and the establishment mentor that includes scheduling, liability insurance and purpose of the mentoring program.

61.20(1) Students shall not begin the mentoring program until they have completed a minimum of 50 percent of the total contact or credit hours and other requirements of the mentoring program established by the school.

61.20(2) Students may participate in a mentoring program for no more than 5 percent of the total contact or credit hours.

61.20(3) Students shall be under supervision of the mentor at all times. Students may perform the following: drape, shampoo, remove color and perm chemicals, remove perm rods, remove rollers, apply temporary rinses, apply reconditioners and rebuilders with the recommendation of the mentor, remove nail polish, file nails, perform hand and arm massage, remove cosmetic preparations, act as receptionist, handle retail sales, sanitize establishment, consult with client (chairside manners), perform inventory, order supplies, prepare payroll and pay monthly bills, and hand equipment to the mentor.

61.20(4) The establishment mentor's responsibilities include the following: introduce the student to the establishment and the client, record the time of the student's attendance in establishment, prepare evaluation, discuss performance, and allow the student to shadow.

61.20(5) An establishment or school shall not compensate students when the students are participating in the mentoring program.

645—61.21(157) Graduate of a school of barbering and cosmetology arts and sciences.

61.21(1) A student shall be considered a graduate when the student has completed the required course of study and met the minimum attendance standard.

61.21(2) Students shall be given a final examination upon completion of the course of study but before graduation.

61.21(3) After passage of the final examination and completion of the entire course of study including all project sheets, students shall be issued a certificate of completion of hours required for the course of study.

645—61.22(157) Records requirements.

61.22(1) Each school of barbering and cosmetology arts and sciences shall maintain a complete set of student records. Individual student hours shall be kept on file at the school for two years following graduation.

61.22(2) Each school shall maintain daily teaching logs for all instructors, which shall be kept on file at the school for two years.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

61.22(3) Prior to closure, the controlling school shall establish agreements with another school to maintain student and graduate transcripts and records. Prior to closure, the controlling school shall also notify the board in writing of the location of student records as established by the maintenance agreements and shall submit a copy of the maintenance agreements to the board. Provisions in the agreement must include maintenance of student transcript records for a period of no less than two years.

645—61.23(157) Classrooms used for other educational purposes. The licensed school of barbering and cosmetology arts and sciences may be used during scheduled theory or applied practical time for any use other than for student instruction so long as these activities do not disrupt classes. Activities that disrupt classes include but are not limited to:

61.23(1) Persons attending other educational classes passing through a classroom or clinic area (en masse) while it is in use.

61.23(2) Activities with noise levels that are disruptive to other classes.

61.23(3) Activities that usurp the space available for barbering and cosmetology arts and sciences instruction.

These rules are intended to implement Iowa Code chapters 157 and 272C.

[Filed 4/1/24, effective 7/1/24]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7922C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to infection control

The Board of Barbering and Cosmetology Arts and Sciences hereby rescinds Chapter 63, "Infection Control for Salons and Schools of Cosmetology Arts and Sciences," and adopts a new Chapter 63, "Infection Control for Establishments and Schools of Barbering and Cosmetology Arts and Sciences," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 147.76, 157.14, 272C.3, 272C.4 and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 157 and 272C.

Purpose and Summary

This rulemaking publicly establishes the responsibilities of the establishment and school owners and service providers and the processes for keeping clean and used items separated, cleaning and disinfecting implements, storing and dispensing supplies, and disposing of porous instruments. The rulemaking also outlines infection control methods for the use of creams, cosmetics, and applicators and the practices consistently used to prevent exposure to blood-borne pathogens and the transmission of disease.

Iowa residents, the public, licensees, and employers benefit from the rulemaking because the rulemaking clarifies the infection control processes by which service providers may ensure the protection of public health as directed in statute.

Public Comment and Changes to Rulemaking

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7539C**. Public hearings were held on February 13 and 14, 2024, at 1:50 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. Public comments were submitted by email. Changes from the Notice have been made.

Proposed paragraph 63.16(2)“a” provided that if licensees intended to provide certain limited services at locations outside of a licensed establishment, the services would need to be scheduled through a licensed establishment. The Board received a public comment expressing concern that this rule would unduly burden licensees who work as independent contractors by renting chairs or booths inside a licensed establishment because such persons could not provide limited services outside the establishment without having their customers book the service through a business entity unrelated to the licensee. The Administrative Rules Review Committee recommended that the Board modify this paragraph. During public session, the Board considered various revisions and received input from members of the public in attendance about the various modifications proposed, including industry concerns on civil liability and insurance for employees practicing outside of their ordinary establishment. To resolve the public concerns, the Board considered that Iowa Code section 157.4(1) allows the Board to issue temporary permits for persons to practice the barbering and cosmetology arts and sciences for purposes determined by administrative rule. Through this authority, the Board decided to modify paragraph 63.16(2)“a” to either require that limited services be booked through a licensed establishment or provide that individual licensees could apply for a one-year temporary permit to provide limited services outside of an establishment. This modification would effectuate the original intent of the rule while also ensuring that independent contractors and other licensees in similar situations would not be burdened by a requirement to book services through a third party unrelated to their business.

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 28, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 1, 2024.

The following rulemaking action is adopted:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Rescind 645—Chapter 63 and adopt the following **new** chapter in lieu thereof:

CHAPTER 63
INFECTION CONTROL FOR ESTABLISHMENTS AND SCHOOLS OF BARBERING AND
COSMETOLOGY ARTS AND SCIENCES

645—63.1(157) Definitions. For purposes of these rules, the following definitions shall apply:

“*Cleaning*” means removing visible debris and disposable parts, washing the surface or item with water and soap or detergent, rinsing the surface or item thoroughly and drying the surface or item. Cleaning must occur before disinfection can begin.

“*Disinfectant*” means a U.S. Environmental Protection Agency (EPA)-registered bactericidal, virucidal, fungicidal, pseudomonacidal chemical solution, spray or wipe that is effective against HIV-1 and human hepatitis B virus and is intended to destroy or irreversibly inactivate specific viruses, bacteria, or pathogenic fungi, but not necessarily their spores, on nonporous items and surfaces.

“*Disinfection*” means the procedure that kills pathogenic microorganisms, but not necessarily their spores.

“*Dispensary*” means a separate physical location or area in an establishment or school to be used for the storing and dispensing of supplies and cleaning and disinfecting of all implements. The dispensary is where products, chemicals and disinfectants are prepared, measured, mixed, portioned, and disposed of.

“*FDA*” means the federal Food and Drug Administration.

“*Germicide*” means an agent that destroys germs.

“*Nonporous*” means an item that lacks minute openings or crevices that allow air, water and bacteria to enter the item.

“*Porous*” means an item that contains minute openings or crevices that allow air, water and bacteria to enter the item, such as untreated wood, paper and cardboard.

“*School*” means a school of barbering and cosmetology arts and sciences.

“*Service provider*” means any person regulated by Iowa Code chapter 157, including but not limited to establishment owners, licensees, students, blow-dry stylists and apprentices.

“*Sterilization*” means the procedure that kills all microorganisms, including their spores.

“*Universal precautions*” means practices consistently used to prevent exposure to blood-borne pathogens and the transmission of disease.

“*Wash hands*” means the process of thoroughly washing hands and the exposed portions of the arms up to the elbow with soap or detergent and water and drying with a single-use towel or air dryer. Bar soap shall not be set out for common use.

645—63.2(157) Infection control rules and inspection report. Upon request, the licensee shall make Chapter 63, “Infection Control for Establishments and Schools of Barbering and Cosmetology Arts and Sciences,” and the most recent inspection report available to the board, agents of the board, all persons employed or studying in an establishment or school, and the general public.

645—63.3(157) Responsibilities of establishment owners. Each establishment owner shall ensure the following:

1. The establishment owner holds a current and active establishment license issued by the board that reflects the current name, address and owner information;
2. Individuals employed for barbering and cosmetology arts and sciences services or other licensees working in the establishment hold a current and active license issued by the board of barbering and cosmetology arts and sciences;
3. Licensees employed by the establishment or other licensees and service providers working in the establishment do not exceed their scope of practice; and
4. License renewal cards are properly displayed in the front entrance area at eye level. No license that has expired or become invalid for any reason shall be displayed in connection with the practices of the establishment.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—63.4(157) Responsibilities of licensees. Licensees are responsible for:

1. Their own station areas;
2. Holding a current and active license issued by the board of barbering and cosmetology arts and sciences; and
3. Ensuring that they do not exceed their scope of practice.

645—63.5(157) Joint responsibility. Establishment owners and licensees are jointly responsible for all service and common areas.

645—63.6(157) Building standards. Establishments and schools shall have and maintain:

1. A service area that is equipped with exhaust fans or air filtration equipment that is of sufficient capacity to be capable of removing chemical fumes from the air;
2. A dispensary;
3. A reception area;
4. Hot and cold running water and clean lavatory facilities;
5. Safe drinking water;
6. Hand-washing facilities;
7. Adequate lighting;
8. Work surfaces that are easily cleanable; and
9. A complete first-aid kit in a readily accessible location on the premises. At a minimum, the first-aid kit must include adhesive dressings, gauze and antiseptic, tape, triple antibiotics, eyewash, and gloves.

645—63.7(157) Establishments in residential buildings.

63.7(1) An establishment located in a residential building shall comply with all requirements in rule 645—63.5(157).

63.7(2) A separate entrance shall be maintained for establishment rooms in a residential building. An exception is that an entrance may allow passage through a nonliving area of the residence, i.e., hall, garage or stairway. Any door leading directly from the licensed establishment to any portion of the living area of the residence shall be closed at all times during business hours.

645—63.8(157) Establishments adjacent to other businesses. An establishment operated adjacent to any other business shall be separated by at least a partial partition. When the establishment is operated immediately adjacent to a business where food is handled, the business shall be entirely separated, and any doors between the establishment and the business shall be rendered unusable except in an emergency.

645—63.9(157) Smoking. All establishments licensed by the board shall comply with the smokefree air Act found in Iowa Code chapter 142D.

645—63.10(157) Personal cleanliness. Any service provider engaged in serving the public shall be neat and clean in person and attire.

645—63.11(157) Universal precautions. Any service provider shall practice universal precautions consistently by observing the following:

63.11(1) Thoroughly wash hands after smoking, vaping, eating, using the restroom, etc., and before providing services to each client. Hand sanitizers or gloves are not an acceptable substitute for hand washing.

63.11(2) Maintain biohazard sharps container for disposing of used needles, razor blades and other sharp instruments in establishments. These containers shall be located as close to the use area as is practical. These containers shall not be filled above the designated “fill line” and shall be disposed of in accordance with guidelines issued by the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

63.11(3) Wear disposable gloves or may refuse to provide the service when encountering clients with open sores. Gloves shall only be used on a single client and shall be disposed of after the client's service. Any time gloves are used during a service, wash hands both before gloves are worn and after they are removed.

63.11(4) Refrain from all direct client care and from handling client-care equipment if the service provider has open sores that cannot be effectively covered.

63.11(5) Clean and disinfect instruments and implements pursuant to rule 645—63.13(157).

63.11(6) Place instruments and supplies that have been used on a client or soiled in any manner in the proper receptacles clearly labeled "used." All used items shall be kept separate from items that are disinfected and ready for use.

63.11(7) Store disinfectant solution in the dispensary.

645—63.12(157) Blood exposure procedures.

63.12(1) If a service provider injures oneself, the following steps shall be taken before returning to service:

- a. Stop service.
- b. Clean the injured area by washing the area with soap and water. Use antiseptic or ointment as appropriate.
- c. In the case of mucous membrane exposure, wash or rinse the affected area with sufficient water.
- d. Cover the injury with the appropriate dressing.
- e. Clean the client and station as necessary. First, remove all visible debris and then clean the client with an antiseptic that is appropriate for the skin and clean the station with disinfectant.
- f. Bag any blood-soiled porous articles and dispose of articles in the trash.
- g. Wash and disinfect all nonporous items.
- h. Wash hands before returning to service.

63.12(2) If a client injury occurs, the service provider shall take the following steps:

- a. Stop service.
- b. Glove hands.
- c. Clean injured area and use antiseptic or ointment as appropriate.
- d. Cover the injury with the appropriate dressing to prevent further blood exposure.
- e. Clean station by removing all visible debris and using disinfectant that is appropriate for the soiled surface.
- f. Bag any blood-soiled porous articles and dispose of articles in the trash.
- g. Wash and disinfect all nonporous items.
- h. Wash hands before returning to service.

645—63.13(157) Disinfecting and sterilizing instruments and equipment. All nonporous tools and implements must be either disinfected or sterilized according to the requirements of this rule before use upon a client in schools and establishments.

63.13(1) Disinfection.

a. Nonporous tools and implements.

(1) Immersion method. After each use, all immersible nonporous tools and implements shall be disinfected by cleaning the tools and implements followed by complete immersion in a disinfectant. Disinfectant solutions shall be mixed according to manufacturer label instructions. The manufacturer's listed contact time for effectively eliminating all pathogens shall be adhered to at all times.

(2) Nonimmersion method. After each use, any nonporous item that cannot be immersed in a disinfectant shall be cleaned with soap or detergent and water to remove all organic material and then sprayed or wiped with disinfectant. Minimum disinfectant contact time as listed on the manufacturer's label shall be followed. Nonimmersible tools and implements include but are not limited to scissors, trimmers, clippers, handles of hair dryers and curling/flat irons.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

b. Disinfected implements shall be stored in a disinfected, dry, covered container and shall be isolated from contaminants. Such container shall be disinfected at least once each week and whenever visibly dirty.

c. Disinfectant solutions shall be changed as instructed on the solution's manufacturer label or whenever visibly dirty.

d. Electric file bits.

(1) After each use, all visible debris shall be removed from diamond, carbide, natural and metal bits by cleaning with either an ultrasonic cleaner or immersion of each bit in acetone for five to ten minutes.

(2) After they are cleaned, diamond, carbide, natural and metal bits shall be disinfected by complete immersion in an appropriate disinfectant. Minimum disinfectant contact time as listed on the manufacturer's label shall be followed.

63.13(2) Sterilization. Ultraviolet (UV) light boxes are prohibited and are not an acceptable method of sterilization.

a. Tools and implements may be sterilized by one of the following methods:

(1) Steam sterilizer, registered and listed with the FDA and used according to the manufacturer's instructions. If steam sterilization, or moist heat, is utilized, heat exposure shall be at a minimum of 121°C/250°F for at least 30 minutes;

(2) Dry heat sterilizer, registered and listed with the FDA and used according to the manufacturer's instructions. If dry heat sterilization is utilized, heat exposure shall be at a minimum of 171°C/340°F for at least 60 minutes;

(3) Autoclave sterilization equipment, calibrated to ensure that it reaches the temperature required by the manufacturer's instructions. If autoclave sterilization equipment is utilized, spore testing by a contracted independent laboratory shall be performed at least every 30 days. If a positive spore test is received, the autoclave may not be used until a negative spore test is received. The establishment must maintain a log of each autoclave use, all testing samples and results, and a maintenance log of all maintenance performed on the device. Maintenance shall be performed according to the manufacturer's instructions. The establishment must have available for inspection the autoclave maintenance log for the most recent 12 months; or

(4) Chemical sterilization with a hospital grade liquid which, if used, shall be used according to the directions on the label. When chemical sterilization is used, items shall be fully submerged for at least ten minutes.

b. Sterilization equipment shall be maintained in working order. The equipment shall be checked at least monthly and calibrated to ensure that it reaches the temperature required by the manufacturer's instructions.

This rule is intended to implement Iowa Code section 157.6.

645—63.14(157) Porous instruments and supplies that cannot be disinfected. Porous instruments and supplies that come into direct contact with a client cannot be disinfected. These instruments and supplies include but are not limited to cotton pads, sponges, wooden applicators, emery boards, pumice stones, nail buffers, buffing bits, arbor or sanding bands, sleeves, toe separators and neck strips. These are single-use items and shall be disposed of in a waste receptacle immediately after use.

645—63.15(157) Infection control methods for creams, cosmetics and applicators.

63.15(1) Liquids, creams, waxes, powders and cosmetics used for clients must be kept in closed, labeled containers.

63.15(2) All fluids, semifluids and powders must be dispensed with an applicator or from a shaker, dispenser pump, or spray-type container.

a. Applicators made of a washable, nonabsorbent material shall be cleaned and disinfected before being used on a client and shall only be dipped into the container one time before being cleaned and disinfected again.

b. Applicators made of wood shall be discarded after a single dip, which would be one use.

c. Roll-on wax products are prohibited.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

d. The use of a styptic pencil is strictly prohibited; its presence in the workplace shall be prima facie evidence of its use. Any material used to stop the flow of blood shall be used in liquid or powder form.

e. Neck dusters, brushes, and common shaving mugs and soap shall not be used in any establishment or school.

645—63.16(157) Events and services provided outside of a licensed establishment.

63.16(1) Licensed barber and cosmetologists, nail technicians, and estheticians may provide limited services at certain locations (e.g., weddings) outside of a licensed establishment. Limited services:

a. Include makeup application, strip lashes, polish removal and application, and hairstyling.

b. Do not include the use of chemicals, lasers, or other machines.

c. May include haircutting, subject to the limitations on location provided in subrule 63.16(2).

63.16(2) Licensees may provide limited services outside of a licensed establishment as follows:

a. Limited services may not be provided unless scheduled through a licensed establishment. Alternatively, licensees may apply for a one-year temporary permit under Iowa Code section 157.4(1) to provide limited services outside of an establishment.

b. Limited services must be within the scope of practice of the licensed barber and cosmetologist, nail technician, or esthetician.

c. Limited services including haircutting may be provided at:

(1) The temporary or permanent residence of a client.

(2) The hospital, health care facility, nursing home or convalescent home of a client.

d. Limited services excluding haircutting may be provided at special events such as, but not limited to, weddings and photo shoots.

645—63.17(157) Prohibited hazardous substances and use of products and equipment.

63.17(1) No establishment or school shall have on the premises cosmetic products containing substances that have been banned or otherwise deemed hazardous or deleterious by the FDA for use in cosmetic products. Prohibited products include, but are not limited to, any product containing liquid methyl methacrylate monomer and methylene chloride. No product shall be used in a manner that is not approved by the FDA. Presence of a prohibited product in an establishment or school is prima facie evidence of that product's use in the establishment or school.

63.17(2) Pedicure instruments designed to remove skin from the bottoms and sides of feet, including but not limited to razor-edged, grating or rasp microplaners, are prohibited. The presence of such equipment is prima facie evidence of the equipment's use.

63.17(3) Procedures involving any animal (e.g., fish, leeches, snails) are prohibited in establishments and schools.

63.17(4) No establishment or school may have chamois buffers. If chamois buffers are observed in the workplace, their presence is prima facie evidence of their use.

63.17(5) No establishment or school may use plastic sleeves or envelopes to store cleaned and disinfected implements unless the implements stored in the plastic sleeves or envelopes have actually been sterilized pursuant to paragraph 63.13(2)“a.”

645—63.18(157) Proper protection of neck. A properly laundered or disposable cape, haircloth, or similar article may be placed directly against the neck of a client. A cape, haircloth, or similar article that has not been sanitized or properly laundered shall be kept from direct contact with the client's neck by means of a paper neckband, clean towel, or cloth neckbands. A paper neckband shall not be used more than once. Towels or cloth neckbands shall not be used more than once without proper laundering. Neckbands of a nonporous material must be properly cleaned and disinfected after each use and stored in a closed container.

645—63.19(157) Proper laundering and storage. All cloth towels, robes, and similar items shall be laundered in a washing machine with laundry detergent used according to the manufacturer's directions.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

All linens shall be dried until hot to the touch. No moisture shall be left in laundered items. A clean storage area shall be provided for clean towels and linens, and a covered hamper or receptacle marked "used" shall be provided for all soiled towels, robes, and linens.

645—63.20(157) Animals. Dogs, cats, birds, or other animals are not permitted in establishments or schools. This rule does not apply to service animals as defined by the Americans with Disabilities Act or to fish in an aquarium provided the aquarium is maintained in a sanitary condition.

645—63.21(157) General maintenance. All areas of the establishment and school shall be clean and in good repair.

63.21(1) Walls, floors, and fixtures must be kept clean and in good repair at all times.

63.21(2) Carpeting shall only be allowed in the reception and hooded dryer areas.

645—63.22(157) Records. Client records, appointment records, and employment records shall be maintained for a period of not less than three years following the last date of entry. Proper safeguards shall be provided to ensure the safety of these records from destructive elements.

63.22(1) Records for services provided outside of a licensed establishment under rule 645—63.16(157) must include:

a. Client name and contact information.

b. Date, time and location of the service(s) provided.

c. Name and license number of the licensee performing the service.

d. A signed and dated waiver stating that the client understands this limited service shall not include the use of chemicals, must be provided by a licensee and that all infection control procedures shall be followed.

63.22(2) Records for employment of blow-dry stylists must include:

a. Name and contact information of the employee.

b. Record of completion of a course on Iowa law, rules and infection control prior to employment, and within every two-year period thereafter as outlined in Iowa Code section 157.12C.

c. Hire date and termination date.

d. A signed and dated waiver stating that the employee understands blow-dry stylist services may only be performed in a licensed establishment upon completion of a course on Iowa law, rules and infection control. This waiver must be completed every two years as a condition of employment.

63.22(3) Foot spa service area records are outlined in subrule 63.24(3).

645—63.23(157) Establishments and schools providing electrology or esthetics. An establishment or school in which electrology or esthetics is practiced shall follow the infection control rules and requirements pertaining to all establishments and schools and shall also meet the following requirements:

1. The electrology or esthetics room shall have adequate space, lighting and ventilation.

2. The floors in the immediate area where the electrology or esthetics is performed shall have an impervious, smooth, washable surface.

3. All service table surfaces shall be constructed of impervious, easily disinfected material.

4. Needles, probes and lancets shall be single-client use and disposable.

5. Licensees providing electrology services shall wear gloves.

6. Adequate access to a sink or running water shall be provided.

645—63.24(157) Cleaning and disinfecting circulating and noncirculating tubs, bowls, and spas.

63.24(1) After use for each client, a service provider shall do the following:

a. Drain the water and remove any visible debris;

b. Clean the surfaces according to the manufacturer's instructions, use a brush to remove all film, and rinse the tub, bowl, or spa basin;

c. Fill the tub, bowl, or spa basin with water and add disinfectant;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- d. Allow the disinfectant to stand for noncirculating tubs, bowls, or basins or to circulate for circulating tubs, bowls, or basins for the time specified according to the manufacturer's instructions; and
- e. After disinfection, drain and rinse with clean water.

63.24(2) At the end of the day, a service provider shall remove all removable parts from circulating tubs, such as filters, screens, drains, and jets, and clean and disinfect the removable parts as follows:

- a. Scrub with a brush and soap or detergent until free from debris, and then rinse.
- b. Completely immerse in disinfectant.
- c. Rinse and air dry.
- d. Replace the disinfected parts into the tubs, bowl, or basin or store the parts in a disinfected, dry, covered container that is isolated from contaminants.

63.24(3) Foot spa service area records. For each foot spa service, including but not limited to pedicures, a record shall be made of the date and time of the daily cleaning and disinfecting for all circulating and noncirculating tubs, bowls or basins. This record shall be made at or near the time of cleaning and disinfecting. Records of cleaning and disinfecting shall be made available upon request by a client, inspector or investigator. The record must be signed by a licensee and include the licensee's license number beside each recorded cleaning event. Foot spa records shall be maintained for two years from the date of the cleaning.

645—63.25(157) Paraffin wax. Paraffin wax shall be used according to the manufacturer's instructions and shall be used in such a manner so as not to contaminate the remaining wax in the paraffin bath. The following procedures apply:

1. The client shall be free of broken skin or any skin disorder;
 2. Hands or feet of a client shall be cleaned before being dipped into paraffin wax. The client's hands and feet shall not be dipped into the original wax container. The wax shall be removed from the original container and placed in a single-use bag before dipping. Any unused wax remaining in the single-use bag shall be discarded after dipping;
 3. Paraffin wax that has been removed from a client's hands or feet shall be discarded after each use; and
 4. Paraffin wax shall be kept free of any debris and kept covered when not in use.
- These rules are intended to implement Iowa Code section 147.7 and chapter 157.

[Filed 4/1/24, effective 7/1/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7923C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to continuing education

The Board of Barbering and Cosmetology Arts and Sciences hereby rescinds Chapter 64, "Continuing Education for Cosmetology Arts and Sciences," and adopts a new Chapter 64, "Continuing Education for Barbering and Cosmetology Arts and Sciences," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 147.76, 157.14, 272C.2A, 272C.4 and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 157 and 272C.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Purpose and Summary

This rulemaking sets forth continuing education requirements for barbers, cosmetologists, nail technicians, estheticians, electrologists, and instructors. The rulemaking includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the rules, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that licensees stay up to date with infection control, laws, rules, and industry standards and, as a result, provide high-quality services to Iowans.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7540C**. Public hearings were held on February 13 and 14, 2024, at 1:50 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 28, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on July 1, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 64 and adopt the following **new** chapter in lieu thereof:

CHAPTER 64

CONTINUING EDUCATION FOR BARBERING AND COSMETOLOGY ARTS AND SCIENCES

645—64.1(157) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“*Board*” means the board of barbering and cosmetology arts and sciences.

“*Continuing education*” means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65.

“*Practice discipline*” means the practice of electrology, esthetics, nail technology, or barbering and cosmetology as recognized by the board of barbering and cosmetology arts and sciences.

“*Prescribed practice*” means an area of specialty certified by the board within the scope of barbering and cosmetology arts and sciences.

645—64.2(157) Continuing education requirements.

64.2(1) The biennial continuing education compliance period shall begin on April 1 of one year and end on March 31 two years later.

64.2(2) Each biennium:

a. A licensee in this state shall be required to complete a minimum of six hours of continuing education that meets the requirements of rule 645—64.3(157,272C). A minimum of four of the six hours shall be in the prescribed practice discipline and a minimum of two of the six hours shall be in the content areas of Iowa barbering and cosmetology law and rules and sanitation. Individuals holding more than one active license shall obtain four hours of continuing education in each prescribed practice discipline and an additional two hours in the content areas of Iowa barbering and cosmetology law and rules and infection control.

b. A licensee who is an instructor of barbering and cosmetology arts and sciences shall obtain six hours in teaching methodology in addition to meeting all continuing education requirements for renewal of the instructor’s practice license. A licensee must comply with all conditions of licensure including obtaining a minimum of two hours each biennium specific to Iowa barbering and cosmetology law and administrative rules as specified in subrule 64.3(2).

c. A licensee currently licensed in Iowa but practicing exclusively in another state may comply with Iowa continuing education requirements for license renewal by meeting the continuing education requirements of the state or states where the licensee practices. The licensee living and practicing in a state that has no continuing education requirement for renewal of a license shall not be required to meet Iowa’s continuing education requirement but shall pay all renewal fees when due.

d. A licensee shall be deemed to have complied with the continuing education requirements of this state during periods that the licensee:

- (1) Serves honorably on active duty in the military services, or
- (2) Is the spouse of an active duty military service person, or
- (3) Is a government employee working in the person’s licensed specialty and assigned to duty outside of the United States, or
- (4) Is engaged in active practice and absent from the state, as approved by the board.

64.2(3) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

education hours acquired any time from the initial licensing until the second license renewal may be used.

64.2(4) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

64.2(5) No hours of continuing education shall be carried over into the next biennium. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

64.2(6) It is the responsibility of each licensee to finance the cost of continuing education.

64.2(7) Requirements for blow-dry stylists are outlined in Iowa Code section 157.12C.

645—64.3(157,272C) Standards.

64.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program.

At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s), sponsor(s);

(2) Number of program contact hours; and

(3) Evidence of successful completion of the course provided by the course sponsor.

64.3(2) *Specific criteria.* The licensee may obtain the minimum continuing education hours of credit outlined in paragraph 64.2(2)“a” by:

a. Attending workshops, trade shows, conferences or symposiums.

b. Accessing online training, such as viewing interactive conferences, attending webinars, or completing online training courses.

c. Attending programs on product knowledge, methods and systems. Continuing education shall be directly related to the technique and theory specific to the practice of barbering and cosmetology arts and sciences. No direct selling of products is allowed as part of a continuing education offering.

d. Attending business classes specific to owning or managing an establishment are acceptable. In addition to fulfilling the requirements in rule 645—64.2(157), for each prescribed practice license held by a licensee, the licensee is to complete four hours in each area.

64.3(3) *Specific criteria for providers and sponsors of continuing education.*

a. Continuing education shall be obtained by attending programs that meet the criteria in subrule 64.3(1). Individuals or groups may offer continuing education programs for any prescribed practice within the barbering and cosmetology arts and sciences that meet the criteria in rule 645—64.3(157,272C) offered by or with express sponsorship in advance of delivery by the following organization(s):

(1) Barbering and cosmetology arts and sciences organizations, including:

1. National, state or local associations;

2. Schools and institutes;

3. Textbook publishers.

(2) Universities, colleges or community colleges;

(3) If intense pulsed light (IPL) or microdermabrasion is within the licensee’s prescribed practice as outlined in rule 645—60.5(157), manufacturers or institutes of laser technology.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

b. A licensee who is a presenter of a continuing education program that meets the criteria in rule 645—64.3(157,272C) may receive credit once per biennium for the initial presentation of the program. The presenter may receive the same number of hours granted the attendees.

These rules are intended to implement Iowa Code section 272C.2 and chapter 157.

[Filed 4/1/24, effective 7/1/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7924C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to discipline

The Board of Barbering and Cosmetology Arts and Sciences hereby rescinds Chapter 65, "Discipline for Cosmetology Arts and Sciences Licensees, Instructors, Salons, and Schools," and adopts a new Chapter 65, "Discipline for Barbering and Cosmetology Arts and Sciences Licensees, Instructors, Establishments, and Schools," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 147.76, 157.14, 272C.3, 272C.4 and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 157 and 272C.

Purpose and Summary

This rulemaking provides protection to Iowans because the rulemaking publicly defines disciplinary options when a licensee fails to act in a manner consistent with professional standards for licensees. This is important to both the public and the licensee because the rulemaking creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, it can subject a licensee to discipline against the licensee's license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the barbering and cosmetology arts and sciences professions and are therefore excluded from the general disciplinary chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7541C**. Public hearings were held on February 13 and 14, 2024, at 1:50 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 28, 2024.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on July 1, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 65 and adopt the following **new** chapter in lieu thereof:

CHAPTER 65

DISCIPLINE FOR BARBERING AND COSMETOLOGY ARTS AND SCIENCES LICENSEES,
INSTRUCTORS, ESTABLISHMENTS, AND SCHOOLS

645—65.1(157,272C) Definitions.

“*Board*” means the board of barbering and cosmetology arts and sciences.

“*Discipline*” means any sanction the board may impose upon barbering and cosmetology arts and sciences licensees, instructors, blow-dry stylists, establishments, and schools.

“*Licensure*” means the granting of a license to any person or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65.

645—65.2(157,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in 645—Chapter 13 when the board determines that any of the acts or offenses listed in such chapter or in Iowa Code section 147.55 or any of the following have occurred:

65.2(1) Misappropriation of funds.

65.2(2) Failure to return the salon license to the board within 30 days of discontinuance of business under that license.

65.2(3) Permitting an unlicensed employee or person under the licensee's or the licensed school's or establishment's control to perform activities that require a license.

65.2(4) Permitting a licensed person under the licensee's or the licensed school's or establishment's control to practice outside the scope of the person's license.

65.2(5) A person is determined by the investigator to be providing barbering and cosmetology services and leaving a salon at the time of inspection, which shall be prima facie evidence that an unlicensed person is providing services for which a license is required.

65.2(6) Performing any of those practices coming within the jurisdiction of the board pursuant to Iowa Code chapter 157, with or without compensation, in any place other than a licensed establishment or a licensed school of barbering and cosmetology arts and sciences.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

EXCEPTION: A licensee may practice at a location that is not a licensed establishment or school of barbering and cosmetology arts and sciences when:

- a. Providing a service authorized under Iowa Code section 157.4 (Temporary Permits).
- b. Providing a service under rule 645—63.17(157), “Events and services provided outside of a licensed establishment” (Iowa Code section 157.13(1) “a”).
- c. Extenuating circumstances related to the physical or mental disability or death of a customer prevent the customer from seeking services at the licensed establishment or school.

645—65.3(157,272C) Unlawful practices. Practices by an unlicensed person or establishment that are subject to civil penalties include, but are not limited to:

65.3(1) Acts or practices by unlicensed persons that require licensure to practice barbering and cosmetology arts and sciences under Iowa Code chapter 157.

65.3(2) Acts or practices by unlicensed establishments that require licensure as an establishment or school of barbering and cosmetology arts and sciences under Iowa Code chapter 157.

These rules are intended to implement Iowa Code chapters 147, 157 and 272C.

[Filed 4/1/24, effective 7/1/24]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7925C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to licensure

The Board of Dietetics hereby rescinds Chapter 81, “Licensure Of Dietitians,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 152A and sections 147.36, 272C.3 and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 152A and 272C.

Purpose and Summary

The intended benefit of Chapter 81 is to set minimum standards for entry into the dietetics profession. Iowa residents, licensees, and employers benefit from the chapter because it articulates the processes by which individuals apply for licensure as a dietitian in the state of Iowa, as directed in statute. The chapter publicly illustrates the process that will be used to license dietitians, including renewal and reinstatement, to ensure public safety through review of the integrity and competence of the practitioner. The chapter describes the application process, educational qualifications, and examination requirements.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7542C**. Public hearings were held on February 13 and 14, 2024, at 2:10 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings.

ATA Action, the American Telemedicine Association’s affiliated trade association, requested that the Board take this opportunity to expand the modalities that can be utilized for telehealth appointments before adopting these rules in the interest of expanding Iowa patients’ access to affordable, high-quality

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

mental health care. In response to the public comment, the Board expanded subrule 81.10(2) related to telehealth to allow for the use of audio or video equipment or both at the discretion of the licensee. The Board also added a date certain to a Health Insurance Portability and Accountability Act of 1996 (HIPAA) reference. Additional changes were made for grammatical consistency, for consistency in references to acronyms, and to correct two cross-references.

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 22, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 81 and adopt the following **new** chapter in lieu thereof:

DIETITIANS

CHAPTER 81	LICENSURE OF DIETITIANS
CHAPTER 82	CONTINUING EDUCATION FOR DIETITIANS
CHAPTER 83	DISCIPLINE FOR DIETITIANS

CHAPTER 81
LICENSURE OF DIETITIANS

645—81.1(152A) Definitions.

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of dietetics.

“*Consultation*” means the practice of providing professional advice to another dietitian or other professional in a particular case and for a limited time, in affiliation with, and at the request of, a dietitian licensed in this state.

“*Dietetics*” means the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food management and from behavioral and social sciences to achieve and maintain an individual's health.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means any person licensed to practice as a dietitian in the state of Iowa.

“*License expiration date*” means the fifteenth day of the birth month every two years following initial licensure.

“*Nutrition assessment*” means the evaluation of the nutrition needs of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and to recommend appropriate nutritional intake, including enteral and parenteral nutrition.

“*Nutrition counseling*” means advising and assisting individuals or groups, with consideration of cultural background and socioeconomic status, about appropriate nutritional intake by integrating information from the nutrition assessment with information about food and other sources of nutrients and meal preparation.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—81.8(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice dietetics to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of dietetics to license persons who have the same or similar qualifications as those required in Iowa.

“*Registered dietitian*” means a dietitian who has met the standards and qualifications of the Commission on Dietetic Registration, a member of the National Commission for Certifying Agencies.

“*Reinstatement*” means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

“*Supervision of nonlicensees*” means any of the following: delegation of duties, direct oversight, or indirect oversight of employees or other persons not licensed by the board.

645—81.2(152A) Nutrition care. The primary function of dietetic practice is the provision of nutrition care services that include:

1. Assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting.
2. Establishing priorities, goals, and objectives that meet nutrition needs and are consistent with available resources and constraints.
3. Providing nutrition counseling concerning health and disease.
4. Developing, implementing, and managing nutrition care systems.
5. Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition services.

645—81.3(152A) Requirements for licensure. The following criteria apply to licensure:

81.3(1) The applicant submits a completed online application for licensure and pay the nonrefundable licensure fee specified in rule 645—5.6(147,152A).

81.3(2) No application will be considered by the board until the applicant satisfactorily completes the registration examination for dietitians administered by the Commission on Dietetic Registration (CDR). The board will accept the passing score set by the CDR. Verification of satisfactory completion may be established by one of the following:

- a. The applicant sends to the board a copy of the CDR registration card;
- b. The CDR sends an official letter directly to the board to verify that the applicant holds registration status; or
- c. The CDR posts web-based verification that the applicant holds registration status.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

81.3(3) A license is not required for dietitians who are in this state for the purpose of consultation, in accordance with rule 645—81.1(152A), when they are licensed in another state, U.S. territory, or country, or have received at least a baccalaureate degree in human nutrition from a U.S. regionally accredited college or university.

81.3(4) Incomplete applications that have been on file in the board office for more than two years will be considered invalid and destroyed.

645—81.4(152A) Educational qualifications.

81.4(1) The applicant shall possess a baccalaureate degree or postbaccalaureate degree from a U.S. regionally accredited college or university with a major course of study in human nutrition, food and nutrition, nutrition education, dietetics, or food systems management, or in an equivalent major course of study, that meets minimum academic requirements as established by the Accreditation Council for Education in Nutrition and Dietetics (ACEND) of the Academy of Nutrition and Dietetics (AND) and is approved by the board.

81.4(2) A foreign-trained dietitian shall:

a. Provide an official letter sent directly from the Commission on Dietetic Registration (CDR) to the board to verify that the applicant has met the minimum academic and didactic program requirements of the CDR. Foreign degree equivalency evaluation requirements of the ACEND of the AND are listed on the ACEND website, and

b. Provide evidence of meeting all other requirements in these rules.

645—81.5(152A) Supervised experience. The applicant shall complete an accredited competency-based supervised experience program approved by the ACEND of the AND.

645—81.6(152A) Licensure by endorsement. An applicant who has been a licensed dietitian under the laws of another jurisdiction may file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

81.6(1) Meets the requirements of rule 645—81.4(152A).

81.6(2) Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- a.* Licensee's name;
- b.* Date of initial licensure;
- c.* Current licensure status; and
- d.* Any disciplinary action taken against the license.

645—81.7(152A) License renewal.

81.7(1) The biennial license renewal period begins on the sixteenth day of the licensee's birth month and ends on the fifteenth day of the licensee's birth month two years later. The licensee is responsible for renewing the license prior to its expiration.

81.7(2) An initial license issued by the board may be valid for an 18- to 29-month period. When an initial license is renewed, it will be placed on a two-year renewal period identified in subrule 81.9(1).

81.7(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—82.2(152A) and the mandatory reporting requirements of subrule 81.9(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

81.7(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children and dependent adults in Iowa will

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

complete the applicable department of health and human services training relating to the identification and reporting of child and dependent adult abuse as required by Iowa Code section 232.69(3) "b."

b. Written documentation of training completion should be maintained for three years.

c. The requirement for mandatory training for identifying and reporting child and dependent adult abuse is suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in rule 645—4.14(272C).

d. The board may select licensees for audit of compliance with the requirements in paragraphs 81.9(4) "a" and "b."

81.7(5) Upon receiving the information required by this rule and the required fee, a two-year license will be administratively issued. In the event the board receives adverse information on the renewal application, the renewal license will be issued but the board may refer the adverse information for further consideration or disciplinary investigation.

81.7(6) The license certificate and proof of active licensure will be displayed in a conspicuous public place at the primary site of practice.

81.7(7) Late renewal. A license not renewed by the expiration date will be assessed a late fee as specified in 645—subrule 5.6(3). Completion of renewal requirements and submission of the late fee within the grace period are needed to renew the license.

81.7(8) Inactive license. A license not renewed by the end of the grace period is inactive. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a dietitian in Iowa until the license is reactivated. A licensee who practices as a dietitian in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

81.7(9) Renewal of a reactivated license. A licensee who reactivates the license in accordance with rule 645—81.8(17A,147,272C) will not be required to renew the license until the next renewal two years later if the license is reactivated within six months prior to the license renewal date.

645—81.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

81.8(1) Submit a reactivation application and pay the reactivation fee as specified in 645—Chapter 5.

81.8(2) Provide verification of current competence to practice dietetics by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license.

(2) Verification of completion of 30 hours of continuing education within two years of the application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license.

(2) Verification of completion of 60 hours of continuing education within two years of application for reactivation.

645—81.9(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—81.8(17A,147,272C) prior to practicing dietetics in this state.

645—81.10(152A,272C) Telehealth visits. A licensee may provide dietetic services to an individual or a group utilizing a telehealth visit if the dietetic services are provided in accordance with all the requirements of this chapter.

81.10(1) "Telehealth visit" means the provision of dietetic services by a licensee to an individual or a group using technology where the licensee and the individual or group are not at the same physical location for the therapy session.

81.10(2) A licensee engaged in a telehealth visit will utilize technology that is secure and, pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191, August 21, 1996, 110 Stat. 1936, and any amendments as of March 22, 2024, HIPAA-compliant and that includes, at a minimum, audio or video equipment or both that allows two-way real-time interactive communication between the licensee and the individual or group. A licensee may use non-real-time technologies to prepare for a session or to communicate with an individual or a group between sessions.

81.10(3) A licensee engaged in a telehealth visit will be held to the same standard of care as a licensee who provides in-person dietetic services. A licensee will not utilize a telehealth visit if the standard of care for the particular services cannot be met by using technology.

81.10(4) Any licensee who provides a telehealth visit to an individual or a group located in Iowa shall be licensed in Iowa.

81.10(5) Prior to the first telehealth visit, a licensee is to obtain informed consent from the individual or group specific to the services that will be provided in a telehealth visit. At a minimum, the informed consent shall specifically inform the individual or group of the following:

- a. The risks and limitations of the use of technology to provide dietetics services;
- b. The potential for unauthorized access to protected health information; and
- c. The potential for disruption of technology during a telehealth visit.

81.10(6) A licensee will identify in the clinical record when dietetic services are provided utilizing a telehealth visit.

These rules are intended to implement Iowa Code chapters 17A, 147, 152A, and 272C.

[Filed 4/5/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7926C**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed****Rulemaking related to continuing education**

The Board of Dietetics hereby rescinds Chapter 82, “Continuing Education for Dietitians,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 152A and sections 147.36, 272C.3 and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 152A and 272C.

Purpose and Summary

Chapter 82 sets forth continuing education requirements for dietitians. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet, and the types of continuing education courses that are permissible. The intended benefit of continuing education is to ensure that dietitians maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7543C**. Public hearings were held on February 13 and 14, 2024, at 2:10 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 22, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 82 and adopt the following new chapter in lieu thereof:

CHAPTER 82
CONTINUING EDUCATION FOR DIETITIANS

645—82.1(152A) Definitions.

“*Active license*” means the license is current and has not expired.

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Board*” means the board of dietetics.

“*Continuing education*” means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee in actual attendance at and completion of approved continuing education activity.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a dietitian in the state of Iowa.

“*Webinar*” means a web-based seminar, presentation, lecture, or workshop that is transmitted over the web.

645—82.2(152A) Continuing education requirements.

82.2(1) The biennial continuing education compliance period will extend for a two-year period beginning on the sixteenth day of the licensee’s birth month and ending on the fifteenth day of the birth month two years later. Each biennium, each person who is licensed to practice as a dietitian in this state will be required to complete a minimum of 30 hours of continuing education approved by the board.

82.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired any time from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

82.2(3) Hours of continuing education credit may be obtained in accordance with the definitions and standards in these rules.

82.2(4) No hours of continuing education will be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

82.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—82.3(152A,272C) Standards.

82.3(1) *General criteria.* A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

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a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

b. Pertains to subject matters that integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of the presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

82.3(2) Specific criteria.

a. Continuing education hours of credit may be obtained by completing programs/activities that reflect the educational needs of the dietitian and the nutritional needs of the consumer. Continuing education programs/activities that are scientifically founded and offered at a level beyond entry-level dietetics for professional growth will be accepted for continuing education.

b. The licensee may engage in other types of activities identified in the individual licensee's professional development portfolio for Commission on Dietetic Registration (CDR) certification.

c. The licensee may engage in programs/activities via webinars and independent study in accordance with the definitions and standards in these rules.

d. The licensee may submit completed training to comply with mandatory reporter training requirements as specified in 645—subrule 81.9(4). Hours reported for credit will not exceed the hours required to maintain compliance with required training.

e. The following areas are appropriate for continuing education credit:

(1) Sciences related to dietetic practice, education, or research including biological sciences, food and resource management, and behavioral and social sciences to achieve and maintain people's health.

(2) Dietetic practice related to assessment, counseling, teaching, or care of clients in any setting.

(3) Management or quality assurance of nutritional care delivery systems.

(4) Dietetic practice related to community health needs.

f. Criteria for hours of credit are as follows:

(1) Academic coursework. Coursework for credit must be completed at a regionally accredited U.S. college or university. In order for the licensee to receive continuing education credit, the coursework must be beyond entry-level dietetics.

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

(2) Scholarly publications. Publication may be approved if submitted in published form in the continuing education documentation file of the licensee. All publications must appear in refereed professional journals. Material related to work responsibilities, such as diet and staff manuals, and publications for the lay public are unacceptable. Continuing education credit hours may be reported using the following guidelines:

1. Senior author: first of two or more authors listed.

2. Coauthor: second of two authors listed.

3. Contributing author: all but senior of the three or more authors.

4. Research papers:

- Single author 10 hours
- Senior author 8 hours
- Coauthor 5 hours
- Contributing author 3 hours

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5. Technical articles:

- Single author 5 hours
- Senior author 4 hours
- Coauthor 3 hours
- Contributing author 2 hours

6. Information-sharing articles: 1 hour

7. Abstracts:

- Senior author 2 hours
- Coauthor 1 hour

(3) Poster sessions. Continuing education credit may be obtained for attending juried poster sessions at national meetings that meet the criteria for appropriate subject matter as required in these rules. One hour of continuing education credit is allowed for each 12 posters reviewed not to exceed six hours in a continuing education biennium.

(4) Presenters. Presenters may receive continuing education credit. Presentations to the lay public will not receive credit for continuing education. For each 50-minute hour of presentation, two hours of credit for continuing education will be earned. Presenters of poster sessions at national professional meetings will receive a maximum of two hours of credit per topic. A copy of the abstract or manuscript and documentation of the peer review process must be included in the licensee's documentation list.

(5) Staff development training. Staff development training that meets the criteria in this subrule will be credited on the basis of the defined hour of continuing education stated in these rules.

These rules are intended to implement Iowa Code section 272C.2 and chapter 152A.

[Filed 4/5/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7927C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to discipline

The Board of Dietetics hereby rescinds Chapter 83, "Discipline for Dietitians," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 152A and sections 147.36, 272C.3 and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 152A and 272C.

Purpose and Summary

Chapter 83 defines actions that are inconsistent with professional standards for licensees, which are established to protect the consumer and colleagues. Actions inconsistent with professional standards could result in disciplinary actions against a practitioner's license.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary

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chapter has been created that applies to all professions. Chapter 83 contains only those disciplinary grounds that are unique to the dietetics licensees and are therefore excluded from the general disciplinary chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7544C**. Public hearings were held on February 13 and 14, 2024, at 2:10 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 22, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 83 and adopt the following **new** chapter in lieu thereof:

CHAPTER 83
DISCIPLINE FOR DIETITIANS

645—83.1(152A,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 645—Chapter 13:

Failure to comply with the Academy of Nutrition and Dietetics/Commission on Dietetic Registration, Code of Ethics for the Profession of Dietetics and Process for Consideration of Ethics Issues, effective January 1, 2010, hereby adopted by reference. Copies may be obtained

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from the Academy of Nutrition and Dietetics/Commission on Dietetic Registration website at www.eatright.org/code-of-ethics-for-rdns-and-ndtrs.

This rule is intended to implement Iowa Code chapters 147, 152A and 272C.

[Filed 4/5/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7928C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to licensure

The Board of Athletic Training hereby rescinds Chapter 351, "Licensure of Athletic Trainers," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 152D and sections 147.36, 272C.3 and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 152D and 272C.

Purpose and Summary

This rulemaking sets the minimum standards of entry into the athletic training profession. Iowa residents, licensees, and employers benefit from the rulemaking because it clarifies the processes by which licensees may apply for licensure as athletic trainers, as directed in statute.

The rulemaking publicly illustrates the process that will be used to license athletic trainers and athletic trainer assistants, including renewal and reinstatement, to ensure public safety through review of the integrity and competence of the practitioner. The rulemaking describes the application process, educational qualifications, and examination requirements. The rulemaking also provides steps for documentation of physician direction and athletic training plans for direct service.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7553C**. Public hearings were held on February 13 and 14, 2024, at 2:10 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 12, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 351 and adopt the following **new** chapter in lieu thereof:

ATHLETIC TRAINERS

CHAPTER 351 LICENSURE OF ATHLETIC TRAINERS
CHAPTER 352 CONTINUING EDUCATION FOR ATHLETIC TRAINERS
CHAPTER 353 DISCIPLINE FOR ATHLETIC TRAINERS

CHAPTER 351
LICENSURE OF ATHLETIC TRAINERS

645—351.1(152D) Definitions. In addition to the definitions included in Iowa Code section 152D.1, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of athletic training created under Iowa Code chapter 147.

“*BOC*” means the Board of Certification or its successor organization.

“*Directing physician*” means a physician who supervises the athletic training services provided by a licensed athletic trainer.

“*Direction*” means that a physician directs the performance of a licensed athletic trainer in the development, implementation, and evaluation of an athletic training service plan as set out in rule 645—351.6(152D). Direction shall not be construed as requiring the personal presence of that physician at each activity of the licensed athletic trainer. It is the responsibility of the licensed athletic trainer to ensure that the practice of athletic training is carried out only under the direction of a licensed physician.

“*Endorsement*” means the issuance of an Iowa license to practice athletic training to an applicant who is currently licensed in another state that has the same or similar qualifications to those required in Iowa.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“*Licensee*” means any person licensed to practice as an athletic trainer in the state of Iowa.

“*License expiration date*” means February 28 of each odd-numbered year.

“*Mandatory reporter training*” means the training on identifying and reporting child abuse or dependent adult abuse as required in Iowa Code sections 323.69 and 235B.16.

“*Physical reconditioning*” means the part of the practice of athletic training that combines physical treatment, rehabilitation and exercise and is carried out under the orders of a physician or physician assistant. Physical treatment is part of a service plan that includes but is not limited to the continued

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use of any of the following: cryotherapy, thermotherapy, hydrotherapy, electrotherapy, or the use of mechanical devices.

“Physician” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, or podiatry under the laws of this state.

“Reactivate” or *“reactivation”* means the process as outlined in rule 645—351.15(17A,147,272C) by which an inactive license is restored to active status.

“Reinstatement” means the process as outlined in rule 645—11.31(272C). Once the license is reinstated, the licensee may apply for active status.

645—351.2(152D) Initial licensure.

351.2(1) Requirements for licensure. The applicant shall:

a. Submit a complete online application and pay the nonrefundable fee specified in rule 645—5.1(147,152D). If the application is not completed according to the instructions, the application will not be reviewed by the board.

b. Submit official copies of academic transcripts directly from the school to the board of athletic training. No application will be considered by the board until official copies of academic transcripts have been received.

c. Have successfully completed the BOC examination. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the Iowa board of athletic training.

d. Provide verification of license from the jurisdiction in which the applicant has been most recently licensed, sent directly from the jurisdiction to the board office. The applicant must also disclose any public or pending complaints against the applicant in any other jurisdiction.

351.2(2) Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

- a.* Licensee’s name;
- b.* Date of initial licensure;
- c.* Current licensure status; and
- d.* Any disciplinary actions taken against the license.

351.2(3) Licensure by endorsement. An athletic trainer applicant who holds a license from the District of Columbia or another state, territory, province or foreign country may be eligible for licensure by endorsement and may direct the BOC to submit:

- a.* A current certification status, or
- b.* A passing score on the examination of the BOCs.

351.2(4) Licensure by verification. A person who is licensed in another jurisdiction but who is unable to satisfy the requirements for licensure by endorsement may apply for licensure by verification, if eligible, in accordance with rule 645—19.1(272C).

351.2(5) Incomplete applications that have been on file in the board office for more than two years shall be:

- a.* Considered invalid and shall be destroyed; or
- b.* Maintained upon written request of the candidate. The candidate is responsible for requesting that the file be maintained.

645—351.3(152D) Educational qualifications.

351.3(1) An applicant for licensure to practice as an athletic trainer shall possess a baccalaureate degree or postbaccalaureate degree from a U.S. regionally accredited college or university.

351.3(2) Foreign-trained athletic trainers shall:

a. Provide an equivalency evaluation of their educational credentials by International Education Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665; telephone 310.258.9451; website www.ierf.org or email at info@ierf.org. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation. An applicant who has passed the BOC examination is exempt from this requirement.

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b. Provide a copy of the certificate or diploma awarded to the applicant from an athletic training program in the country in which the applicant was educated. An applicant who has passed the BOC examination is exempt from this requirement.

c. Receive a final determination from the board regarding the application for licensure.

d. Pass the BOC examination. Official results are to be submitted directly to the board from the BOC.

351.3(3) An applicant who has relocated to Iowa from a state that did not require licensure to practice the profession may submit proof of work experience in lieu of educational and training requirements, if eligible, in accordance with rule 645—19.2(272C).

645—351.4(152D) Examination requirements.

351.4(1) The examination required by the board shall be the BOC examination. Application and information may be obtained from the BOC Offices, 1411 Harney Street, Suite 200, Omaha, NE 68102; telephone 402.559.0091; website www.bocatc.org or email at BOC@bocatc.org.

351.4(2) The applicant has responsibility for:

a. Making arrangements to take the national examination; and

b. Arranging to have the examination scores sent directly to the board from BOC.

645—351.5(152D) Documentation of physician direction. Each licensee must maintain documentation of physician direction. It is the responsibility of the licensee to ensure that documentation of physician direction is obtained and maintained, including the following:

1. Athletic training service plan as set out in rule 645—351.6(152D);

2. Dates and names of physician and physician assistant orders or referrals;

3. Initial evaluations and assessments;

4. Treatments and services rendered, with dates; and

5. Dates of subsequent follow-up care.

645—351.6(152D) Athletic training standards of professional practice. Athletic training service plans shall be composed of the following components as taken from the Board of Certification Standards of Professional Practice (January 2018):

351.6(1) Practice Standards.

351.6(2) Code of Professional Responsibility.

645—351.7(147) License renewal.

351.7(1) The biennial license renewal period for a license to practice athletic training shall begin on March 1 of each odd-numbered year and end on February 28 of the next odd-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

351.7(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

351.7(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—352.2(152D) and the mandatory reporting requirements of subrule 351.9(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

351.7(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of training in child abuse identification and reporting as required by Iowa Code section 232.69(3)"*b*" in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 351.7(4)"*e*."

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b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)“*b*” in the previous three years or condition(s) for waiver of this requirement as identified in paragraph 351.7(4)“*e*.”

c. The course(s) shall be the curriculum provided by the Iowa department of health and human services.

d. The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs 351.7(4)“*a*” to “*c*,” including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements.

f. The board may select licensees for audit of compliance with the requirements in paragraphs 351.7(4)“*a*” to “*e*.”

351.7(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

351.7(6) A person licensed to practice as an athletic trainer shall keep the license certificate and renewal displayed in a conspicuous public place at the primary site of practice.

351.7(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the renewal. The licensee shall be assessed a late fee as specified in 645—subrule 5.1(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

351.7(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as an athletic trainer in Iowa until the license is reactivated. A licensee who practices as an athletic trainer in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—351.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

351.8(1) Submit a reactivation application on a form provided by the board.

351.8(2) Pay the reactivation fee that is due as specified in 645—Chapter 5.

351.8(3) Provide verification of current competence to practice as an athletic trainer by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction’s board office if the verification includes:

1. Licensee’s name;

2. Date of initial licensure;

3. Current licensure status; and

4. Any disciplinary action taken against the license; and

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(2) Verification of completion of 50 hours of continuing education within two years of the application for reactivation or verification of active practice, consisting of a minimum of 2,080 hours, in another state or jurisdiction during the two years preceding an application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license from the jurisdiction in which the applicant has most recently been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education within two years of application for reactivation; and

(3) Verification of current BOC certification.

351.8(4) Submit a sworn statement of previous practice from an employer or professional associate, detailing places and dates of employment and verifying that the applicant worked as an athletic trainer for at least 2,080 hours or taught as the equivalent of a full-time faculty member for at least one of the immediately preceding years during the last two-year time period.

645—351.9(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—351.15(17A,147,272C) prior to practicing as an athletic trainer in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 152D and 272C.

[Filed 4/12/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7929C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to continuing education

The Board of Athletic Training hereby rescinds Chapter 352, "Continuing Education for Athletic Trainers," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 152D and sections 147.36, 272C.3 and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 152D and 272C.

Purpose and Summary

This rulemaking sets forth continuing education requirements for athletic trainers in Iowa. It includes definitions related to continuing education, the required number of hours of continuing education that licensees are required to obtain, the standards that licensees need to meet in order to comply with the

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rules, and the types of continuing education courses that are permissible. The intended benefit of this rulemaking is to provide the licensees, schools, continuing education providers, and employers clarity regarding the processes licensees must complete for renewal or reactivation of licensure. The intended benefit of continuing education is to ensure that athletic trainers maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7554C**. Public hearings were held on February 13 and 14, 2024, at 2:50 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 12, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 352 and adopt the following **new** chapter in lieu thereof:

CHAPTER 352
CONTINUING EDUCATION FOR ATHLETIC TRAINERS

645—352.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Board*” means the board of athletic training created under Iowa Code chapter 147.

“*BOC*” means the Board of Certification or its successor organization.

“*Continuing education*” means the same as defined in Iowa Code section 272C.1.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee completing an approved continuing education activity through live, virtual, online or prerecorded means where the instructor provides proof of completion by the licensee as set forth in these rules.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“License” means license to practice.

“Licensee” means any person licensed to practice as an athletic trainer in the state of Iowa.

645—352.2(152D) Continuing education requirements.

352.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on March 1 of each odd-numbered year and ending on February 28 of the next odd-numbered year. Each biennium, each person who is licensed to practice as an athletic trainer in this state will have the responsibility to finance the cost and be required to maintain BOC certification or complete a minimum of 40 hours of continuing education approved by the board.

352.2(2) Requirements for new licensees. Those persons licensed for the first time or being licensed for the first time after a temporary license shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired any time from the initial licensing until the second license renewal may be used. The new licensee will be required to maintain BOC certification or complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

352.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

352.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

645—352.3(152D,272C) Standards.

352.3(1) General criteria. A continuing education activity that meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

- a. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;
- b. Pertains to subject matters that integrally relate to the practice of the profession;
- c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;
- d. Fulfills stated program goals, objectives, or both; and
- e. Provides proof of attendance to licensees in attendance including:
 - (1) Date(s), location, course title, presenter(s);
 - (2) Number of program contact hours; and
 - (3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

352.3(2) Specific criteria. Continuing education may be obtained through any of the following:

- a. Completing a course provided by a BOC-approved provider of continuing education.
- b. Attending workshops, conferences, or symposiums.
- c. Authoring research, the results of which are published in a recognized professional publication.

A licensee shall receive five hours of credit per page.

d. Presenting professional programs that meet the criteria of this chapter. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit. Presenting at a professional program does not include teaching a class at an institution of higher learning at which the applicant is regularly and primarily employed, nor does it include presentations to the lay public. A licensee may be granted no more than ten hours of continuing education credit per biennium for presenting professional programs.

e. Completing academic courses that directly relate to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses that apply to the field of athletic training must be maintained for audit. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

1 academic trimester hour = 12 continuing education hours

1 academic quarter hour = 10 continuing education hours

These rules are intended to implement Iowa Code section 272C.2 and chapter 152D.

[Filed 4/12/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7930C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to discipline

The Board of Athletic Training hereby rescinds Chapter 353, "Discipline for Athletic Trainers," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 152D and sections 147.36, 272C.3 and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 152D and 272C.

Purpose and Summary

The rulemaking defines actions that are inconsistent with professional standards for licensees, which are established to protect the consumer and colleagues. Actions inconsistent with professional standards could result in disciplinary actions against a practitioner's license.

The 19 boards in the legacy Health and Human Services Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only those disciplinary grounds that are unique to the athletic training licensees and are therefore excluded from the general disciplinary chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7555C**. Public hearings were held on February 13 and 14, 2024, at 2:50 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on March 12, 2024.

Fiscal Impact

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

Jobs Impact

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

Waivers

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 353 and adopt the following **new** chapter in lieu thereof:

CHAPTER 353
DISCIPLINE FOR ATHLETIC TRAINERS

645—353.1(152D) Definitions.

“Board” means the board of athletic training.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as an athletic trainer in Iowa pursuant to Iowa Code chapter 152D and 645—Chapters 351 to 353.

645—353.2(152D,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in 645—Chapter 13 when the board determines that any of the following acts or offenses listed in such chapter or in Iowa Code section 147.55 have occurred:

353.2(1) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other athletic trainers in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care that is ordinarily exercised by the average athletic trainer acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensed athletic trainer in this state.

353.2(2) Violation of a regulation, rule or law of this state, another state, or the United States, which relates to the practice of athletic training.

353.2(3) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of athletic training in another state, district, territory or country.

353.2(4) Knowingly aiding, assisting, or advising a person to unlawfully practice as an athletic trainer.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

353.2(5) Representing oneself as a licensed athletic trainer when one's license has been suspended or revoked, or when one's license is on inactive status.

These rules are intended to implement Iowa Code chapters 147, 152D and 272C.

[Filed 4/12/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7932C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rulemaking related to certificate of need program

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 202, "Certificate of Need Program," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 10A.712(2)"e"(5) and Executive Order 10 (January 10, 2023).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 10A.711 to 10A.729.

Purpose and Summary

The Iowa Code currently mandates the existence of the State Health Facilities Council (Council) and the Certificate of Need (CON) process and these administrative rules. The statutory goal is to protect access to affordable health care options, especially in rural areas and for medically underserved populations. Institutional health facilities, including but not limited to hospitals, health care facilities, birthing centers, and ambulatory surgery centers, must acquire a CON prior to offering services.

This chapter establishes the CON process when adding beds, building a new facility, or purchasing certain medical equipment. It provides an overview of each step in the process and information about the role of the Council and its duties. This chapter also publicly illustrates the process and criteria that will be used by the Council in determining whether to grant a CON to an applicant.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 10, 2024, as **ARC 7379C**. Public hearings were held on January 30 and 31, 2024, at 9 a.m. at 6200 Park Avenue, Des Moines, Iowa.

On January 30, a comment was received from the public suggesting that language removed from subrule 202.4(2) be added back to the subrule. This language includes the words "and financing costs" to be added to the end of the first sentence of the subrule, and the following "in addition to other costs associated with the project" be added after the word "space" in subparagraph 202.4(2)"a"(2). There are no objections to these changes.

No one attended the January 31 hearing.

In addition to the changes mentioned above, Iowa Code citations were changed to reflect realignment enacted by 2023 Iowa Acts, Senate File 514.

Adoption of Rulemaking

This rulemaking was adopted by the Department on March 29, 2024.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 641—Chapter 202 and adopt the following new chapter in lieu thereof:

CHAPTER 202
CERTIFICATE OF NEED PROGRAM

641—202.1(10A) Definitions. For purposes of this chapter, the following definitions apply:

“*Acute care category of bed usage,*” as the term applies in Iowa Code section 10A.713(2) “*k,*” is the same as the acute care categories listed in the state survey section of the American Hospital Association Annual Survey of Hospitals.

“*Any expenditure in excess of five hundred thousand dollars,*” as defined in Iowa Code section 10A.711(18) “*e,*” means new capital expenditures necessary to operate the service for a year.

“*Any mobile health service with a value in excess of one million five hundred thousand dollars,*” as defined in Iowa Code section 10A.711(18) “*l,*” means the value of all equipment used to provide the service, including the trailer. The party providing the equipment is the applicant regardless of the location of that party.

“*Appropriate geographic service area,*” as the term applies to defining affected persons in Iowa Code section 10A.711(1) “*c,*” is defined as follows:

1. For applications regarding hospitals, hospitals located in the same county and in Iowa counties contiguous to the county wherein the applicant hospital's proposed project will be located.

2. For applications regarding health care facilities, other health care facilities located in the same county and in Iowa counties contiguous to the county wherein the applicant's proposed health care facility will be located.

3. For applications sponsored by other than the hospitals or health care facilities specified in paragraphs “1” and “2,” those providers within the same county who offer similar service or might logically be viewed as potential providers of such service.

“*Bed capacity*” is defined as follows:

1. For hospitals, bed capacity is defined as the total facility licensed beds as reported on the state survey section of the American Hospital Association Annual Survey of Hospitals.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

2. For health care facilities, bed capacity is defined as a facility's licensed bed capacity according to the department of inspections, appeals, and licensing.

"Cardiac catheterization service," as the term applies to a new or changed institutional health service in Iowa Code section 10A.711(18) "m"(1), means the initiation or expansion of this service.

"Consumers served by a new institutional health service" means those consumers residing in the service area as determined by the department.

"Long-term (acute) care hospital," for purposes of these rules, means a hospital that has been approved to participate in the Title XVIII (Medicare) program as a long-term care hospital-prospective payment system (LTCH-PPS) hospital in accordance with 42 CFR Part 412 as amended to March 29, 1985.

"Open heart surgical service," as the term applies to new or changed institutional health service in Iowa Code section 10A.711(18) "m"(2), means the initiation or expansion of this service.

"Organ transplantation service," as the term applies to a new or changed institutional health service in Iowa Code section 10A.711(18) "m"(3), means the initiation or expansion of this service. Each type of organ transplant shall be considered separately.

"Permanent change in bed capacity of an institutional health facility" includes but is not limited to the following:

1. A conversion of a long-term acute care hospital, a rehabilitation hospital or a psychiatric hospital as defined by federal regulations to a general acute care hospital or to a different type of specialty hospital.

2. A hospital that has deleted beds pursuant to Iowa Code section 10A.713(2) "g" for the purpose of receiving designation as a critical access hospital reestablishes the deleted beds at a later time, provided that the number of beds reestablished does not exceed the number of beds maintained prior to the deletion as reported on the bed reduction form.

"Physical facility," as the term applies in Iowa Code section 10A.711(18) "f," means a separately licensed facility.

"Private offices and private clinics of an individual physician, dentist, or other practitioner or group of health care providers." The meaning of this term as used in Iowa Code section 10A.713(2) "a" is determined by looking at factors that include but are not limited to:

1. The type of health care service delivered.
2. The control and supervision of medical judgment in the care of and treatment of patients.
3. The control and supervision of professional assistants, including nurses, physician assistants, and technicians.
4. The ownership and maintenance of medical records of patients.

This term excludes an ambulatory surgical center as defined in Iowa Code section 135R.1.

"Radiation therapy service applying ionizing radiation for the treatment of malignant disease using megavoltage external beam equipment," as the term applies to new or changed institutional health service in Iowa Code section 10A.711(18) "m"(4), means the initiation or expansion of this service.

"Rehabilitation hospital," for the purposes of these rules, means a hospital that has been approved to participate in the Title XVIII (Medicare) program as an inpatient rehabilitation facility-prospective payment system (IRF-PPS) hospital in accordance with 42 CFR Part 412.23(b), 412.25 or 412.29 as amended to March 29, 1985.

"Relocation of an institutional health facility," as the term applies to new or changed institutional health service in Iowa Code section 10A.711(18) "b," means the replacement of a facility located in one county with a facility located in another county.

"Value in excess of one million five hundred thousand dollars," as used in Iowa Code section 10A.711(18) "g," "h," "i" and "j," means the value of the equipment including any applicable sales tax, delivery charge and installation charge. With respect to the initiation of radiation therapy services applying ionizing radiation for the treatment of malignant disease using the megavoltage external beam equipment, the term includes the cost of constructing a vault.

641—202.2(10A) Letter of intent.

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202.2(1) Before applying for a certificate of need, the sponsor of a proposed new institutional health service or changed institutional health service will electronically submit a letter of intent meeting the criteria noted in Iowa Code section 10A.715(1) and containing the project's estimated cost (site costs, land improvements, facility costs, movable equipment and financing costs, and any applicable sales tax for movable equipment, any applicable delivery charge for movable equipment, and any applicable installation charge for movable equipment).

202.2(2) The department will make available on the certificate of need web page all criteria and standards that are pertinent to an application.

202.2(3) A letter of intent received by the department is valid for a period of one year from the date of receipt by the department. The sponsor may renew the validity of a letter of intent by providing written notification to the department prior to the one-year expiration date.

641—202.3(10A) Determination of reviewability. A sponsor of a proposed project may submit a written request for a determination of reviewability as to whether the project requires a certificate of need.

202.3(1) The request should include sufficient details of the proposed project and cite the sections of the Iowa Code that the sponsor relies upon to assert the project is not reviewable.

202.3(2) Upon receipt of a written request from the sponsor of a project, the department will determine if a proposed project requires a certificate of need under Iowa Code sections 10A.711 through 10A.729. The department may request additional information about the project to make the determination.

a. If it is determined that a certificate of need is required, the sponsor will be notified by the department and the request for nonreviewability will be considered the letter of intent for purposes of 202.2(2).

b. If it is determined that a certificate of need is not required, the sponsor will be notified by the department and the determination of nonreviewability will be placed on the next agenda of the state health facilities council for consideration.

c. The notification to the sponsor of the results of the department's review of the request will include specific Iowa Code citations relied upon to support the determination.

641—202.4(10A) Submission of application.

202.4(1) Application form.

a. A sponsor of a proposed project for a new or changed institutional health service will submit to the department an application for certificate of need by using the appropriate application form found on the certificate of need web page. All information requested in the application form will be required in the absence of a waiver by the department.

b. An original application and all attachments shall be submitted via electronic mail.

c. The department will establish and maintain electronic files on each application.

202.4(2) Application fee. The application fee specified in Iowa Code section 10A.713(1) is based on the total cost of the project, including site costs, land improvements, facility costs, movable equipment, and financing costs.

a. The fee for leased or donated new institutional health services is calculated in the same manner as if the new institutional health services were purchased.

(1) The leased equipment fee is based on total value of the lease, plus sales tax, delivery and installation.

(2) The lease of space includes the cost of a one-year-lease payment for the space, in addition to other costs associated with the project.

(3) Financing costs are not applicable on leases or cash purchases.

b. The application fee will be refunded by the department for any application that is voluntarily withdrawn from the review process in the amounts specified in Iowa Code section 10A.713(1).

c. For purposes of this subrule and Iowa Code section 10A.713(1), the term "submission" means the day the application is received by the department.

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641—202.5(10A) Organizational procedures.

202.5(1) The presence of three members of the council shall constitute a quorum.

202.5(2) The chair and all other council members present will cast votes or abstain, as the case may be, on all council action. No proxy votes shall be allowed.

202.5(3) A vote of a majority of those present will be necessary to take action on any motion before the council. A tie vote means no action on the motion.

202.5(4) The council will, at the first meeting after July 1 of each odd-numbered year, elect a vice-chair to perform the duties of the chair in the chair's absence, when the chair has a conflict of interest or when the chair so directs.

202.5(5) A council member will refrain from participating in an application review process if the member:

- a.* Has a personal bias or prejudice concerning the applicant;
- b.* Has acted as counsel to the applicant or a competitor of the applicant in the same or adjoining county within the past two years;
- c.* Has a financial interest in the outcome of the application process or any other significant personal interest that could be substantially affected by the outcome of the case;
- d.* Has a spouse or relative within the third degree of relationship that (1) is affiliated with or represents the applicant or a competitor of the applicant in the same or adjoining county; (2) has a known financial or significant personal interest that could be substantially affected by the outcome of the application process; or (3) is likely to testify on behalf of the applicant or an affected person at public hearing; or
- e.* Has any other legally sufficient cause to refrain from participating in the application review process.

641—202.6(10A) Public hearing on application. Public hearings conducted pursuant to Iowa Code section 10A.716(3)“b” are not contested cases. Judicial review pursuant to Iowa Code section 17A.19 of final agency decisions under Iowa Code section 10A.719 will be treated as other agency action.

202.6(1) The council will use the following meeting format:

- a.* Announcement of application under review.
- b.* Presentation of department report.
- c.* Applicant presentation.
- d.* Affected persons' presentation.
- e.* Applicant's rebuttal.
- f.* Council discussion, motion and final decision.

202.6(2) The notice of an accepted application issued pursuant to Iowa Code section 10A.716(2) will inform the applicant and affected persons of the deadlines for the electronic submission to the department of written statements or other materials. These deadlines will also be posted on the certificate of need web page.

Written submissions received by the department after the deadlines established in this notice will not be considered by the department or the council unless submitted at the public hearing solely to support oral testimony or upon a showing of good cause.

202.6(3) The applicant, affected persons, or their designated representatives will be given the opportunity to make oral presentations to the council. Other interested persons may be given the opportunity to make oral presentations to the council.

202.6(4) Oral testimony that simply duplicates material received in writing will not be heard. The applicant and affected persons will present only one witness for each issue raised unless permission is requested and granted by the chair.

202.6(5) All questions to an applicant or affected person presenting oral testimony will be directed from the council or council staff unless permission is requested and granted by the chair. Persons making oral presentations to the council are not expected to be placed under oath.

202.6(6) The council may designate technical consultants or experts to assist in its activities as defined by the council.

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641—202.7(10A) Summary review. Pursuant to Iowa Code section 10A.717, an applicant requesting a summary review will abide by the following procedures:

202.7(1) Electronically submit a written request for summary review and a copy of the application and all attachments. The applicant is not required to submit a letter of intent pursuant to Iowa Code section 10A.715 prior to submitting a written request for a summary review.

202.7(2) The eligibility of an application for summary review pursuant to Iowa Code section 10A.717 does not mandate or require such review. The department will make the decision as to whether an application will be reviewed in the summary review process.

202.7(3) Upon receipt of a written request for summary review, an application, and the fee required by Iowa Code section 10A.713(1), the department will notify the applicant in writing within 15 calendar days if the application is complete and if a summary review will be granted.

202.7(4) If an application is deemed incomplete, the department will state specifically in writing what information is needed to make the application complete.

202.7(5) If the department notifies the applicant that a summary review will not be performed, this decision is binding on the applicant and the application will be entered into the formal review process on the date of written notice that such application will not be reviewed summarily.

202.7(6) A summary review of an application for a certificate of need will be completed within 60 calendar days of the acceptance of an application by the department.

202.7(7) At any time during the summary review process, an application may be withdrawn without prejudice from the process. The applicant may then submit the application for a formal 90-day review.

641—202.8(10A) Extension of review time.

202.8(1) A formal review of an application for a certificate of need pursuant to Iowa Code section 10A.716 may be extended by the department on the basis of any of the following criteria:

- a.* In order to review competing applications simultaneously;
- b.* In the case of technologically innovative equipment, to obtain additional information necessary to evaluate the proposal. The department will specify in writing such additional information as necessary;
- c.* At the request of the applicant;
- d.* At the request of at least two members of the state health facilities council in order to allow additional time for deliberation on all evidence present. The council will specify the time of the delay and the date on which the final decision will be rendered.

202.8(2) An extension by the department made pursuant to 202.8(1) will in no case be more than 60 calendar days beyond the time a decision is required under Iowa Code section 10A.719 unless the applicant and department agree.

202.8(3) Where none of the provisions of 202.8(1) are applicable and where an application will be automatically denied because of the expiration of time required by Iowa Code section 10A.719 for the issuance of a written decision by the council, the department will notify the applicant of the likelihood of an automatic denial and will ask the applicant to request in writing an extension of the review time. Where an extension is so requested, the application will be heard at the next regularly scheduled meeting of the council or at any time agreeable to the applicant and the department.

641—202.9(10A) Rehearing of certificate of need decision.

202.9(1) The applicant or any affected person who has participated or sought unsuccessfully to participate in the formal review procedure prescribed in Iowa Code section 10A.716 may, for good cause shown, file an application for rehearing in writing with the department stating the specific grounds therefor and the relief sought, within 20 calendar days after the date of the issuance of the final decision on an application for certificate of need.

202.9(2) Grounds for rehearing include but are not limited to:

- a.* New significant, relevant information that was unavailable at the date of the hearing;
- b.* Significant changes in factors or circumstances relied upon by the council in reaching its decision;

PUBLIC HEALTH DEPARTMENT[641](cont'd)

c. Demonstration that the council has materially failed to follow its adopted procedures in reaching its decision; or

d. Such other bases as the council determines constitute good cause.

202.9(3) An application for rehearing is deemed to have been denied unless the council grants the application in writing within 20 calendar days after its filing.

202.9(4) If the application for rehearing is granted, the council may issue an order modifying the initial final order, or may set the matter for consideration at a subsequent meeting date. If public hearing is granted on the application for rehearing, notice will be provided ten calendar days prior to hearing to the person applying for rehearing, the applicant and other affected persons upon request pursuant to 641—202.10(10A).

202.9(5) The council will issue the final decision on rehearing, stating the basis for its decision, within 30 calendar days after the application for rehearing was granted or 30 calendar days after public hearing on rehearing, whichever is later.

202.9(6) If a rehearing is not requested or an affected party remains dissatisfied after the request for rehearing, an appeal may be taken in the manner provided by Iowa Code chapter 17A. A request for rehearing is not required prior to appeal under Iowa Code section 17A.19.

641—202.10(10A) Status reports to affected persons. Affected persons are entitled to status reports from the department while a formal application review is in progress pursuant to Iowa Code section 10A.718. The department will maintain a log of all requests for written status reports by affected persons. Affected persons who request written status reports will submit an electronic request, identifying the specific information requested, which may include notification of the council's final decision, any application for rehearing, or the filing of a petition for judicial review. The formal process does not preclude informal contacts with department staff for verbal status reports. Printed copies of the council's final decision, an application for rehearing, a petition for judicial review, or any other public record will be provided upon request.

641—202.11(10A) Finality. The certificate of need application process is continuous beginning with submission of a letter of intent or request for waiver of a letter of intent through issuance of a final decision by the council subject to judicial review under Iowa Code chapter 17A.

202.11(1) The following stages of the process are intermediate and subject to judicial review only to the extent they meet criteria for intermediate review under Iowa Code section 17A.19:

a. A decision by the department pursuant to 641—202.3(10A) that a proposed project does not require a certificate of need;

b. A decision by the department to waive submission of the letter of intent and substitute summary review; and

c. The rejection of an application by the department that fails to provide all information required under Iowa Code section 10A.713(1).

202.11(2) The following stages of the process are final decisions subject to judicial review as final agency action under Iowa Code section 17A.19:

a. A decision by the department to disallow summary review;

b. A decision by the council that a proposed project does not require a certificate of need;

c. A decision by the council to approve or deny an application;

d. The council's final ruling on an application for rehearing; and

e. A decision by the council to revoke a certificate of need pursuant to 641—202.13(10A).

641—202.12(10A) Project progress reports.

202.12(1) The sponsor of an approved application will submit a progress report using the form available on the certificate of need web page six months after approval at hearing.

202.12(2) Progress reports shall fully identify the project and indicate the current status of the project in descriptive terms. The reports should also reflect an amended project schedule if necessary.

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641—202.13(10A) Request for extension of certificate.

202.13(1) A request by the applicant for an extension of a certificate of need should be filed with the department using the form available on the certificate of need web page no later than 30 days prior to the expiration of the certificate of need.

202.13(2) A request for extension should fully identify the project and indicate the current status of the project in descriptive terms.

202.13(3) Any affected person has the right to submit to the department in writing, or orally at the council meeting at which the extension request is considered, information that may be relevant to the question of granting an extension.

202.13(4) When an extension has been requested, the council will approve or deny the request at a meeting of the council preceding the expiration of the certification. The certificate of need may be revoked by the council at the end of the certification period for insufficient progress in developing the project.

202.13(5) If the extension is denied, the applicant has the right to appeal under the provisions of Iowa Code section 10A.720.

641—202.14(10A) Application changes after approval.

202.14(1) Once a project has been approved by the council, no changes that vary from or alter the number of approved beds, the approved services or the approved cost by an amount indicated in 202.14(2) may be made unless requested by the applicant and approved by the council. Requests should be made in writing and filed with the department electronically.

202.14(2) An increase in the actual cost of the project over and above that originally approved will automatically generate review by the council if the increase exceeds the originally approved amount by:

- a. Fifteen percent for projects up to \$999,999.99;
- b. Twelve percent for projects from \$1,000,000.00 to \$4,999,999.99;
- c. Eight percent for projects \$5,000,000.00 and over.

An increase in the approved cost that falls below the above percentages will be reported to the department.

202.14(3) Failure to notify and receive permission of the council to change the project as originally approved may result in the imposition of sanctions provided in Iowa Code section 10A.723. The council may make a recommendation to the department regarding the imposition of a sanction and the amount of the fine to be imposed.

641—202.15(10A) Sanctions. Hearings to determine class I or class II violations pursuant to Iowa Code section 10A.723 will be conducted in accordance with the department's procedural rules for contested cases found at 641—Chapter 173.

641—202.16(10A) Reporting requirements. For the purposes of the annual reports and data compilation required in Iowa Code sections 10A.725 and 10A.727, the department will utilize the AHA Annual Survey of Hospitals with the state survey addendum for hospitals and the cost reports for health care facilities submitted to the Medicaid enterprise of the department of health and human services.

These rules are intended to implement Iowa Code sections 10A.711 through 10A.729.

[Filed 4/3/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.

ARC 7933C**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed****Rulemaking related to standards for certificate of need review**

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 203, “Standards for Certificate of Need Review,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 10A.712(2)“e”(5) and Executive Order 10 (January 10, 2023).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 10A.711 to 10A.729.

Purpose and Summary

The Iowa Code currently mandates the existence of the State Health Facilities Council (Council), the Certificate of Need (CON) process, and these administrative rules. Applicants for a CON and affected parties benefit from this chapter since it provides guidance on adding services, such as cardiac catheterization and cardiovascular surgery and radiation therapy, and on the purchase of specific pieces of medical equipment, including MRI, PET and CT. The additional benefit is to those applicants who wish to add beds to a health care facility, such as a nursing home. The chapter outlines a bed need formula and additional factors that are used by applicants to determine whether there is a need for more beds in their area. The chapter benefits the Council when it reviews applications since the chapter provides standards for the addition of certain services, for certain medical equipment purchases and for the addition of health care facility beds. This chapter also benefits those who might consider themselves an affected party to a specific application by keeping them informed of the standards for CON review.

This chapter also publicly illustrates some of the criteria that will be used by the Council in determining whether to grant a CON to an applicant. Public notice was provided, and one comment from an association was received indicating support for the changes to Chapter 203.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 10, 2024, as **ARC 7380C**. Public hearings were held on January 30 and 31, 2024, at 9 a.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received.

Iowa Code citations have been changed from the Notice to reflect realignment enacted by 2023 Iowa Acts, Senate File 514. In addition, other clarifying changes have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on March 29, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa in an amount requiring a fiscal impact statement pursuant to Iowa Code section 17A.4(4).

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 641—Chapter 203 and adopt the following **new** chapter in lieu thereof:

CHAPTER 203
STANDARDS FOR CERTIFICATE OF NEED REVIEW

641—203.1 Reserved.

641—203.2(10A) Cardiac catheterization and cardiovascular surgery standards.

203.2(1) Purpose and scope.

a. These standards are measures of some of those criteria found in Iowa Code sections 10A.714(1) “a” through “q” and 10A.714(3). Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these cardiac catheterization and cardiovascular surgery standards include:

- (1) Proposals to commence or expand capacity to perform cardiac catheterization.
- (2) Proposals to add new or replace cardiovascular surgery services.
- (3) Any other applications that relate to cardiac catheterization or cardiovascular surgery.

203.2(2) Definitions.

a. Adult cardiac catheterization laboratory—a diagnostic facility exclusively for intracardiac or coronary artery catheterization on adults.

b. Pediatric cardiac catheterization laboratory—the same as adult cardiac catheterization laboratory, except exclusively for children and infants.

c. Cardiac catheterization—

(1) Intracardiac—a diagnostic study of the heart, pulmonary arteries, or both, in which a small catheter passes through a vein or artery in the neck, leg or arm and advances into the great vessels, the heart or the pulmonary arteries. Through this procedure one can measure pressure within the heart and in adjacent veins and arteries, collect blood samples for blood gas analysis and inject radiopaque material, and visualize cardiac and vessel anatomy. The procedure permits detection of congenital and acquired heart abnormalities, the study of ventricular function, the estimation of the orifice size, the placement of pacemakers, etc. Cardiac catheterization is incomplete without cineangiography, intracardiac pressure measurements, blood gas analysis and the ability to diagnose intracardiac shunts.

(2) Coronary artery catheterization—a diagnostic study of the coronary arteries, in which a small catheter passes through an artery in the leg, neck or arm into a coronary artery orifice. Intravascular pressure measurements are taken, and angiography of the coronary arteries is performed. Catheterization and cineangiography of the left ventricle are an integral part of this procedure.

d. Angiography—

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The photographic recording of X-ray or radiologic images of blood vessels, in any part of the body—the heart, the head, the great vessels, the kidney, etc. In the procedure blood vessels are injected with a radiopaque chemical. Immediately following injection, X-rays are employed to image the path of the injected chemical. These X-ray images are then photographically recorded.

e. Angiocardiography—

The recording of moving X-ray images (fluoroscopic images) of the heart and great vessels. After injection of radiopaque chemicals, moving X-rays of the chemical's flow are projected on a screen called a fluoroscope. Moving pictures (cineangiography) or still pictures in sequence (serialography) may be recorded of the X-ray image.

f. Adult cardiovascular surgery—cardiovascular surgery exclusively for adults.

g. Pediatric cardiovascular surgery—cardiovascular surgery exclusively for infants and children.

h. Cardiovascular surgery—the services associated with and surgery performed for congenital or acquired diseases of the heart, great vessels, or pericardium, including the placement of travenous and epicardial pacemakers.

(1) Open heart surgery—cardiovascular surgery in which an incision of sufficient size is made to allow direct vision of the area. Open heart surgery requires temporary use of a heart-lung (cardiopulmonary bypass) machine, as blood flow through the heart is greatly reduced or stopped altogether.

(2) Coronary artery surgery—surgery to correct inadequate blood flow to the heart using revascularization techniques to bypass significantly obstructed coronary artery lesions.

i. Closed heart surgery—cardiovascular surgery in which a small incision and repairs are made without direct vision of the area.

203.2(3) *Availability of services.*

a. Minimum utilization—cardiovascular surgery (Iowa Code section 10A.714(1) “*c*,” “*g*,” “*h*”).

(1) Adult cardiovascular surgical programs should project an annual minimum rate of over 200, or no approval will be granted. Higher case loads over 200 per annum are encouraged.

(2) Pediatric cardiovascular surgical units should project a minimum of 100 pediatric heart operations after the first year, at least 75 of which must be open heart procedures.

(3) Combined adult/pediatric cardiovascular surgery units should project the minimum projected annual rates for both adult and pediatric surgery.

(4) Applicants should project utilization of cardiovascular surgery, catheterization and cardiac care units based upon service area population demographics, current regional or national utilization rates of the service, disease incidence and prevalence rates, current cardiac care treatment modes, and in consideration those adult cardiovascular surgery units currently operating in Iowa, and bordering states within the project's service area.

b. Expansions—cardiovascular surgery (Iowa Code section 10A.714(1) “*c*,” “*d*,” “*e*,” “*g*,” “*h*”).

(1) There should be no additional adult cardiovascular surgery units initiated, unless each existing unit within the project's service area is operating at a minimum of 200 open heart surgery cases per year.

(2) There should be no additional pediatric cardiovascular surgery units initiated, unless each existing unit within the project's service area is operating at 100 surgeries per year. If one team serves more than one institution, the numbers for those institutions should be combined.

(3) If the annual utilization of the other cardiovascular surgery units within the area is below the levels noted above, future utilization above that current level must be reasonably projected or reasons for permanently utilizing the equipment below the level must be demonstrated.

(4) The applicant will demonstrate that an attempt was made to determine with the cooperation of existing providers whether such a reduction would occur. Existing providers of consequence are generally within two hours' surface travel time for adult services and within three for pediatric services.

c. Minimum utilization—cardiac catheterization (Iowa Code section 10A.714(1) “*c*,” “*d*,” “*g*,” “*h*”).

(1) Adult cardiac catheterization laboratories should be projected to operate at a minimum of 300 catheterizations per annum.

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(2) Pediatric catheterization laboratory units should project a minimum of 150 catheterizations annually.

(3) Combined units should meet each of the adult and pediatric standards.

(4) Applicant should project utilization of cardiac catheterization units based upon service area population demographics, current regional or national utilization rates of the service, disease incidence and prevalence rates, current cardiac care treatment modes, and in consideration those adult cardiovascular surgery units currently operating in Iowa, and bordering states within the project's service area.

d. Expansions—cardiac catheterizations (Iowa Code section 10A.714(1)“c,” “d,” “e,” “g,” “h”).

(1) There should be no additional adult cardiac catheterization unit opened unless the number of studies per year in each existing unit within the project's service area is greater than 300. No additional pediatric unit should be opened unless the number of studies per year in each existing unit within the project's services area is greater than 150.

(2) If the annual utilization of the other cardiovascular surgery units within the area is below the levels noted above, future utilization above that current level must be reasonably projected or reasons for permanently utilizing the equipment below the level must be demonstrated.

(3) The applicant must demonstrate that an attempt was made to determine with the cooperation of existing providers whether such a reduction would occur. Existing providers of consequence are those within two hours' surface travel time for adults or three for pediatrics.

203.2(4) Costs.

a. *Financial feasibility.* (Iowa Code section 10A.714(1)“f,” “i,” “p”) Cardiovascular surgery and catheterization equipment and associated remodeling or construction should be depreciated over a period consistent with generally accepted accounting standards.

b. *Cost-effectiveness.* Proposed new or replacement cardiac catheterization laboratories cost per catheterization and cardiovascular surgery services estimated costs per surgery should when compared to their peers demonstrate cost-effectiveness.

203.2(5) Accessibility. (Iowa Code section 10A.714(1)“c,” “d”)

a. Cardiovascular surgery units and cardiac catheterization labs should meet the needs of the communities that the units and labs are meant to serve.

b. Cardiac catheterization and cardiovascular surgery service should be provided regardless of ability to pay, in consideration of those programs available in the state that serve the medically indigent.

203.2(6) Quality. (Iowa Code section 10A.714(1)“i,” “k”)

a. Each surgery unit and cardiac catheterization lab shall demonstrate a reasonable set of criteria that are used in selecting appropriate candidates for surgery and catheterization.

b. Staffing minimums.

(1) The open heart surgery team should minimally consist of:

1. At least two certified or board-eligible cardiovascular surgeons for the first 75 to 130 pediatric open heart surgeries. If pediatric surgery is performed, one surgeon must have special training and experience in surgery for congenital cardiac defects.

2. Board-certified or board-eligible adult or pediatric cardiologist(s). The latter only if pediatric surgery is performed, the former only if adult surgery is performed.

3. Board-certified or board-eligible anesthesiologist with special training in the management of cardiovascular cases' respiratory care.

4. Radiologist trained in the cardiovascular field.

5. Pathologist familiar with cardiac problems.

6. Surgical nursing staff specially trained in heart disease.

7. Cardiopulmonary bypass pump technicians.

8. Other ancillary staff as needed.

(2) Each applicant will document that the proposed surgery unit can be so staffed when completed and operational.

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c. Equipment and facilities. The applicant seeking to provide cardiovascular surgery should demonstrate that the following support services will be available:

- (1) General X-ray diagnostic facilities and facilities for emergency X-rays on a 24-hour basis.
- (2) A cardiac catheterization laboratory or angiography lab available on a 24-hour basis.
- (3) A cardiographics laboratory, with facilities for recording the following tests: EKG, vector cardiogram, phonocardiogram, echocardiogram, and exercise stress testing.
- (4) A supporting blood bank and hematology laboratory.
- (5) A microbiology laboratory.

d. Cardiac catheterization labs serving infants and children should have biplane angiographic equipment, either cineangiographic or cut film. Pediatric cardiac catheterization labs should be supervised by board-certified or board-eligible pediatric cardiologists; adult cardiac catheterization labs should be supervised by a board-certified or board-eligible adult cardiologist.

203.2(7) Continuity. (Iowa Code section 10A.714(1) “g,” “h,” “i,” “k”)

a. The applicant should demonstrate that an attempt was made to solicit letters of support from area hospitals and physicians to indicate a community need.

b. The applicant should provide documentation that emergency medical transport services will be available.

c. Institutions providing cardiovascular surgery services should include mechanisms for comprehensive medical followup including adequate medical records exchange.

203.2(8) Acceptability. (Iowa Code section 10A.714(1)) Facilities with cardiovascular surgery and cardiac catheterization indicate a willingness to observe and respect the rights of patients.

641—203.3(10A) Radiation therapy standards.

203.3(1) Purpose and scope.

a. These standards provide guidelines to assist the council in applying those criteria in Iowa Code sections 10A.714(1) “a” through “r” and 10A.714(3). Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these radiation therapy standards include:

- (1) Proposals to commence or expand the kind or capacity of megavoltage radiation therapy services.
- (2) Proposals to replace a megavoltage radiation therapy unit.
- (3) Any other applications that relate to megavoltage radiation therapy.

203.3(2) Definitions.

“*Conjoint radiation oncology center*” or “*cancer center*” means a multi-institution, multidisciplinary network to provide radiation therapy for cancer patients. Integration of patient care management, common utilization of personnel and equipment, and a single system of records between center institutions ensures optimal care regardless of entry portal.

“*Dosimetrist*” means a staff member who calculates, verifies, and develops treatment plans for the radiation dose distributions that will be delivered to patients. The dosimetrist is an essential member of the treatment planning team and works closely with radiation oncologists and radiation physicists.

“*Megavoltage therapy*” means the use of ionizing radiation in excess of one million electron volts. Energies above one million electron volts cause considerably less skin damage, increase depth dose markedly, and result in much less scatter from the therapeutic beam. Megavoltage machines are classified as follows:

1. Electron accelerator. A machine such as a linear accelerator that uses a supply of electrons, which are accelerated into high energy beams. These electron beams are either caused to strike a target resulting in high energy X-ray production or are used themselves as the treatment beam. Electron accelerators generate over one million electron volts.

2. Heavy particle accelerator. A machine such as a cyclotron that produces beams of high energy particles such as protons, neutrons, pions, carbon ions, or other heavy ions with masses greater than that of an electron.

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3. Isotope sources (gamma ray teletherapy units).

Cobalt 60 units—emit gamma rays of approximately 1.2 million electron volts.

“*Megavoltage therapy unit*” means a piece of megavoltage therapeutic radiologic equipment that provides megavoltage therapy.

“*New occurrence*” means a course of treatment for a new occurrence on a given patient at a given radiation therapy facility. First-time radiation therapy at a new facility is based on each round of treatment.

“*Radiation modality*” means the method of applying ionizing radiation in the treatment of patients with malignant disease using megavoltage external beam equipment.

“*Radiation oncologist*” means a physician authorized user trained in accordance with 641—subrule 41.3(5).

“*Radiation therapy facility*” or “*facility*” means the physical space that houses a megavoltage therapy unit and accompanying support equipment.

“*Radiation therapy physicist*” means an individual who works closely with radiation oncologists and is responsible for the safe and accurate delivery of radiation to patients. A radiation therapy physicist conducts quality control programs for the equipment and procedures, as well as calibrating the equipment. A radiation therapy physicist shall practice in accordance with 641—subrule 41.3(6).

“*Radiation therapy technologist*” means an individual who possesses an Iowa permit to practice as a radiation therapist in accordance with rule 641—42.7(136C).

“*Service area*” means the county in which the facility is located and any other counties from which the applicant expects to draw patients with a cancer diagnosis who need radiation therapy treatment.

“*Simulation*” means the precise mock-up of a patient treatment with an apparatus that uses planar X-rays, magnetic resonance imaging device, or computed tomography scanner, which is used in reproducing the two-dimensional or three-dimensional internal or external geometry to the patient, for use in treatment planning and delivery.

“*Superficial X-ray therapy*” means the use of a conventional X-ray machine, which generates X-rays of up to 150 kilovolts (150 kv), to treat superficial lesions, such as skin cancer.

“*Treatment*” means radiation fields applied in a single patient visit fraction or delivery session.

203.3(3) Availability.*a. Minimum utilization.* (Iowa Code section 10A.714(1)“c,”“g,”“h”)

(1) A megavoltage radiation therapy unit and cobalt units should treat at least 250 new occurrences annually within three years after initiation of the service.

(2) The expected number of new occurrences needing megavoltage radiation therapy annually in a service area should be calculated as follows:

1. Multiply the service area population times 0.00582 (5.82/1,000 population was the mean cancer incidence rate in 2017 in Iowa as filed by the Surveillance, Epidemiology, and End Results (SEER) Program).

2. Multiply this product times .5 (50 percent of all new occurrences receive radiation therapy).

(3) The expected volume of utilization sufficient to support the need for a new megavoltage therapy unit should be calculated as follows: each unit shall provide a minimum of 5,000 treatments per annum. Megavoltage treatments should be projected by multiplying the number of projected new occurrences needing megavoltage therapy times 20, which will result in no fewer than 5,000 treatments per annum.

(4) Applicants shall account for other providers of radiation therapy in the service area including, but not limited to, factors such as technological capability and quality. Applicants shall address in their application other providers and the impact on those providers in the service area and compare technological capability and quality.

(5) Applicants should provide a map of the expected service area.

(6) Institutions that form a conjoint oncology center should have at least 500 new occurrences annually.

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b. Simulator availability. A simulator should be available within a radiation oncology department.

203.3(4) Accessibility. (Iowa Code section 10A.714(1) “c,” “d”) Radiation therapy services should be provided regardless of ability to pay, in consideration of those programs available in the state that serve the medically indigent.

203.3(5) Quality. (Iowa Code section 10A.714(1) “i,” “k”)

a. Minimum staffing requirements for radiation therapy facilities:

(1) Each facility will have the services of at least one radiation oncologist.
 (2) Each facility will have the services of at least one radiation therapy physicist.
 (3) Each facility will have the services of radiation therapy technologists that should be staffed at a level of two technologists per megavoltage unit.

(4) Each facility should have the services of nurses.

(5) Each facility should have the services of at least one dosimetrist.

(6) Each facility should have the services of one radiation therapist or radiation technologist competent to operate a CT simulator.

b. Each conjoint center will have at least two cancer biologists available.

c. Each conjoint center will have one radiation technologist available for each simulator.

d. The long-range plans for radiation therapy services shall be submitted to the Iowa department of health and human services.

e. Multidisciplinary tumor boards should be established in all institutions housing megavoltage machines.

f. A source of continuing education should exist within each conjoint center to reach participating community referral hospitals and physicians.

g. Each conjoint center should have a unified training program in radiation therapy for radiation oncologists.

h. Each radiation therapy facility should offer psychosocial counseling services and nutritional counseling.

203.3(6) Continuity. (Iowa Code section 10A.714(1) “g,” “h,” “i,” “k”) The applicant should demonstrate that an attempt was made to solicit letters and establish referral agreements from area hospitals and physicians to indicate their willingness to participate in a cooperative endeavor to refer to the proposed service.

641—203.4(10A) Computerized tomography standards.

203.4(1) Purpose and scope.

a. These standards are measures of some of those criteria in Iowa Code section 10A.714(1) “a” through “l.” Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these computerized tomography standards include:

(1) Proposals to commence or expand the capacity of computerized tomography services.

(2) Any other applications that relate to computerized tomography services.

203.4(2) Definitions.

a. Computerized tomographic (CT) scanner—a diagnostic tool that rotates about and that sends X-ray beams through the body or brain. The X-ray beams that emerge from the body or brain are absorbed by a detector. Differences in the amount of X-rays absorbed by the detector indicate differences in tissue density. As the scanner rotates, it takes many images of a volume or cross-section. The images on the detector are transmitted to a computer that displays on a monitor a reconstructed cross-sectional slice or volume. Contrast media is often injected to alter absorption of the detector. If the scan is repeated, it is called enhancement. Studies of the heart, arteries and veins may be done with contrast only.

(1) Whole body scanner—one capable of imaging the entire body.

(2) Head scanner—one capable of imaging only the brain and structures adjacent to the head.

b. Enhanced scan—a scan performed on a patient who has been administered a contrast medium so that specific organs or areas of the body will be displayed more distinctly on the scan image.

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c. Minimum shared-market area for a scanner (hereafter referred to as “area”)—the smallest geographic area within which any scanner installation is judged to affect the utilization rate of any other scanner is the community (as defined by the U.S. Bureau of the Census) or a Standard Metropolitan Statistical Area (where an area is so designated).

d. Emergency medical service (EMS) level II trauma service—the level of various services and staffing that qualify a facility to be designated by the emergency medical service division of the Iowa department of health and human services, using the facilities categorization criteria of such services that is in effect on the date of the enactment of this standard.

e. Shared service agreements—a multi-institutional arrangement for coordination or consolidation of services or sharing of support services. Among the various types of arrangements are referred services, purchased or joint contract services, multisponsored services and regional services.

f. CT consortia—a cooperative venture in which two or more institutions form a separate entity that is created for the purpose of owning, leasing, planning for, and maintaining the use of the scanner. Each facility in the consortium maintains its autonomy for all other services.

g. Applicant—an applicant may be a facility or a consortium of facilities within an area, or a physician or group of physicians.

h. General imaging procedures—a radiological diagnostic procedure performed on an X-ray machine or similar radiological diagnostic instrument.

i. Active oncology service—full, multidisciplinary cancer care, provided by a medical team that would include: surgery, gynecology, medical oncology, radiation oncology, pathology, diagnostic radiology and nuclear medicine. The surgery specialties that might be available would include: thoracic, abdominal, genitourinary and gynecological. The active oncology staff would include those specialists with training in oncology, hematology, and pathology and who spend at least half of their time at the institution.

j. Radiotherapy service—the therapeutic application of megavoltage radiation, using a linear accelerator or cobalt unit. The availability of such service at a hospital would necessitate personnel trained in the therapeutic application of radiology.

k. Chemotherapy service—the treatment of cancer by chemical agents.

203.4(3) Determination of need.

a. Applicants who do not have a scanner, or who have a scanner and seek a certificate for one or more additional scanners.

(1) Applicants in areas with no other scanners.

1. Applicants must have performed at least 30,000 general imaging procedures during the past calendar year or 12 months, or

2. Demonstrate that during the past calendar year or 12 months, the applicant performed diagnostic procedures equivalent to 1500 HECTs (head equivalent CTs), using the following:

100% of the number of patients referred to other facilities for CT diagnosis \times 1.75 (in the case of head scans) and 2.75 (in the case of body scans)

(2) Applicants in areas with one or more scanners.

1. An applicant must meet the requirement of need, described in subparagraph 203.4(3) “a”(1), and

2. The average level of utilization for scanners within the area was at least 3000 HECTs (plus or minus 10 percent) for the past calendar year or 12 months. The average level of utilization will be determined by adding the number of HECTs performed during the period at all area facilities divided by the number of facilities.

3. The University of Iowa Hospitals and Clinics is specifically exempted from consideration under numbered paragraph 203.4(3) “a”(2)“2” because it has a service area that encompasses the entire state and adjoining states. The utilization statistics for the University Hospital will therefore neither affect nor be affected by Mercy Hospital, Iowa City. Additionally, the utilization statistics for scanners at the University of Nebraska Hospitals and Clinics and St. Joseph’s Hospital (both in Omaha) will not affect the need for scanners at hospitals in Council Bluffs.

b. Replacement scanners—applicants who currently have a scanner.

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(1) All applicants seeking to replace a scanner with another scanner, head or body.

1. The applicant must demonstrate that the applicant's use of the applicant's current scanner was at least at the operating capacity level during the last calendar year or 12 months, or

2. Below the operating capacity level, but above 1500 CT scan level, and the applicant must demonstrate reasons for permanently utilizing their scanner below operating capacity level and demonstrate that discontinuation of their scanner service would impair the applicant's ability to respond to the emergency needs of the area. Reasons for utilizing the scanner below the capacity should include a unique patient or procedure mix that would define the capacity level differently for this applicant.

(2) Reserved.

203.4(4) *Costs and financial feasibility.* (Iowa Code section 10A.714(1) "f," "i," "p") CT scanners should be depreciated over a period of not less than seven years. Remodeling shall be depreciated as appropriate by generally accepted accounting principles.

a. *Cost-effectiveness.* Applicants should demonstrate for themselves and the health care system that the most cost-effective method of providing CT services has been chosen. Proposed new and replacement CT scanner's cost per CT scan should, when compared to their peers, demonstrate cost-effectiveness.

b. Reserved.

203.4(5) *Accessibility.* (Iowa Code section 10A.714(1) "c," "d")

a. All scanners must be available to meet the needs of the communities the scanners are meant to serve.

b. Services should be provided to all patients regardless of the patient's ability to pay, taking into consideration the availability of those programs available in the state that serve the medically indigent.

c. Applicants will demonstrate a willingness to accept referrals for CT services from all area physicians.

203.4(6) *Quality.* (Iowa Code section 10A.714(1) "i," "k")

a. Data on use and costs of the CT scanners should be submitted to the Iowa department of health and human services as a condition of approval. (Iowa Code section 10A.714(1) "a," "h")

b. All scanners.

(1) All applicants must demonstrate that they have on their staff or will acquire on their staff a full-time diagnostic radiologist, trained in the use of the CT scanner, or other physicians with comparable training and expertise.

(2) All applicants must document that they have on their medical staff individuals who are qualified to operate a scanner and interpret and act upon the diagnostic results. Such documentation may include reference to board certification, apprenticeship, academic credentials or such other qualifications that would prompt a medical staff to accept the responsibility for offering this new service. Applicants who intend to acquire staff with the desired expertise should provide signed letters of intent from the incoming medical personnel. Applicants who intend to upgrade the specialty skills of their staff should document a plan for training their current staff in the use of CT scanners.

(3) All applicants should have a complement of other diagnostic modalities available. Applicants seeking body scanners should also have available ultrasound and conventional X-ray services.

(4) All applicants should have the facilities for treating the conditions diagnosed by imaging with the scanner or should demonstrate referral agreements with treatment facilities, in the event that the scanner will be used as a screening device.

(5) All applicants should have on their staff or available on a consultative basis the services of a biomedical engineer or medical physicist, with special training in CT applications. These functions may also be provided by contract with the scanner manufacturer.

203.4(7) *Continuity.* (Iowa Code section 10A.714(1) "g," "h," "i," "k")

a. The applicant should demonstrate that an attempt was made to solicit letters of support from area hospitals and physicians to indicate a community need for the proposed service.

b. The applicant should provide documentation that emergency medical transport services will be available.

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c. The applicant should demonstrate an emphasis on the availability of outpatient CT procedures and that an appropriate percentage of all CT procedures will be done on an outpatient basis.

203.4(8) Acceptability. (Iowa Code section 10A.714(1)“k”) Providers of CT services should indicate a willingness to observe the rights of patients.

641—203.5(10A) Long-term care.

203.5(1) Purpose and scope.

a. These standards are measures of criteria found in Iowa Code section 10A.714(1)“a” through “g.” Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these standards include applications to:

(1) Construct, develop, offer new, modernize, replace, renovate, or relocate intermediate care or skilled nursing care beds in nursing homes or hospitals.

(2) Expand bed capacity in intermediate care or skilled nursing care facilities or designated units in hospitals.

203.5(2) Definitions.

“Intermediate care facility” or “ICF” means any institution, place, building, or agency providing for a period exceeding 24 consecutive hours accommodation, board, and nursing services, the need for which is certified by a physician, to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity require nursing services that can be provided only under the direction of a registered nurse or a licensed practical nurse.

“Rural counties” means all counties not designated by the U.S. Census as SMA (Standard Metropolitan Area) counties.

“Skilled nursing facility” or “SNF” means any institution, place, building, or agency providing for a period exceeding 24 consecutive hours accommodation, board, and nursing services, the need for which is certified by a physician, to three or more individuals not related to the administrator or owner thereof within the third degree of consanguinity who by reason of illness, disease, or physical or mental infirmity require continuous nursing care services and related medical services, but do not require hospital care. The nursing care services provided must be under the direction of a registered nurse on a 24-hour-per-day basis.

“Urban counties” means those counties designated by the U.S. Census as SMA (Standard Metropolitan Area) counties.

203.5(3) Availability and need. (Iowa Code section 10A.714(1)“c,” “d,” “e,” “g,” “h”)

a. The following formula shall be used as a means of projecting the approximate number of intermediate and skilled nursing care beds needed to serve the projected population five years into the future:

(1) Rural counties:

$[\text{.09}(\text{65} + \text{population}) + \text{.0015}(\text{64} - \text{population})] \times 110\%$ equals total long-term care bed need

Combined SNF and ICF bed need equals $\frac{2}{3}$ (total long-term care bed need)

Assumed RCF bed need equals $\frac{1}{3}$ (total long-term care bed need).

(2) Urban counties:

$[\text{.07}(\text{65} + \text{population}) + \text{.0015}(\text{64} - \text{population})] \times 110\%$ equals total long-term care bed need

Combined SNF and ICF bed need equals $\frac{2}{3}$ (total long-term care bed need)

Assumed RCF bed need equals $\frac{1}{3}$ (total long-term care bed need).

(3) Department of economic development population projections are adopted for use in the determination of long-term care bed need.

(4) The department of inspections, appeals, and licensing will calculate long-term care bed need figures annually, using population projections five years into the future.

b. For purposes of comparing “need” to “existing” beds in a given county, the following shall be considered in the calculation of “existing” beds:

(1) ICF and SNF beds licensed at freestanding facilities in the county.

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(2) Additional ICF and SNF beds previously approved through certificate of need but not yet licensed.

(3) ICF and SNF beds in designated units in hospitals in the county.

c. The statistical calculation of bed need shall serve as a guideline for the health facilities council in reviewing need for the proposed long-term care beds. Other factors that may be considered by the council include, but are not limited to:

(1) The availability and utilization of other ICF and SNF services in the county, or within the applicant's service area.

(2) The availability and utilization of other long-term care services in nearby hospitals, such as skilled care available through the swing bed program.

(3) The availability of supportive living arrangements that may or may not be licensed as residential care facilities (RCF).

(4) The availability of home health and other in-home services.

(5) The availability of other services to the elderly.

(6) The availability of ICF and SNF services in neighboring counties.

(7) Utilization by out-of-state residents of facilities in counties bordering other states, where the applicant provides evidence that in-migration of long-term care patients exceeds out-migration to the bordering state.

(8) Programs and services directed at special populations whose needs cannot otherwise be met, or whose needs cannot be met cost-effectively at other facilities.

d. In documenting need for a project, the applicant shall identify the service area and target population, including a description of the methodology used by the applicant in determining need for the requested beds and the expected sources of referrals. The applicant shall document that the number of beds requested is appropriate to address the identified need. The applicant shall also identify how the target population is currently being cared for, and what hardship is being experienced by the absence of the proposed beds.

203.5(4) Quality. (Iowa Code section 10A.714(1) "i," "k") The applicant shall document that the applicant has contacted the health facilities division of the department of inspections and appeals to conform with physical standards, staffing requirements, and other licensing requirements to assess the potential for provision of quality care at the facility. When necessary, the applicant shall attempt to arrange an on-site visit to the facility to determine compliance with physical requirements, and shall provide documentation of this site visit or attempts to arrange such a site visit.

203.5(5) Continuity. (Iowa Code section 10A.714(1) "g," "h," "k")

a. The applicant shall document the relationship of the facility's proposed services to other health and long-term care services in the community such as physician and hospital services, habilitation, rehabilitation, transportation or other services. The facility should be capable of providing or arranging for the provision of a continuum of long-term care services.

b. The facility should be capable of providing or arranging for the provision of a comprehensive program of coordinated patient services. The applicant shall provide evidence of contracts for services, appropriate staffing patterns and ratios, and licensure of personnel as necessary.

203.5(6) Accessibility and acceptability. (Iowa Code section 10A.714(1) "c," "d")

a. Population subgroups that have traditionally been underserved, such as adolescents, the elderly, women, racial minorities, mentally ill, intellectually disabled, and developmentally disabled should be considered when planning for or reviewing long-term care facilities.

b. The applicant shall document to what extent Medicaid patients will be served by the proposed beds, using past Medicaid utilization as an indicator or, in the case of a new facility, projecting anticipated Medicaid utilization.

203.5(7) Costs and financial feasibility. (Iowa Code section 10A.714(1) "e," "f," "i," "p")

a. The applicant shall identify capital and operating costs associated with the project, identify sources of funding to cover those costs, and demonstrate that the project is financially feasible.

b. Construction costs shall be in line with construction costs of other similar projects.

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c. The applicant shall provide budgets for the first three years of operation, including documentation of all assumptions used. The budget shall include anticipated sources of revenue, including the percentage of revenue from private pay, Medicaid, Medicare and other patient revenues.

d. Proposed charges per patient day should be justifiable when compared to current charges of other similarly licensed facilities in the applicant's service area, or other similar facilities elsewhere in the state. If charges are significantly higher or lower, the applicant shall provide a description of proposed programs or services that explain the difference in charges.

These rules are intended to implement Iowa Code section 10A.722.

641—203.6 to 203.11 Reserved.

641—203.12(10A) Magnetic resonance imaging services standards.

203.12(1) Purpose and scope.

a. These standards are measures of some of those criteria in Iowa Code section 10A.714(1) "a" through "q." Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these standards include:

- (1) Proposals to commence or expand the capacity of magnetic resonance imaging services.
- (2) Proposals to replace a magnetic resonance imaging unit.
- (3) Any other applications that relate to magnetic resonance imaging.

203.12(2) Definitions.

"Area" means the community or a metropolitan statistical area (as defined by the U.S. Office of Management and Budget and used by the U.S. Census Bureau).

"CT (*computed tomography*) procedure" means a CT study of a single site of anatomic interest during an individual patient visit.

"Magnetic resonance imaging (*MRI*)" means a diagnostic modality that employs a combination of magnetic and radio frequency fields and computers to produce images of body organs and tissues.

"MRI procedure" means each discrete MRI study of one patient.

"MRI unit" means the essential equipment and facility necessary to operate one MRI system.

203.12(3) Availability and need. (Iowa Code section 10A.714(1) "c," "d," "e," "g," "h")

a. Applicants in areas with no other MRI units. Applicant must document a future utilization of reasonably projected MRI procedure volume for the fiscal year period after projected installation.

b. Applicants in areas with one or more MRI units currently in operation or approved by certificate of need for operation.

(1) Applicant must meet the requirement of need described in paragraph 203.12(3) "a," and

(2) The other MRI unit(s) within the area must have been operating at a minimum of 2,000 MRI procedures annually (or 500 in three months), or proportionately more if the MRI unit runs more than one ten-hour shift.

(3) If the annual utilization of the other MRI unit(s) within the area has been below 2,000 procedures, future utilization above that current level must be reasonably projected or reasons for permanently utilizing the equipment below the 2,000 procedure level must be demonstrated.

c. Applicants seeking to replace an MRI unit.

(1) The applicant must demonstrate that the existing MRI unit has been operating at the level of at least 3,000 procedures during the most recent annual period.

(2) If the applicant's annual utilization has been below 2,000 procedures, the applicant must reasonably project future utilization above that level or demonstrate reasons for permanently utilizing the equipment below that level.

d. Applicants seeking to add an additional MRI unit.

(1) The applicant must demonstrate that the existing MRI unit(s) has been operating at the level of at least 3,500 procedures during the most recent annual period.

(2) The applicant must demonstrate that the demand significantly exceeds the 2,000 procedures annually.

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(3) If the applicant's annual utilization has been below 2,000 procedures, the applicant must reasonably project future utilization above that level or demonstrate reasons for permanently utilizing the equipment below that level.

203.12(4) Quality and continuity. (Iowa Code section 10A.714(1) "g," "h," "i," "k")

a. The proposed MRI unit should function as a component of a comprehensive inpatient or outpatient diagnostic service. The proposed MRI unit must have the following modalities on-site or through referral arrangements:

- (1) Ultrasound.
- (2) Computed tomography.
- (3) Angiography.
- (4) Nuclear medicine.
- (5) Conventional radiography.

b. The proposed MRI unit must be located in a facility that has, either in-house or through referral arrangement, the resources necessary to treat most of the conditions diagnosed or confirmed by MRI. The following medical specialties must be available during MRI service hours on-site or by referral arrangements: neurology or neurosurgery, oncology and cardiology.

c. A proposal to provide new or expanded MRI must include satisfactory assurances that the services will be offered in a physical environment that conforms to federal standards, manufacturer's specifications, and licensing agencies' requirements.

d. The applicant must provide evidence that the proposed MRI equipment has been certified for clinical use by the U.S. Food and Drug Administration or will be operated under the approval and authority of an institutional review board whose membership is consistent with U.S. Department of Health and Human Services regulations.

e. Applicants for MRI should document that the necessary qualified staff are available to operate the proposed unit. The following minimum staff will be available to the MRI unit:

(1) A board-eligible or board-certified radiologist or any other board-eligible or board-certified licensed physician whose exclusive responsibility for at least a two-year period prior to submission of a certificate of need request has been in the acquisition and interpretation of clinical images. This individual shall have a knowledge of MRI through training, experience, or documented postgraduate education. The individual shall also have training with a functional MRI facility.

(2) Qualified engineering personnel, available to the institution during MRI service hours, with training and experience in the operation and maintenance of the MRI equipment.

(3) Diagnostic radiologic technologists or other certified technologists with expertise in computed tomography or other cross-sectional imaging methods, at a staffing level consistent with the hospital's expected MRI service volume.

(4) Other appropriate physicians shall be available during MRI service hours in clinical specialties such as neurology or neurosurgery, oncology and cardiology.

f. The applicant shall demonstrate how emergencies within the MRI unit will be managed in conformity with accepted medical practice.

203.12(5) Accessibility and acceptability. (Iowa Code section 10A.714(1) "c," "d")

a. MRI facilities should have adequate scheduled hours to avoid an excessive backlog of cases and to meet the needs of the communities the scanners are meant to serve.

b. Selection of patients for clinical MRI studies must guarantee equal access to all persons regardless of insurance coverage or ability to pay.

203.12(6) Costs and financial feasibility. (Iowa Code section 10A.714(1) "e," "f," "i," "p")

a. The applicant shall identify capital and operating costs associated with the proposed MRI unit, identify sources of funding to cover those costs, and demonstrate that the project is financially feasible.

b. The applicant shall provide budgets for the first three years of operation, including documentation and justification of all assumptions used.

c. The applicant must document its projected average cost per procedure and charge per procedure for the first three years. Charges for MRI should be reasonably related to service cost, and comparable to MRI charges at other facilities in the state.

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d. The applicant shall demonstrate that alternatives were considered and the proposed application is the most cost-effective and will accomplish the goals of the project.

641—203.13(10A) Positron emission tomography services standards.

203.13(1) Purpose and scope.

a. These standards are measures of some of those criteria in Iowa Code section 10A.714(1) “*a*” through “*q*.” Criteria that are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications that are to be evaluated against these standards include:

- (1) Proposals to commence or expand the capacity of positron emission tomography services.
- (2) Proposals to replace a positron emission tomography unit.
- (3) Any other applications that relate to positron emission tomography.

203.13(2) Definitions.

“*Area*” means the community or a metropolitan statistical area (as defined by the U.S. Office of Management and Budget and used by the U.S. Census Bureau).

“*CT (computed tomography)*” means an imaging method in which a cross-sectional image of the structures in a body plane is reconstructed by a computer program from the X-ray absorption of beams projected through the body in the image plane.

“*Cyclotron*” means an apparatus for accelerating protons or neutrons to high energies by means of a constant magnet and an oscillating electric field.

“*MRI (magnetic resonance imaging)*” means a diagnostic modality that employs a combination of magnetic and radio frequency fields and computers to produce images of body organs and tissues.

“*Radiopharmaceutical*” means a radioactive pharmaceutical used for diagnostic or therapeutic purposes.

“*PET procedure*” means an image-scanning sequence derived from a single administration of PET, equated with a single injection of the tracer.

“*Positron emission tomography (PET)*” means an imaging method in which positron-emitting radionuclides, which are produced either by a cyclotron or generator, and a nuclear camera are used to create pictures of organ function rather than structure.

“*SPECT (single photon emission computed tomography)*” means a camera-based imaging system using the radionuclides in the routine practice of nuclear medicine.

203.13(3) Availability and need. (Iowa Code section 10A.714(1) “*c*,” “*d*,” “*e*,” “*g*,” “*h*”)

a. Applicants in areas with no other PET units.

(1) Applicants should demonstrate a reasonable potential utilization of a PET unit based on diversified inpatient and outpatient case mix thresholds including:

1. Intracranial cases.

- Primary brain tumors 50/year
- Metastasis 100/year
- Cerebral vascular disease 200/year
- Organic brain disease and dementia/psychiatric diagnoses (including epilepsy-seizure disorders) 500/year

- Spinal 100/year

2. Cardiovascular cases.

- Ischemic heart disease (including acute and chronic infarction) 1200/year

3. Neoplasms (head, neck, thorax (excluding heart), abdomen, pelvic, prostate and musculoskeletal) 1300/year.

(2) Applicants should have other diagnostic capabilities, on-site or through referral arrangements, with appropriate volumes including:

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	<u>Proposed Threshold</u>
Nuclear medicine imaging services	5,600
Single photon emission computed tomography (including brain, bone, liver, Gallium and Thallium stress)	1,600
CT	8,000
MRI	2,400

(3) Applicants should demonstrate secondary and tertiary service capability, on-site or through referral arrangements, including cardiac surgery, cardiology, internal medicine, general surgery, hematology/oncology, neurology, pathology, thoracic surgery and psychiatry.

b. Applicants in areas with one or more PET units currently in operation or approved by the certificate of need program for operation.

Existing PET units within the area (whether basic or enhanced) should have been operating at a minimum of 1000 PET procedures during the most recent annual period as reported to the certificate of need program according to paragraph 203.13(6)“*e.*”

203.13(4) *Quality and continuity.* (Iowa Code section 10A.714(1)“*g,*” “*h,*” “*i,*” “*k*”)

a. The proposed PET unit should function as a component of a comprehensive inpatient or outpatient diagnostic service. The proposed PET unit should have the following modalities (and capabilities) on-site or through referral arrangements:

- (1) Computed tomography.
- (2) Magnetic resonance imaging.
- (3) Nuclear medicine — (cardiac, SPECT).
- (4) Conventional radiography.

b. The proposed PET unit should be located in a facility that has, either in-house or through referral arrangement, the resources necessary to treat most of the conditions diagnosed or confirmed by PET. The following medical specialties should be available during PET service hours on-site or by referral arrangements: cardiology, neurology, neurosurgery, oncology, and psychiatry.

c. A proposal to provide new or expanded PET must include satisfactory assurances that services will be offered in a physical environment that conforms to federal standards, manufacturer’s specifications, and licensing agencies’ requirements. The following areas are to be addressed:

- (1) Quality control and assurance of radiopharmaceutical production of generator or cyclotron-produced agents;
- (2) Quality control and assurance of PET tomograph and associated instrumentation;
- (3) Radiation protection and shielding;
- (4) Radioactive emissions to the environment.

d. The applicant will provide evidence that the proposed PET equipment has been certified for clinical use by the U.S. Food and Drug Administration or will be operated under the approval and authority of an institutional review board whose membership is consistent with U.S. Department of Health and Human Services regulations.

e. Applicants for PET will document that the necessary qualified staff are available to operate the proposed unit. The applicants will document the PET training and experience of the staff. The following minimum staff will be available to the PET unit:

(1) One or more nuclear medicine imaging physician(s) available to the PET unit who have been licensed by the state for the handling of medical radionuclides and whose primary responsibility for at least a one-year period prior to submission of the certificate of need application has been in acquisition and interpretation of tomographic images. This individual shall have knowledge of PET through training, experience, or documented postgraduate education. The individual shall also have training with a functional PET facility.

(2) Qualified PET radiochemist or radiopharmacist personnel, available to the facility during PET service hours, with at least one year of training. The individual(s) will demonstrate experience in the testing of chemical, radiochemical, and radionuclidic purity of PET radiopharmaceutical syntheses.

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(3) Qualified engineering and physics personnel, available to the facility during PET service hours, with training and experience in the operation and maintenance of the PET equipment.

(4) Qualified radiation safety personnel, available to the facility at all times, with training and experience in the handling of short-lived positron-emitting nuclides.

(5) Certified nuclear medicine technologists with expertise in computed tomographic nuclear medicine imaging procedures, at a staffing level consistent with the proposed center's expected PET service volume.

(6) Other appropriate personnel should be available during PET service hours, which may include certified nuclear medicine technologists, computer programmers, nurses, and radiochemistry technicians.

f. The applicant will demonstrate how emergencies within the PET unit will be managed in conformity with accepted medical practice.

203.13(5) Accessibility and acceptability. (Iowa Code section 10A.714(1) "c," "d")

a. PET facilities should have adequate scheduled hours to avoid an excessive backlog of cases.

b. Selection of patients for clinical PET studies will guarantee equal access to all persons regardless of insurance coverage or ability to pay.

c. In addition to accepting patients from participating institutions, facilities performing clinical PET procedures should accept appropriate referrals from other local providers. These patients will be accommodated to the extent possible by extending the hours of service and by prioritizing patients according to standards of need and appropriateness rather than source of referral.

203.13(6) Costs and financial feasibility. (Iowa Code section 10A.714(1) "e," "f," "i," "p")

a. The applicant will identify capital and operating costs associated with the proposed PET unit, identify sources of funding to cover those costs, and demonstrate that the project is financially feasible.

b. The applicant will provide budgets for the first three years of operation, including documentation and justification of all assumptions used.

c. The applicant will document its projected average cost per procedure and charge per procedure for the first three years. Charges for PET should be reasonably related to service cost and comparable to PET charges at other facilities in the state.

d. The applicant should verify whether the service is eligible for reimbursement by public and private third-party payers.

e. The applicant should demonstrate that alternatives were considered and the proposed application is the most cost-effective and should accomplish the goals of the project.

These rules are intended to implement Iowa Code sections 10A.711 through 10A.729.

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