



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XLI
March 27, 2019

NUMBER 20
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PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2019

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
22	Friday, April 5, 2019	April 24, 2019
23	Friday, April 19, 2019	May 8, 2019
24	Friday, May 3, 2019	May 22, 2019

PLEASE NOTE:

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

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, April 5, 2019, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ARTS DIVISION[222]

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

Artsafe and art in state buildings programs, rescind chs 12, 13 Filed **ARC 4333C**..... 3/13/19**ATTORNEY GENERAL[61]**Victim assistance program, amendments to ch 9 Notice **ARC 4350C**..... 3/27/19**CITY FINANCE COMMITTEE[545]**

MANAGEMENT DEPARTMENT[541]“umbrella”

Transfers of moneys between funds, 2.1, 2.5(1) Filed **ARC 4334C**..... 3/13/19**COLLEGE STUDENT AID COMMISSION[283]**

EDUCATION DEPARTMENT[281]“umbrella”

Changes to address of commission, 1.2(1) Filed **ARC 4373C**..... 3/27/19Registered nurse and nurse educator loan forgiveness program, rescind ch 34 Filed **ARC 4374C**..... 3/27/19**CREDIT UNION DIVISION[189]**

COMMERCE DEPARTMENT[181]“umbrella”

Board of directors meetings; branch applications, 2.8, 2.9, 6.1 Notice **ARC 4331C**..... 3/13/19**DENTAL BOARD[650]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Teledentistry, 27.12, 27.13 Notice **ARC 4359C**..... 3/27/19Sedation and nitrous oxide, ch 29 Notice **ARC 4358C**..... 3/27/19**ECONOMIC DEVELOPMENT AUTHORITY[261]**Regional sports authority districts, 38.3(1)“b,” 38.4(1)“a” Notice **ARC 4354C**..... 3/27/19Workforce housing tax incentives program—housing project completion deadline,
48.5(3)“c” Notice **ARC 4353C**..... 3/27/19Targeted jobs withholding tax credit program, tax credits for investments in certified
innovation funds—extension of sunset dates, amendments to chs 71, 116 Notice **ARC 4355C**..... 3/27/19Iowa export trade assistance program, amendments to ch 72 Filed **ARC 4375C**..... 3/27/19Community attraction and tourism programs, amendments to chs 211, 213 Notice **ARC 4329C**..... 3/13/19**ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Air quality, amendments to chs 20, 22, 23, 25 Filed **ARC 4335C**..... 3/13/19**HISTORICAL DIVISION[223]**

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

State historical society award programs, 21.2, 21.3 Notice **ARC 4330C**..... 3/13/19**HUMAN SERVICES DEPARTMENT[441]**State supplementary assistance—assistance standards definition, cost-of-living adjustments,
51.4(1), 51.7, 52.1 Filed **ARC 4336C**..... 3/13/19Health insurance premium payment (HIPP) program, 75.21 Notice **ARC 4368C**..... 3/27/19Child care assistance—fee schedule, change reporting, 170.2(4), 170.4 Notice **ARC 4367C**..... 3/27/19Aftercare services program, ch 187 Notice **ARC 4369C**..... 3/27/19**INSPECTIONS AND APPEALS DEPARTMENT[481]**Subacute mental health care facilities, amendments to ch 71 Notice **ARC 4328C**..... 3/13/19**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]“umbrella”

Unfair trade practices—standards for annuity illustrations, 15.66 Notice **ARC 4326C**..... 3/13/19Short-term limited-duration health insurance policies, 35.23, 36.4(17), 36.6(11), 36.7(13)
Filed Emergency After Notice **ARC 4332C**..... 3/13/19**IOWA FINANCE AUTHORITY[265]**Local housing trust fund program allocation plan—adoption by reference, 19.1 Notice **ARC 4371C**..... 3/27/19Water quality financing program, ch 46 Notice **ARC 4372C**..... 3/27/19

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]

Contribution rates; sick and compensatory time; bona fide funds; vesting; service credit and purchases; IRC Section 415 testing; beneficiaries; alternate payees; overpayments and underpayments, amendments to chs 4, 6 to 9, 11, 12, 14, 16 Filed **ARC 4337C** 3/13/19

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”
Conveyance safety program—elevator alterations, fees, 71.10(4), 71.16(4) Filed **ARC 4376C** 3/27/19

MANAGEMENT DEPARTMENT[541]

Calculating net general fund revenues, ch 15 Notice **ARC 4327C**..... 3/13/19

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PUBLIC HEALTH DEPARTMENT[641]“umbrella”
Training requirements for chronic pain management and end-of-life care for permanent or special license renewal; definition of “opioid,” 11.1, 11.4(1) Filed **ARC 4338C**..... 3/13/19
Standards of practice—medical cannabidiol, 13.15(1) Filed **ARC 4377C** 3/27/19
Licensure of genetic counselors, ch 20 Filed **ARC 4339C**..... 3/13/19

PAROLE BOARD[205]

CORRECTIONS DEPARTMENT[201]“umbrella”
Revocation of parole—conviction in another state or foreign country, 11.12 Notice **ARC 4349C** 3/27/19

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Electronic filing; confidential information; public records, amend chs 1, 2, 6, 7, 10, 14, 16; adopt ch 12 Notice **ARC 4365C**..... 3/27/19
Bargaining unit determinations; representative certifications, amend chs 4, 5; adopt ch 15 Notice **ARC 4366C** 3/27/19
State employee whistleblower actions, ch 17 Notice **ARC 4364C**..... 3/27/19

PUBLIC HEALTH DEPARTMENT[641]

Special supplemental nutrition program for women, infants, and children (WIC), amendments to ch 73 Notice **ARC 4361C** 3/27/19
Local public health services, 80.2, 80.3 Notice **ARC 4362C**..... 3/27/19
Medical cannabidiol program, amendments to ch 154 Notice **ARC 4363C**..... 3/27/19
Oral and health delivery system bureau; office of minority and multicultural health, 170.7(6) Notice **ARC 4360C** 3/27/19

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”
Confidential records; licensing; licensees’ responsibilities; racing; definition of “minus pool”; gambling games; facility internal controls, amendments to chs 3, 5 to 8, 10 to 12 Filed **ARC 4378C**..... 3/27/19

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]“umbrella”
Oversight by superintendent of banking—update of rules, amend chs 1, 3, 5, 6, 8, 9, 11, 16, 17; adopt chs 18 to 25 Filed **ARC 4379C**..... 3/27/19

REGENTS BOARD[681]

Parking and vehicle registration at universities, 4.71 Notice **ARC 4351C** 3/27/19

REVENUE DEPARTMENT[701]

Assessor or deputy assessor continuing education, 124.3 Notice **ARC 4352C** 3/27/19

SECRETARY OF STATE[721]

Safe at home program, 6.1 Notice **ARC 4356C** 3/27/19
Primary election—nominations by write-in votes for certain offices, rescind 21.602 Filed **ARC 4348C**..... 3/13/19
Local option sales and services tax elections in qualified counties, 21.804 Notice **ARC 4357C**..... 3/27/19

SOIL CONSERVATION AND WATER QUALITY DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]“umbrella”
Increase in eligible costs of certain soil erosion control and water protection practices, 10.20, 10.60(1)“b,” 12.84 Filed **ARC 4340C**..... 3/13/19

TRANSPORTATION DEPARTMENT[761]

- Petition submission methods; oral presentation information; office name and address
- updates, amendments to chs 10 to 12 Notice **ARC 4325C** 3/13/19
- Procurement of equipment, materials, supplies and services; exemptions from competition with private enterprise, amendments to chs 20, 25 Filed **ARC 4341C** 3/13/19
- Public improvement quotation process—retained funds, amendments to ch 180 Filed **ARC 4342C** 3/13/19
- Motor vehicle dealer licensing for final-stage manufacturers; business records; security interest notation on certificate of title, 400.1, 400.4, 400.8(2), 425.10(3)“c,” 425.11 to 425.13 Filed **ARC 4343C**..... 3/13/19
- Initial application for firefighter plates, 401.9(1) Filed **ARC 4344C** 3/13/19
- Permitted tandem axle weights, 511.13(6) Filed **ARC 4345C**..... 3/13/19
- For-hire intrastate motor carrier authority, 524.1 to 524.6, 524.7(2), 524.8, 524.11, 524.12(1)“b,” 524.15, 524.18 Filed **ARC 4346C** 3/13/19
- Operating while intoxicated revocations—issuance of temporary restricted license, installation of ignition interlock device, 620.3 Filed **ARC 4347C**..... 3/13/19

UTILITIES DIVISION[199]

- COMMERCE DEPARTMENT[181]“umbrella”
- Natural gas safety standards, 10.12(1), 19.2(5), 19.5(2), 19.8(3) Filed **ARC 4380C** 3/27/19

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

- Iowa veterans home—county of residence upon discharge, 10.41 Notice **ARC 4370C** 3/27/19

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Waylon Brown
109 South Summer Street
St. Ansgar, Iowa 50472

Representative Steven Holt
1430 Third Avenue South
Denison, Iowa 51442

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Representative Megan Jones
4470 Highway 71
Sioux Rapids, Iowa 50585

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

Representative Joe Mitchell
Mount Pleasant, Iowa

Senator Pam Jochum
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Dubuque, Iowa 52001

Representative Amy Nielsen
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Senator Zach Whiting
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INSURANCE DIVISION[191]

Unfair trade practices—standards
for annuity illustrations, 15.66
IAB 3/13/19 **ARC 4326C**

Division Offices, Fourth Floor
Two Ruan Center
601 Locust St.
Des Moines, Iowa

April 2, 2019
11 a.m. to 12 noon

IOWA FINANCE AUTHORITY[265]

Water quality financing program,
ch 46
IAB 3/27/19 **ARC 4372C**

Authority Offices, Suite 200
1963 Bell Ave.
Des Moines, Iowa

April 16, 2019
9 to 10 a.m.

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Electronic filing; confidential
information; public records,
amend chs 1, 2, 6, 7, 10, 14, 16;
adopt ch 12
IAB 3/27/19 **ARC 4365C**

Public Employment Relations Board
Jessie Parker Bldg.
510 East 12th St.
Des Moines, Iowa

April 17, 2019
10 a.m. to 12 noon

Bargaining unit determinations;
representative certifications,
amend chs 4, 5; adopt ch 15
IAB 3/27/19 **ARC 4366C**

Public Employment Relations Board
Jessie Parker Bldg.
510 East 12th St.
Des Moines, Iowa

April 17, 2019
10 a.m. to 12 noon

State employee whistleblower
actions, ch 17
IAB 3/27/19 **ARC 4364C**

Public Employment Relations Board
Jessie Parker Bldg.
510 East 12th St.
Des Moines, Iowa

April 17, 2019
10 a.m. to 12 noon

TRANSPORTATION DEPARTMENT[761]

Petition submission methods; oral
presentation information; office
name and address updates,
amendments to chs 10 to 12
IAB 3/13/19 **ARC 4325C**

Department of Transportation
Administration Bldg.
First Floor, South Conference Room
800 Lincoln Way
Ames, Iowa

April 4, 2019
10 a.m.
(If requested)

UTILITIES DIVISION[199]

Approval of appraiser for
municipal utilities, 32.10
IAB 2/27/19 **ARC 4315C**

Board Hearing Room
1375 E. Court Ave.
Des Moines, Iowa

April 2, 2019
8:30 to 10:30 a.m.

The following list will be updated as changes occur.

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

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

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

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ARC 4350C

ATTORNEY GENERAL[61]

Notice of Intended Action

**Proposing rule making related to crime victim assistance
and providing an opportunity for public comment**

The Attorney General hereby proposes to amend Chapter 9, "Victim Assistance Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 915.82(2) and 915.83(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 709 and 915.

Purpose and Summary

The purpose of this proposed rule making is to implement rules based on statutory provisions authorized under 2009 Iowa Acts, chapter 179, section 47; 2011 Iowa Acts, chapter 34, section 157; and 2018 Iowa Acts, chapter 1107, sections 1 and 2; and to amend rules adopted under Iowa Code chapter 915, subchapter VII, Victim Compensation, and subchapter V, Victims of Sexual Assault. The amendments will modernize the administrative rules in Chapter 9 and help control costs to the crime victim compensation fund.

The crime victim compensation fund has experienced a cumulative decrease of \$1,726,500 in deposits from state revenue sources between SFY13 and SFY17. During the same period, the compensation fund has seen an increase in obligations for sexual assault examinations. The cost per claim has risen from \$719 in SFY14 to \$911 in SFY17. During this period, the number of claims submitted by medical providers has risen by nearly 20 percent. The proposed amendments would allow the Crime Victims Assistance Division to set reasonable rates for the laboratory and prescription drug charges billed to the fund. The average cost per claim has risen from \$100 per claim in SFY13 to \$207 per claim in SFY17 for prescription drugs, and the average cost per claim has risen from \$156 per claim in SFY13 to \$196 per claim in SFY17 for laboratory charges.

Compensation payments made to eligible victims are not taxable under state or federal tax regulations. Under current rules, the Crime Victim Compensation Program calculates income loss at the gross rate of pay. Since payments are not considered taxable income, a decrease would not impact an eligible victim's out-of-pocket wage loss. However, a percentage decrease would assist the Iowa Department of Justice with controlling obligations of the fund.

This rule making proposes to rescind subrules 9.35(5) and 9.35(6) regarding compensation for counselors funded by the federal Victims of Crime Act (VOCA). The Department ceased compensating VOCA-funded programs in 2010 because compensating a VOCA-funded counselor may violate certified assurances subgrantees provide when accepting VOCA funds.

This rule making would enhance the ability of the program to compensate eligible survivors of a deceased victim for up to 30 days of lost wages following the death of an eligible victim. Under current rules, the program can compensate the parent, spouse, or child of a deceased victim for up to 30 days of lost wages without a disability statement. The proposed amendments would enhance the program's wage loss benefit for eligible survivors when the relationship between the deceased victim and the survivor compels the survivor to miss work for grief and the missed work is documented.

This rule making also proposes amendments that make grammatical changes and update cross references in the rules.

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Fiscal Impact

From SFY14 to SFY17 wage loss payments totaled \$3,093,311. A 25 percent reduction to gross wage calculation is proposed in this rule making. Based on wage loss payments issued between SFY14 and SFY17, this reduction would save an average of \$193,331 per year.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Attorney General for a waiver of the discretionary provisions, if any, pursuant to rule 61—9.37(17A).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Attorney General no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Robert Hamill
Office of the Attorney General
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: robert.hamill@ag.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 61—9.26(915) as follows:

61—9.26(915) Definitions. For rules of the crime victim compensation program of the crime victim assistance division of the department of justice, the following definitions apply:

“*Affinity*” means the relationship of persons who are related by marriage, cohabitation, or engagement to be married.

“*Applicant*” includes the following individuals who file an application with the crime victim compensation program:

1. A victim of a crime as defined in Iowa Code section ~~915.80(6)~~ 915.80.
2. A person responsible for the care and maintenance of a victim.

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3. A resident of Iowa who is the victim of an act that would be compensable had it occurred within the state of Iowa and ~~the act occurred in a state or foreign country that does not have a victim compensation program as defined in the federal law.~~ any of the following apply:

- The act occurred in a state or foreign country that does not have a victim compensation program as defined in the federal law;
- The act occurred in a state or foreign country whose victim compensation program has insufficient or inadequate benefits; or
- The act occurred on an aircraft while in flight or occurred on waters outside of the jurisdiction of any particular state or country.

4. In the event of a victim's death, the spouse, ~~children, parents, siblings, or persons former spouse,~~ child, foster child, parent, legal guardian, foster parent, stepparent, sibling, or foster sibling of a victim, or a person cohabiting with, or otherwise related by blood or affinity to the victim. An estate is not an eligible applicant for crime victim compensation. An estate shall, however, be reimbursed for funeral and burial expenses if the estate paid the costs on behalf of an eligible applicant who shall benefit from the proceeds of the estate.

5. A legal representative authorized to act on behalf of any of the persons listed above.

"Board" means the crime victim assistance board of the department of justice.

"Causal relationship" means that the crime would not have occurred without the action of the victim. A causal relationship exists if the actions of the victim result in a foreseeable injury, play a substantial role in the injury, or directly cause the injury.

"Claimant" means an applicant who has been found to be eligible for compensation.

"Cohabiting" means living in the same household. It is not necessary to establish that a sexual relationship exists between the parties.

"Compensation" means moneys awarded by the division as authorized in Iowa Code chapter 915.

"Consent" means to agree to a course of action or to voluntarily allow what is planned or done by another.

"Counseling" means problem solving and support concerning emotional issues that result from a compensable crime. Counseling is a confidential service provided ~~in person~~ on an individual basis or in a group. Counseling has as a primary purpose to enhance, protect and restore a person's sense of well-being and social functioning. Counseling does not include victim advocacy services ~~such as crisis telephone counseling~~; conversation in a nonprivate setting such as the common area of a shelter or a courthouse; transportation; or attendance at medical procedures, law enforcement interviews or civil and criminal justice proceedings.

"Crime" as defined in Iowa Code section 915.80 includes:

1. Conduct punishable as a misdemeanor or a felony.
2. Property crimes including but not limited to robbery, residential burglary, and residential arson, where there is a threat of personal injury or harm against a person.
3. Violation of a custody order in which the custodial parent suffers injury.

"Denial" means disqualification of an application or reduction in the amount of compensation paid.

"Department" means the department of justice, i.e., the attorney general's office.

"Dependent" means a person who is wholly or partially reliant upon a victim for care or support and includes a child of the victim born after the victim's death, or a person who is unable to care for himself or herself due to injury, disability, or minor age status.

"Director" means the director of the crime victim assistance division established in the department of justice.

"Division" means the crime victim assistance division of the department of justice.

"Incitement" means to urge forward or to goad to action.

~~*"Income Lost wages or income," "lost income," or "lost wages"*~~ means the gross income or gross wages rate of pay, decreased by 25 percent.

"Medical care" means services provided by or provided under the supervision of a person licensed under Iowa law as a medical physician or surgeon, osteopathic physician or surgeon, chiropractor,

ATTORNEY GENERAL[61](cont'd)

podiatrist, physical therapist, acupuncturist, or dentist. Medical care also includes services rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

“*Medically necessary*” means that the items and services, prescribed or recommended by a medical provider under the prescriptive authority of the medical provider’s license, which are reasonably necessary to facilitate the victim’s physical and emotional recovery from the compensable crime.

“*Pecuniary loss*” means the amount of medical or medical-related expenses and shall include, but not be limited to, eyeglasses, hearing aids, dentures, prosthetic devices including those which were taken, lost, or destroyed during the crime, home health care, medications, counseling, pregnancy-related services, equipment rental or purchase, property alteration, transportation for emergencies and medical care provided outside the victim’s county of residence, or health insurance premiums covered by an employer previous to the victim’s disability from the crime. Pecuniary loss shall also include the loss of income that the victim has incurred as a direct result of the injury to the extent that the victim has not been and shall not be indemnified from any other source.

“*Personal injury*” or “*injury*” means bodily harm or mental suffering and shall include a victim’s pregnancy or miscarriage resulting from a crime.

“*Program*” means the crime victim compensation program of the department of justice.

“*Provocation*” means to cause anger, resentment, or deep feelings that cause or instigate another to take action.

“*Public funds*” means moneys provided by federal, state, county, city or other local government.

“*Reasonable charges*” means charges ordinarily charged by the provider of the service to the general public for services of a similar nature.

“*Residence*” means a property on which an applicant lives and may include but is not limited to a dwelling, detached garage, shed, or similar structure located on the property, or a privately owned vehicle if the vehicle serves as the primary residence.

ITEM 2. Amend subrule 9.28(4) as follows:

9.28(4) *Program effective date.* The effective date of the crime victim compensation program is January 1, 1983. Victims and survivors of crimes that were committed prior to the effective date ~~are not~~ may be eligible for compensation if the program can obtain sufficient documentation to verify eligibility.

ITEM 3. Amend subrules 9.29(4), 9.29(7) and 9.29(8) as follows:

9.29(4) *Good cause.* In determining whether there is good cause for waiving the requirement to report a crime to law enforcement within 72 hours of the occurrence of the crime, the victim’s age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered. In the event good cause is found, the crime must be substantiated through disclosure to another provider including, but not limited to, a licensed medical provider, a licensed mental health professional, or a designated victim service provider.

9.29(7) *Sexual abuse victim.* For a victim of sexual abuse, ~~the department finds there is good cause to waive the 72-hour reporting requirement~~ may be waived for good cause if a sexual abuse evidentiary examination was completed within 72 hours of the crime and the victim files a subsequent law enforcement report or if the crime was disclosed to another provider including, but not limited to, a licensed medical provider, a licensed mental health professional, or a designated victim service provider.

9.29(8) *Domestic abuse victim.* For a victim of domestic abuse, ~~the department finds there is good cause to waive the 72-hour reporting requirement~~ may be waived for good cause if a pro se protection domestic abuse protective order pursuant to Iowa Code chapter 236 is entered by the court and or if the victim files a subsequent law enforcement report crime was disclosed to another provider including, but not limited to, a licensed medical provider, a licensed mental health provider, or a designated victim service provider.

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ITEM 4. Amend rule 61—9.30(915), introductory paragraph, as follows:

61—9.30(915) Cooperation with law enforcement. To be eligible for compensation, the ~~victim~~ of crime ~~victim~~ must cooperate with the reasonable requests of law enforcement. After considering the factors in subrule 9.29(4), the department may waive the requirement if good cause is shown.

ITEM 5. Amend subrule 9.31(4), introductory paragraph, as follows:

9.31(4) Additional assessment of provocation and incitement, and commission of a criminal act. In assessing the causal nature of provocation or incitement and commission of a criminal act pursuant to Iowa Code section ~~915.87(2)“a,”~~ 915.87(2), the division may consider law enforcement documentation that indicates:

ITEM 6. Amend subrule 9.32(2) as follows:

9.32(2) Reopening applications. Pursuant to Iowa Code section 915.83(2), the department may reopen and reinvestigate an application if the department determines that the decision was incorrect or incomplete. A denied application may be reopened and reinvestigated if it is discovered through a criminal trial or other investigatory source that the information relied upon for the denial decision was incorrect or incomplete. The eligibility of an approved application will be reopened for consideration if information is discovered through a criminal trial or other investigatory source that ~~indicates that there is reason to deny the application~~ the information relied upon for the approval decision was incorrect or incomplete. The reopening of a denied or approved case is at the discretion of the administrator for the compensation program, the director, or the board.

ITEM 7. Amend subrules 9.34(2), 9.34(4) and 9.34(5) as follows:

9.34(2) Payer of last resort ~~Payer of last resort~~. The program is a ~~payer of last resort~~ payer of last resort pursuant to federal law ~~42 U.S.C. 10602(1403)~~ 34 U.S.C. 20102. Compensation shall not be paid for services when the provision for those services is mandated by law or administrative rule to be the responsibility of another governmental unit, private agency or program. Payments shall be reduced by payments made by offenders and third parties responsible for the damages of the crime. The department may waive this requirement for good cause after considering the factors in subrule 9.29(4), for compensation made from state funds.

9.34(4) Insurance providers. Eligible victims and claimants must give service providers the information necessary to bill insurance providers for crime-related treatment. Payment of compensation will not be made if the victim refuses or fails to provide information requested by the service or insurance provider or to sign the required assignment of benefits within a reasonable time frame. The department may waive this requirement if the victim can demonstrate good cause exists. Good cause may include, but is not limited to, situations where the insurance policyholder is the perpetrator of the crime that gave rise to the claim.

9.34(5) Supplanting of funds prohibited. Compensation shall be made only when the claimant is responsible for the cost of crime-related injury. Compensation shall not be paid when a government entity, including but not limited to a mental health facility, jail, or prison, is responsible for the costs of treatment for injury from crime, unless the entity is legally allowed to pass those costs along to the victim.

ITEM 8. Amend rule 61—9.35(915), introductory paragraph, as follows:

61—9.35(915) Computation of benefit categories. The division shall determine the amount of compensation to be awarded to an eligible applicant for injury from crime for each benefit category pursuant to Iowa Code section ~~985.86~~ 915.86.

ITEM 9. Amend paragraphs **9.35(1)“a,” “h”** and **“i”** as follows:

a. Medical care sanctioned by sovereign nations and tribes. Compensation may be paid for medical care rendered in accordance with a method of healing sanctioned by a state-recognized or federally recognized sovereign nation or tribe.

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h. Transportation for medical emergency. Compensation may be paid for the reasonable cost of transportation in a medical emergency by private vehicle at the ~~state rate for boards and commissions per mile~~ per-mile rate established by the department of administrative services for state employees using a privately owned vehicle for state business. Mileage will be based on mileage calculation from the most current map published by the department of transportation. Transportation within a city limits will be based on the program's estimate of mileage from the location of the injured victim to the medical facility.

i. Transportation for nonemergency care. Compensation may be paid for the cost of transportation by commercial vehicle or by private car for nonemergency medical care and counseling received outside of the victim's county of residence. Transportation provided by private vehicle for nonemergency care will be reimbursed at the ~~state rate for boards and commissions per mile~~ per-mile rate established by the department of administrative services for state employees using a privately owned vehicle for state business. Mileage will be based on mileage calculation from the most current map published by the department of transportation.

ITEM 10. Amend subrule 9.35(3), introductory paragraph, as follows:

9.35(3) Mental health counseling. Compensation may be paid for the reasonable costs of up to 12 mental health counseling sessions for eligible crime victims and survivors of a homicide victim. ~~When with the provision of a treatment plan and certification as defined in paragraph 9.35(4) "a."~~ Costs for those 12 sessions will be paid in full if the crime is noted in the treatment plan. If preexisting mental health issues are addressed during crime-related counseling sessions following the initial 12 visits, the program may reduce payment to a percentage equal to the portion of the counseling determined to be directly related to the compensable crime. The mental health counseling provider shall submit a vitae establishing the provider's educational qualifications for compensation. A provider who is required to be licensed under Iowa law must provide proof of licensure and good standing with the professional licensing board. Compensation shall be paid for mental health counseling provided by the following:

ITEM 11. Rescind subrules **9.35(5)** and **9.35(6)**.

ITEM 12. Renumber subrules **9.35(7)** to **9.35(11)** as **9.35(5)** to **9.35(9)**.

ITEM 13. Amend renumbered subrule 9.35(5) as follows:

9.35(5) Counseling with the perpetrator. Compensation for mental health ~~or victim service~~ counseling that includes the perpetrator of the crime may be payable when the perpetrator takes part ~~only~~ to take responsibility for the crime and apologize to the victim and the victim is allowed to confront the perpetrator regarding the effects of the crime; or at the request of the victim.

ITEM 14. Amend renumbered subrule 9.35(7) as follows:

9.35(7) Lost wages or income. Compensation may be paid for reasonable lost wages or income when an eligible crime victim is unable to work as the result of physical or emotional injury from a crime, or as a result of cooperation with the investigation or prosecution of the crime, or due to health and safety concerns related to maintaining employment. ~~Lost wages or income due to crime is determined as follows: the gross rate of pay multiplied by the number of scheduled hours of work missed, decreased by 25 percent pursuant to the definition of "lost wages or income" in rule 61—9.26(915).~~ Lost wages or income due to the crime is determined as follows:

a. Gross wages computed. ~~Lost wages are computed as the gross rate of pay times the number of scheduled hours of work missed.~~

b. a. Variable income. Income that is variable shall be computed based on the average income earned during a minimum 28-day period within the three months preceding the crime. Estimated earnings not supported by past income statements shall not be accepted.

e. b. Self-employment and small business income. Self-employed persons or small business employees must provide federal or state income tax forms for the most recent year completed or verification of average income for a minimum of the past six months. Work estimates, labor contracts, and affidavits from individual employers may be used to establish wages.

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~~d. c.~~ *Vacation, sick, holiday, bereavement, and annual leave.* Lost wages or income paid shall not be reduced by vacation, sick, holiday, bereavement, or annual leave available or used by the victim due to the crime.

d. Calculation when rate of pay cannot be established. In the event employment can be verified but the rate of pay cannot be established through pay stubs, state or federal tax forms, or bank statements, compensation shall be calculated at the current state minimum wage rate on the basis of an eight-hour workday.

ITEM 15. Amend renumbered subrule 9.35(8) as follows:

9.35(8) *Lost wages or income ~~due to disability as the result of physical or emotional injury from a crime.~~* Compensation for lost wages or income incurred within the first two weeks following the crime shall be paid for lost wages incurred by to an eligible crime victim within two weeks after injury from crime or without an authorized disability statement. Compensation for lost wages or income incurred within the first 30 days following the crime may be paid to an eligible survivor of a homicide deceased victim for up to five days within two weeks after the death of a victim without an authorized disability statement. Compensation for lost wages may be paid to the spouse, child, or parent of the homicide victim for up to one month without a disability statement as determined reasonable by the program. A victim or survivor of a homicide victim seeking lost wages for a longer period of time longer than two weeks, or an eligible survivor seeking lost wages for longer than 30 days under Iowa Code section 915.86(10), shall submit a disability statement from a licensed ~~physician~~ medical provider for a physical injury or an injury related to mental health, or from a licensed mental health provider as included in ~~paragraph~~ paragraphs 9.35(3) "a" through "d" for an injury related to mental health. Compensation shall be made for lost wages or income under the following circumstances:

a. *Victim injured Lost income.* Compensation may be paid when the victim ~~cannot~~ misses work due to physical or emotional injury from crime.

b. *Lost hire income.* Compensation may be paid when the victim has been hired by an employer but is unable to begin employment because of injury due to the crime, until released to work. Required documentation includes a signed affidavit by the employer.

c. *Employment ~~terminated~~ ceases.* Compensation may be paid when the ~~victim is terminated from~~ victim's employment ceases as a result of crime-related injuries, until released to seek work.

d. *Unemployment eligible.* Compensation may be paid for the difference between the victim's ~~gross wage~~ lost wages or income and the unemployment benefit when the victim is terminated from employment because of injury from crime and is found to be eligible for unemployment benefits.

e. *Unemployment ineligibility.* Compensation may be paid for the amount of the victim's unemployment benefit when the victim is rendered ineligible for unemployment benefits because of injury from the crime, until the victim is released to work.

f. *~~Worker~~ Workers' compensation benefit eligible.* Compensation may be paid for the difference between the victim's gross wage and the ~~worker~~ workers' compensation benefit when the victim is unable to work because of injury from crime and is found to be eligible for worker compensation benefits.

g. *Medical and counseling appointments.* Compensation may be paid to a primary victim, the parent or guardian of a minor aged primary victim, or the caretaker of a dependent adult primary victim for wages lost due to medical care or counseling appointments for the victim.

ITEM 16. Amend renumbered subrule 9.35(9) as follows:

9.35(9) *Lost wages or income ~~during~~ for cooperation in an investigation and prosecution.* Compensation may be paid for lost wages or income incurred by an eligible primary victim, survivor of a ~~homicide~~ deceased victim as described in Iowa Code section 915.86(8), parent or guardian of a minor aged primary victim, or caretaker of a dependent primary victim while cooperating with the investigation and prosecution of the crime including, but not limited to, participation at identification sessions, arraignment, deposition, plea agreement meetings, trial, sentencing, parole and probation hearings, and sexually violent predator civil commitment proceedings.

ATTORNEY GENERAL[61](cont'd)

ITEM 17. Adopt the following **new** subrule 9.35(10):

9.35(10) *Lost wages or income due to health or safety concerns related to maintaining employment.* Compensation for lost wages or income shall be paid to an eligible crime victim for up to 30 days following an event that compromises the health or safety of the victim including, but not limited to, the approved crime, stalking, or harassment. Compensation for lost wages or income beyond 30 days may be extended at the discretion of the program administrator, the director, or the board.

ITEM 18. Renumber subrules **9.35(12)** to **9.35(15)** as **9.35(11)** to **9.35(14)**.

ITEM 19. Amend renumbered subrule 9.35(11) as follows:

9.35(11) *Residential crime scene cleanup.* Compensation may be paid for the reasonable costs of an eligible victim or applicant for cleaning a residential crime scene, which includes a home, or a private vehicle if the vehicle serves as the primary residence, in which the crime was committed. Cleaning a residential crime scene means to remove, or attempt to remove, from the crime scene blood, dirt, stains, or other debris caused by the crime or the processing of the crime scene. Compensation shall be paid for the reasonable out-of-pocket cost of cleaning supplies, equipment rental, labor, and the value of property which is essential to the victim and which is held by law enforcement for evidentiary purposes. Cleaning a residential crime scene does not include replacement or repair of property damaged in the crime.

ITEM 20. Amend renumbered subrule 9.35(13) as follows:

9.35(13) *Clothing and bedding.* Compensation may be paid for clothing and bedding held as evidence by law enforcement ~~and not returned to the victim~~. Compensation shall not be made for ~~the clothing~~ of a deceased victim victim's clothing which is held as evidence.

ITEM 21. Amend renumbered subrule 9.35(14) as follows:

9.35(14) *Funeral, ~~and~~ burial, and memorial expenses.* Compensation may be paid for reasonable expenses incurred for the funeral and burial or cremation for an eligible crime victim. The following expenses may be paid up to the maximum expense established in Iowa Code section ~~915.86(4)~~ 915.86(6):

a. Funeral service. Compensation may be paid for expenses related to funeral and burial or cremation preparation and services.

b. Burial plot and vessel. Compensation may be paid for the cost of a burial plot, vault, casket, urn, or other permissible vessel.

c. Burial effects. Compensation may be paid for miscellaneous funeral and burial expenses including, but not limited to, flowers, burial clothing for the victim, transportation of the victim's body, and travel and lodging expenses for survivors of the ~~homicide~~ deceased victim as described in Iowa Code section ~~915.87(8)~~ 915.80(7) with priority for the surviving spouse, children, and parents of the victim. Documentation must be provided for all miscellaneous funeral and burial expenses.

d. Memorial. Reasonable memorial costs may be paid for commemorating the memory of a deceased victim, including but not limited to a structure or public or private event.

ITEM 22. Adopt the following **new** subrules 9.35(15) to 9.35(17):

9.35(15) *Dependent care.* Compensation may be paid for reasonable costs of dependent care incurred by a primary victim, the parent or caretaker of a dependent primary victim, or the survivor of a deceased victim, to attend medical or counseling appointments or criminal justice proceedings. Dependent care expenses may be paid for the parent or caretaker of a primary victim to attend the parent's or caretaker's own medical or mental health appointments.

Compensation may include, but is not limited to, expenses for care provided by a day care center, private residential childcare, relative who is not a tax dependent, before- or after- school program, custodial elder care, adult day care center, nanny, or au pair. Expenses may be paid up to the maximum benefit established in Iowa Code section 915.86(13).

9.35(16) *Residential security.* Compensation may be paid for reasonable costs incurred by a victim, the victim's parent or caretaker, or the survivor of a deceased victim to install new residential security items, or to replace inadequate or damaged residential security items, not to exceed the maximum expense established in Iowa Code section 915.86(14).

ATTORNEY GENERAL[61](cont'd)

Compensation may be paid for doors, locks, windows, security cameras, security systems or devices, or other reasonable expenses that provide for the safety of the victim or the security of the residence.

9.35(17) *Transportation and lodging expenses.* Compensation may be paid for reasonable transportation and lodging expenses incurred by the victim, secondary victim, parent or guardian of the victim, or the survivor of a deceased victim for medical and counseling services, criminal justice proceedings, or funeral activities, not to exceed the benefit limit established in Iowa Code section 915.86(15).

a. Privately owned vehicle. Use of a privately owned vehicle shall be paid at the per-mile rate established by the department of administrative services for state employees using a private vehicle for state business.

b. Commercial vehicle transportation shall be paid at the cost incurred by, or on behalf of, an eligible applicant.

ITEM 23. Amend rule 61—9.83(915) as follows:

61—9.83(915) Computation of sexual abuse examination payments.

9.83(1) *Payment for examination.* The department shall make payment for sexual abuse examinations, as appropriate, for services including, but not limited to:

a. Examiner's fee ~~for collection of:~~

- (1) ~~Patient's~~ To collect the patient's medical history;
- (2) ~~Physical~~ To conduct a physical examination;
- (3) ~~Collection of~~ To collect laboratory specimens;
- (4) ~~Return visits to~~ To test for sexually transmitted disease; diseases.

~~(5) *b.*~~ Treatment for the prevention of sexually transmitted disease.

~~*b. c.*~~ Examination facility, including:

- (1) Emergency room, clinic room or office room fee;
- (2) Pelvic tray and medically required supplies;
- (3) Additional facility or equipment fees which the department determines to be reasonable.

~~*e. d.*~~ Laboratory collection and processing of specimens for: criminal evidence; sexually transmitted disease; and pregnancy testing.

9.83(2) *Provider payment.* The department will pay up to \$300 for the examination facility and up to \$200 for examiner fees. Any charges in excess of these amounts will require additional documentation from the provider. The department shall set reasonable payment limits for treatment, including prescription drugs, for the prevention of sexually transmitted diseases and for laboratory collection and processing of specimens. The crime victim assistance program will pay only those charges determined by the department to be reasonable and fair.

9.83(3) *Examination kits available at no cost.* The Iowa department of public safety division of criminal investigation makes sexual abuse examination kits available to health care providers at no cost.

ITEM 24. Amend rule 61—9.84(915) as follows:

61—9.84(915) Victim responsibility for payment. A victim of sexual abuse is not responsible for the payment of the costs of a sexual abuse examination determined to be eligible for payment by the department. A medical provider must not submit any costs associated with a sexual abuse examination to a victim's insurance or to the sexual abuse victim. A medical provider shall must not submit any remaining balance to the sexual abuse victim after the sexual abuse examination program has determined payment to the sexual abuse victim.

ARC 4359C**DENTAL BOARD[650]****Notice of Intended Action****Proposing rule making related to teledentistry
and providing an opportunity for public comment**

The Dental Board hereby proposes to amend Chapter 27, “Standards of Practice and Principles of Professional Ethics,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 147.2, 153.13, 153.15, 153.17, and 153.38.

Purpose and Summary

The primary purpose of these proposed amendments is to define standards of practice for teledentistry. Technological advances have made it possible for dental services to be provided without an on-site dentist. New rule 650—27.12(153) expands access to dental services utilizing available technology. The new rule also establishes criteria to safely provide dental services while maintaining patient confidentiality.

Fiscal Impact

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

Jobs Impact

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

Waivers

The rules in this chapter establish the minimum requirements to meet the standard of care in the practice of dentistry. Waiver of these rules would pose a risk to members of the public since it would mitigate the minimum acceptable standard of the practice of dentistry.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 15, 2019. Comments should be directed to:

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

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Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Renumber rule **650—27.12(17A,147,153,272C)** as **650—27.13(17A,147,153,272C)**.

ITEM 2. Adopt the following **new** rule 650—27.12(153):

650—27.12(153) Teledentistry. This rule establishes the standards of practice for teledentistry.

27.12(1) Definitions. As used in this rule:

“*Asynchronous technology*” means store-and-forward technology that allows a dentist, dental hygienist, or dental assistant to transmit a patient’s health information to a dentist for viewing at a later time.

“*Board*” means the Iowa dental board.

“*Synchronous technology*” means two-way audiovisual technology that allows a dentist to see and communicate in real time with a patient who is located in a different physical location.

“*Teledentistry*” means the practice of dentistry when a patient receives dental care in a location where the dentist is not physically at that location but is delivering or overseeing the delivery of those services through the use of teledentistry technology.

“*Teledentistry technology*” means synchronous or asynchronous technology.

27.12(2) Teledentistry authorized. In accordance with this rule, a dentist may utilize teledentistry to provide dental care to patients located in Iowa. A dentist shall not provide dental care to a patient located in Iowa based solely on an Internet questionnaire consisting of a static set of questions that have been answered by the patient.

27.12(3) License required. A dentist who uses teledentistry in the examination, diagnosis, or treatment of a patient located in Iowa shall hold an active Iowa license to practice dentistry.

27.12(4) General requirements. The standard of dental care is the same whether a patient is seen in person or through a teledentistry encounter. The use of teledentistry is not an expansion of the scope of practice for dental hygienists or dental assistants. A dentist who uses teledentistry shall utilize evidence-based teledentistry standards of practice and practice guidelines, to the degree they are available, to ensure patient safety, quality of care, and positive outcomes.

27.12(5) Calibration training. The dentist, dental hygienist, and dental assistant shall undergo calibration training for any teledentistry technology utilized. Calibration training shall include communication and data sharing to ensure that the use of teledentistry technologies allows the dentist to provide diagnoses and treatment planning with comparable efficacy to diagnoses and treatment planning provided at an in-person examination. Calibration training includes processes and protocols for screening, data collection, definitive examination, and diagnosis. The purpose of calibration training is to diminish practice inconsistencies and ensure coordinated efforts.

27.12(6) Informed consent. When teledentistry will be utilized, a dentist shall ensure informed consent covers the following additional information:

a. A description of the types of dental care services provided via teledentistry, including limitations on services;

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b. The identity, contact information, licensure, credentials, and qualifications of all dentists, dental hygienists, and dental assistants involved in the patient's dental care; and

c. Precautions for technological failures or emergency situations.

27.12(7) Examination. A dentist may use teledentistry to conduct an examination for a new patient or for a new diagnosis if the examination is conducted in accordance with evidence-based standards of practice to sufficiently establish an informed diagnosis. A dentist shall not conduct a dental examination using teledentistry if the standard of care necessitates an in-person dental examination. Once an examination has been conducted, a dentist may delegate the services to be provided.

27.12(8) Follow-up and emergency care. A dentist who uses teledentistry shall have adequate knowledge of the nature and availability of local dental resources to provide appropriate follow-up care to a patient following a teledentistry encounter. A dentist shall refer a patient to an acute care facility or an emergency department when referral is necessary for the safety of the patient or in the case of emergency.

27.12(9) Supervision. With the exception of administering local anesthesia or nitrous oxide inhalation analgesia, or performing expanded functions, a dentist may delegate and supervise services to be performed to a dental hygienist or dental assistant.

a. When direct supervision of a dental hygienist or dental assistant is required, a dentist may provide direct supervision using synchronous technology. A dentist is not required to directly supervise the entire delivery of dental care but must appear using synchronous technology upon request with a response time similar to what would be expected if the dentist were present in the treatment facility.

b. When general supervision of a dental hygienist or dental assistant is required, a dentist may utilize teledentistry technology.

c. When public health supervision is utilized, a supervising dentist may authorize use of teledentistry technology.

27.12(10) Patient records. A teledentistry encounter shall be clearly characterized as such in a patient record.

27.12(11) Privacy and security. All dentists, dental hygienists, and dental assistants shall ensure that the use of teledentistry complies with the privacy and security requirements of the Health Insurance Portability and Accountability Act.

ITEM 3. Amend **650—Chapter 27**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 153.34(7), ~~153.34(9)~~, 272C.3, 272C.4(1f) and 272C.4(6).

ARC 4358C

DENTAL BOARD[650]

Notice of Intended Action

**Proposing rule making related to sedation and nitrous oxide
and providing an opportunity for public comment**

The Dental Board hereby proposes to rescind Chapter 29, "Sedation and Nitrous Oxide Inhalation Analgesia," and adopt a new Chapter 29, "Sedation and Nitrous Oxide," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 153.33 and 153.33B.

DENTAL BOARD[650](cont'd)

Purpose and Summary

The primary purpose of this proposed rule making is to update the requirements for providing sedation and nitrous oxide in dental offices. The rule making was drafted based on updated recommendations from the American Dental Association and input from the Board's Anesthesia Credentials Committee.

This rule making updates requirements for providing moderate sedation, deep sedation and general anesthesia in dental offices. This rule making specifies the conditions under which the administration of the sedation services may be delegated to another health care provider, such as an anesthesiologist or nurse anesthetist.

This rule making clarifies that training in the use of nitrous oxide during enrollment in an accredited school of dentistry or dental hygiene is approved for the purposes of these rules. This rule making also clarifies what a dental assistant is allowed to do or required to do, or both, while monitoring the administration of nitrous oxide.

This rule making establishes a requirement for training in the monitoring of patients under moderate sedation, deep sedation or general anesthesia. Due to the increased risk of these levels of sedation, the training could focus on additional training in observation of a patient under sedation and prepare staff to recognize signs of an adverse reaction or occurrence.

This rule making establishes a prohibition of the use of drugs intended for deeper levels of sedation from being employed for the purposes of moderate sedation. This rule making clarifies the facilities and locations subject to inspection and the equipment required to be maintained at each facility where moderate sedation, deep sedation or general anesthesia, or all three, are performed.

This rule making updates terminology to be more specific and to clarify the requirements for providing sedation or nitrous oxide inhalation analgesia. These amendments also reorder some of the rules for clearer understanding and reference.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on May 15, 2019. Comments should be directed to:

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

DENTAL BOARD[650](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind 650—Chapter 29 and adopt the following **new** chapter in lieu thereof:

CHAPTER 29
SEDATION AND NITROUS OXIDE

650—29.1(153) Definitions. For the purpose of these rules, relative to the administration of deep sedation, general anesthesia, moderate sedation, minimal sedation, and nitrous oxide inhalation analgesia by licensed dentists, the following definitions shall apply:

“*ACC*” means the anesthesia credentials committee of the board.

“*ASA*” refers to the American Society of Anesthesiologists Patient Physical Status Classification System. Category I means normal healthy patients, and category II means patients with mild systemic disease. Category III means patients with severe systemic disease, and category IV means patients with severe systemic disease that is a constant threat to life.

“*Board*” means the Iowa dental board established in Iowa Code section 147.14(1)“d.”

“*Capnography*” means the monitoring of the concentration of exhaled carbon dioxide in order to assess physiologic status or determine the adequacy of ventilation during anesthesia.

“*Current ACLS or PALS certification*” means current certification in Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS). Current certification means certification by an organization on an annual basis or, if that certifying organization requires certification on a less frequent basis, evidence that the individual has been properly certified for each year covered by the renewal period. The course for the purposes of certification must include a clinical component.

“*DAANCE*” means the Dental Anesthesia Assistant National Certification Examination as offered by the American Association of Oral and Maxillofacial Surgeons (AAOMS).

“*Deep sedation*” means drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

“*Facility*” means any dental office or clinic where sedation is used in the practice of dentistry. The term “facility” does not include a hospital.

“*General anesthesia*” means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

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“Licensed sedation provider” means a physician anesthesiologist currently licensed by the Iowa board of medicine or a certified registered nurse anesthetist (CRNA) currently licensed by the Iowa board of nursing.

“Minimal sedation” means a minimally depressed level of consciousness produced by a pharmacological method that retains the patient’s ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. A patient whose only response reflex is withdrawal from repeated painful stimuli is not considered to be in a state of minimal sedation.

“Moderate sedation” means a drug-induced depression of consciousness, either by enteral or parenteral means, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. A patient whose only response reflex is withdrawal from a painful stimulus is not considered to be in a state of moderate sedation.

“Monitoring nitrous oxide inhalation analgesia” means continually observing the patient receiving nitrous oxide and recognizing and notifying the dentist of any adverse reactions or complications.

“MRD” means the manufacturer’s maximum recommended dose of a drug as printed in FDA-approved labeling.

“Nitrous oxide inhalation analgesia” refers to the administration by inhalation of a combination of nitrous oxide and oxygen producing an altered level of consciousness that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

“Patient monitor” means a dental assistant, dental hygienist, nurse or dentist who is designated to continuously monitor a patient receiving moderate sedation, deep sedation or general anesthesia until the patient meets the criteria to be discharged to the recovery area.

“Pediatric” means patients aged 12 or under.

“Permit holder” means an Iowa licensed dentist who has been issued a moderate sedation or general anesthesia permit by the board.

“Time-oriented anesthesia record” means documentation at appropriate time intervals of drugs, doses and physiologic data obtained during patient monitoring.

650—29.2(153) Advertising. A dentist shall ensure that any advertisements related to the availability of antianxiety premedication or minimal sedation clearly reflect the level of sedation provided and are not misleading.

650—29.3(153) Nitrous oxide inhalation analgesia.

29.3(1) A dentist may use nitrous oxide inhalation analgesia sedation on an outpatient basis for dental patients provided the dentist has completed training and complies with the following:

- a. Has adequate equipment with fail-safe features.
- b. Has routine inspection, calibration, and maintenance on equipment performed every two years and maintains documentation of such and provides documentation to the board upon request.
- c. Ensures the patient is continually monitored by a patient monitor while receiving nitrous oxide inhalation analgesia.

29.3(2) A dentist shall provide direct supervision of the administration and monitoring of nitrous oxide and establish a written office protocol for taking vital signs, adjusting anesthetic concentrations, and addressing emergency situations that may arise. The dentist shall be responsible for dismissing the patient following completion of the procedure.

29.3(3) A dental hygienist may administer and monitor nitrous oxide inhalation analgesia provided the services have been prescribed by a dentist and the hygienist has completed training while a student in an accredited school of dental hygiene or a board-approved course of training.

DENTAL BOARD[650](cont'd)

29.3(4) A dental assistant may monitor a patient who is under nitrous oxide after the dentist has induced a patient and established the maintenance level, provided the dental assistant has completed a board-approved expanded function course. A dental assistant may make adjustments to decrease the nitrous oxide concentration while monitoring the patient or may turn off oxygen delivery at the completion of the dental procedure.

29.3(5) Record keeping. The patient chart must include the concentration administered and duration of administration, as well as any vital signs taken.

650—29.4(153) Minimal sedation standards.

29.4(1) A dentist shall evaluate a patient prior to the start of any sedative procedure. In healthy or medically stable patients (ASA I, II), the dentist should review the patient's current medical history and medication use. For a patient with significant medical considerations (ASA III, IV), a dentist may need to consult with the patient's primary care provider or consulting medical specialist. A dentist shall obtain informed consent from the patient or the patient's parent or legal guardian prior to providing minimal sedation.

29.4(2) Record keeping. A time-oriented anesthesia record must be maintained and must contain the names of all drugs administered, including local anesthetics and nitrous oxide, dosages, time administered, and monitored physiological parameters, including oxygenation, ventilation, and circulation.

29.4(3) Minimal sedation for ASA I or II nonpediatric patients.

a. A dentist may prescribe or administer a single medication for minimal sedation via the enteral route that does not exceed the MRD for unmonitored home use. A dentist may administer a supplemental dose of the same drug provided the total aggregate dose does not exceed 1.5 times the MRD on the day of treatment. The dentist shall not administer a supplemental dose until the clinical half-life of the initial dose has passed.

b. A dentist may administer a single medication for minimal sedation via the enteral route that does not exceed the MRD for monitored use on the day of treatment.

c. A dentist may utilize nitrous oxide inhalation analgesia in combination with a single enteral drug.

29.4(4) Minimal sedation for ASA III, ASA IV or pediatric patients.

a. A dentist may prescribe or administer a single medication for minimal sedation via the enteral route for ASA III or IV patients or pediatric patients that does not exceed the MRD for unmonitored home use.

b. A dentist may administer a single medication for minimal sedation via the enteral route that does not exceed the MRD for monitored use on the day of treatment.

c. A dentist may administer nitrous oxide inhalation analgesia for minimal sedation of ASA III or IV patients or pediatric patients provided the concentration does not exceed 50 percent and is not used in combination with any other drug.

650—29.5(153) Shared standards for moderate sedation, deep sedation and general anesthesia.

29.5(1) Prior to administering moderate sedation, deep sedation or general anesthesia, a dentist must obtain a current moderate sedation permit or general anesthesia permit pursuant to rule 650—29.11(153).

29.5(2) A dentist administering moderate sedation, deep sedation or general anesthesia must maintain current ACLS certification. A dentist administering moderate sedation to pediatric patients may maintain current PALS certification in lieu of current ACLS certification.

29.5(3) A dentist shall evaluate a patient prior to the start of any sedative procedure. A dentist should review a patient's medical history, medication(s) and NPO (nothing by mouth) status. For a patient with significant medical considerations (ASA III, IV), a dentist may need to consult with the patient's primary care provider or consulting medical specialist. The dentist should consult the body mass index as part of the preprocedural workup.

29.5(4) A dentist who administers sedation or anesthesia shall ensure that each facility where sedation services are provided is appropriately staffed to reasonably handle emergencies incident to the

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administration of sedation. A patient monitor shall be present in the treatment room and continually monitor the patient until the patient returns to a level of minimal sedation.

29.5(5) The dentist must provide postoperative verbal and written instructions to the patient and caregiver prior to discharging the patient.

29.5(6) The dentist must not leave the facility until the patient meets the criteria for discharge.

29.5(7) The dentist or another designated permit holder or licensed sedation provider must be available for postoperative aftercare for a minimum of 48 hours following the administration of sedation.

29.5(8) The dentist must establish emergency protocols which comply with the following:

a. A dentist must establish a protocol for immediate access to backup emergency services;

b. A patient monitor shall employ initial life-saving measures in the event of an emergency and shall activate the EMS system for life-threatening complications;

c. A dentist who utilizes an immobilization device must avoid chest or airway obstruction when applying the device and shall allow a hand or foot to remain exposed; and

d. The recovery room for a pediatric patient must include a functioning suction apparatus as well as the ability to provide >90% oxygen and positive-pressure ventilation, along with age- and size-appropriate rescue equipment.

29.5(9) Record keeping. A time-oriented anesthesia record must include preoperative and postoperative vital signs, drugs administered, dosage administered, anesthesia time in minutes, and monitors used. Pulse oximetry, heart rate, respiratory rate, and blood pressure must be recorded continually until the patient is fully ambulatory. The chart should contain the name of the person to whom the patient was discharged.

650—29.6(153) Moderate sedation standards.

29.6(1) Moderate sedation for ASA I or II nonpediatric patients.

a. A dentist may prescribe or administer a single enteral drug in excess of the MRD on the day of treatment.

b. A dentist may prescribe or administer a combination of more than one enteral drug.

c. A dentist may administer a medication for moderate sedation via the parenteral route.

d. A dentist may administer a medication for moderate sedation via the parenteral route in incremental doses.

e. A dentist shall ensure the drug(s) or techniques, or both, carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

f. A dentist may administer nitrous oxide with more than one enteral drug.

29.6(2) Moderate sedation for ASA III, ASA IV or pediatric patients. A dentist who does not meet the requirements of paragraph 29.11(3)“c” is prohibited from administering moderate sedation to pediatric or ASA III or IV patients. The following constitutes moderate sedation:

a. The use of one or more enteral drugs in combination with nitrous oxide.

b. The administration of any intravenous drug.

29.6(3) A dentist administering moderate sedation in a facility shall have at least one patient monitor observe the patient while under moderate sedation. The patient monitor shall be capable of administering emergency support and shall complete one of the following:

a. A minimum of three hours of on-site training in airway management that provides the knowledge and skills necessary for a patient monitor to competently assist with emergencies;

b. Current ACLS or PALS certification; or

c. Current DAANCE certification.

29.6(4) Use of capnography or pretracheal/precordial stethoscope is required for moderate sedation providers.

a. All moderate sedation permit holders shall use capnography to monitor end-tidal carbon dioxide unless the use of capnography is precluded or invalidated by the nature of the patient, procedure or equipment.

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b. In cases where the use of capnography is precluded or invalidated for the reasons listed previously, a pretracheal or precordial stethoscope must be used to continually monitor the auscultation of breath sounds at all facilities where licensed sedation providers provide sedation.

650—29.7(153) Deep sedation or general anesthesia standards.

29.7(1) The administration of anesthetic sedative agents intended for deep sedation or general anesthesia, including but not limited to Propofol, Ketamine and Dilaudid, shall constitute deep sedation or general anesthesia.

29.7(2) A dentist shall have at least two patient monitors observe the patient while the patient is under deep sedation or general anesthesia. The patient monitors who observe patients under deep sedation or general anesthesia shall be capable of administering emergency support and shall have completed one of the following:

- a.* Current ACLS or PALS certification; or
- b.* Current DAANCE certification.

29.7(3) A dentist shall use capnography and a pretracheal/precordial stethoscope.

29.7(4) If the dentist has a recovery area separate from the operatory, the recovery area must have oxygen and suction equipment.

650—29.8(153) Facility and equipment requirements for moderate sedation, deep sedation or general anesthesia.

29.8(1) Change of address or addition of facility location(s). A permit holder shall notify the board office in writing within 60 days of a change in location or the addition of a sedation facility.

29.8(2) Facilities shall be permanently equipped. A dentist who administers moderate sedation, deep sedation or general anesthesia in a facility is required to be trained in and maintain, at a minimum, the following equipment to be properly equipped:

- a.* Electrocardiogram (EKG) monitor;
- b.* Positive pressure oxygen;
- c.* Suction;
- d.* Laryngoscope and blades;
- e.* Endotracheal tubes;
- f.* Magill forceps;
- g.* Oral airways;
- h.* Stethoscope;
- i.* Blood pressure monitoring device;
- j.* Pulse oximeter;
- k.* Emergency drugs;
- l.* Defibrillator;
- m.* Capnography machine to monitor end-tidal carbon dioxide;
- n.* Pretracheal or precordial stethoscope; and
- o.* Any additional equipment necessary to establish intravascular or intraosseous access, which shall be available until the patient meets discharge criteria.

29.8(3) The board or designated agents of the board may conduct facility inspections. The actual costs associated with the on-site evaluation of the facility shall be the primary responsibility of the licensee. The cost to the licensee shall not exceed the fee specified in 650—Chapter 15.

650—29.9(153) Use of another licensed sedation provider or permit holder.

29.9(1) A permit holder may use a licensed sedation provider or another permit holder to administer moderate sedation, deep sedation or general anesthesia in a dental facility. A dentist who does not hold a sedation permit is prohibited from using a licensed sedation provider or permit holder to provide moderate sedation, deep sedation or general anesthesia.

DENTAL BOARD[650](cont'd)

29.9(2) A permit holder who has a licensed sedation provider or another permit holder administer moderate sedation, deep sedation or general anesthesia must remain present in the treatment room for the duration of the dental procedure.

29.9(3) A permit holder who has a licensed sedation provider or another permit holder administer moderate sedation, deep sedation or general anesthesia services must maintain a permanently and properly equipped facility pursuant to the provisions of this chapter.

29.9(4) A permit holder shall assess the need and the patient suitability for sedation services.

650—29.10(153) Reporting of adverse occurrences related to sedation or nitrous oxide.

29.10(1) All licensed dentists must submit a report to the board office within a period of seven days of any mortality related to sedation or nitrous oxide or any other incident related to sedation or nitrous oxide which results in temporary or permanent physical or mental injury requiring inpatient treatment at a hospital or clinic. The report shall include a complete copy of the patient record and include responses to the following:

- a.* Description of dental procedure.
- b.* Description of preoperative physical condition of patient.
- c.* List of drugs and dosage administered.
- d.* Description, in detail, of techniques utilized in administering the drugs utilized.
- e.* Description of adverse occurrence:
 - (1) Description, in detail, of symptoms of any complications, to include but not be limited to onset, and type of symptoms in patient.
 - (2) Treatment instituted on the patient.
 - (3) Response of the patient to the treatment.
- f.* Description of the patient's condition on termination of any procedures undertaken.

29.10(2) Failure to report an adverse occurrence, when the occurrence is related to the use of sedation or nitrous oxide, may result in disciplinary action.

650—29.11(153) Requirements for issuance of a moderate sedation or general anesthesia permit.

29.11(1) No dentist shall administer moderate sedation, deep sedation or general anesthesia for dental patients unless the dentist possesses a current permit issued by the board.

29.11(2) A dentist who intends to obtain a sedation permit must submit a completed application and pay the fee specified in 650—Chapter 15.

29.11(3) To qualify for a moderate sedation permit, the applicant shall have successfully completed the following education and training:

- a.* A training program, approved by the board, that consists of a minimum of 60 hours of instruction and management of at least 20 patients, or an accredited residency program that includes formal training and clinical experience in moderate sedation.
- b.* Training that includes rescuing patients from a deeper level of sedation than intended, including managing the airway, intravascular or intraosseous access, and reversal medications.
- c.* For a dentist who intends to utilize moderate sedation on pediatric or ASA III or IV patients: an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA III or IV patients.

29.11(4) To qualify for a general anesthesia permit, the applicant shall have successfully completed the following education and training:

- a.* An advanced education program accredited by the Commission on Dental Accreditation that provides training in deep sedation and general anesthesia.
- b.* A minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level, in a training program approved by the ACC.
- c.* Formal training in airway management.
- d.* Current ACLS certification.

29.11(5) Prior to issuance of a new permit, all facilities where the applicant intends to provide sedation services must have passed inspection by the board or designated agent.

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29.11(6) The applicant may be required to complete a peer review evaluation, if requested by the ACC, prior to issuance of a permit.

650—29.12(153) ACC.

29.12(1) The ACC shall be chaired by a member of the board and shall include at least six additional members who are licensed to practice dentistry in Iowa. At least four members of the ACC shall hold deep sedation/general anesthesia or moderate sedation permits issued under this chapter.

29.12(2) The ACC shall perform the following duties:

- a. Review all permit applications and take action as authorized.
- b. Perform peer reviews as needed and report the results to the board.
- c. Other duties as delegated by the board.

650—29.13(153) Review of permit applications.

29.13(1) Referral to the ACC. All applications will be referred to the ACC for review at its next scheduled meeting.

29.13(2) Review by the ACC. Following review and consideration of an application, the ACC may take any of the following actions:

- a. Request additional information;
- b. Request that the applicant appear for an interview;
- c. Approve issuance of the permit;
- d. Approve issuance of the permit under certain terms and conditions or with certain restrictions;
- e. Recommend denial of the permit;
- f. Refer the permit application to the board for review and consideration with or without recommendation; or
- g. Request a peer review evaluation.

29.13(3) Review by board. The board shall consider applications and recommendations referred by the ACC. The board may take any of the following actions:

- a. Request additional information;
- b. Request that the applicant appear for an interview;
- c. Grant the permit;
- d. Grant the permit under certain terms and conditions or with certain restrictions; or
- e. Deny the permit.

29.13(4) Appeal process for denials. If a permit application is denied, an applicant may file an appeal of the final decision using the process described in rule 650—11.10(147).

650—29.14(153) Renewal. A permit to administer deep sedation/general anesthesia or moderate sedation shall be renewed biennially at the time of license renewal. Permits expire August 31 of every even-numbered year.

29.14(1) To renew a permit, a licensee must submit the following:

- a. Evidence of renewal of current ACLS certification or of current PALS certification if the permit holder provides sedation services for pediatric patients.
- b. A minimum of six hours of continuing education in the area of sedation. These hours may also be submitted as part of license renewal requirements.
- c. The appropriate fee for renewal as specified in 650—Chapter 15.

29.14(2) Failure to renew the permit prior to November 1 following its expiration shall cause the permit to lapse and become invalid for practice.

29.14(3) A permit that has been lapsed may be reinstated upon submission of a new application for a permit in compliance with the provisions of this chapter and payment of the application fee as specified in 650—Chapter 15.

650—29.15(147,153,272C) Grounds for nonrenewal. A request to renew a permit may be denied on any of the following grounds:

DENTAL BOARD[650](cont'd)

29.15(1) After proper notice and hearing, for a violation of these rules or Iowa Code chapter 147, 153, or 272C during the term of the last permit renewal.

29.15(2) Failure to pay required fees.

29.15(3) Failure to obtain required continuing education.

29.15(4) Failure to provide documentation of current ACLS or PALS certification.

29.15(5) Failure to provide documentation of maintaining a properly equipped facility.

29.15(6) Receipt of a certificate of noncompliance from the college student aid commission or the child support recovery unit of the department of human services in accordance with 650—Chapter 33 or 650—Chapter 34.

650—29.16(153) Noncompliance. Violations of the provisions of this chapter may result in revocation or suspension of the dentist's permit or other disciplinary measures as deemed appropriate by the board.

These rules are intended to implement Iowa Code sections 153.13, 153.33, and 153.33B.

ARC 4354C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rule making related to regional sports authority districts and providing an opportunity for public comment

The Economic Development Authority hereby proposes to amend Chapter 38, "Regional Sports Authority Districts," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 15E.321.

Purpose and Summary

The first proposed amendment changes a rule regarding the composition of the regional sports authority district governing boards so that the rule now conforms to the statute. The second proposed amendment addresses the scoring criteria for applications. The current rules require the use of marketing data that the Iowa Tourism Office no longer collects. The amendment sets forth a new formula that incorporates current and useful marketing data, to be provided to the applicant by the Iowa Tourism Office.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Kristin Hanks-Bents
Iowa Economic Development Authority
200 East Grand Avenue
Des Moines, Iowa 50309
Email: kristin.hanks-bents@iowaEDA.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **38.3(1)“b”** as follows:

b. The board shall consist of seven members named by the applicant, of whom at least ~~one member~~ three members shall be a city council ~~member~~ members of ~~a city~~ any cities located in the proposed district.

ITEM 2. Amend paragraph **38.4(1)“a”** as follows:

a. Economic impact: 30 points. The authority will consider the amount of economic impact represented by the proposed nonprofessional sporting events and will view favorably events that have a greater economic impact. Economic impact will be determined ~~based on the information required under subrule 38.3(2), and the authority will use that information in combination with the average daily spending data from the Iowa tourism office’s most recent marketing follow-up survey to calculate the estimated economic impact of the nonprofessional sporting events proposed in the application by using the following calculation: Applicants will estimate the number of hotel room nights generated by each proposed nonprofessional sporting event and multiply the number of estimated hotel room nights by the average daily room rate for Iowa hotels. The average daily room rate will be provided by the Iowa tourism office based on information obtained from a hotel market data service.~~ Intentionally inflated estimates of attendance or a history of providing inaccurate estimates will negatively affect the scoring of an application and may result in noncertification of a district.

ARC 4353C**ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action****Proposing rule making related to workforce housing tax incentives program and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to amend Chapter 48, “Workforce Housing Tax Incentives Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 15.354.

Purpose and Summary

This proposed rule making amends paragraph 48.5(3)“c” to reflect 2018 Iowa Acts, House File 2500. Currently, a housing business must complete the housing project within three years from the date of registration in order to remain eligible for the tax incentives under the program. The amendment allows the Authority discretion to extend the housing project’s completion deadline once by up to 12 months upon application by the housing business. This Notice of Intended Action was approved by the Iowa Economic Development Authority Board on February 22, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Jennifer Klein
Iowa Economic Development Authority
200 East Grand Avenue
Des Moines, Iowa 50309
Phone: 515.348.6144
Email: jennifer.klein@iowaEDA.com

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend paragraph **48.5(3)“c”** as follows:

c. Housing project completion deadline.

(1) A Except as provided in subparagraph 48.5(3)“c”(2), a housing business shall complete its housing project within three years from the date the housing project is registered by the authority.

(2) The authority may for good cause within the discretion of the authority extend a housing project’s completion deadline once by up to 12 months upon application by the housing business, which application shall be made prior to the expiration of the three-year completion deadline in subparagraph 48.5(3)“c”(1) in the manner and form prescribed by the authority.

ARC 4355C**ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action****Proposing rule making related to sunset date extensions
and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to amend Chapter 71, “Targeted Jobs Withholding Tax Credit Program,” and Chapter 116, “Tax Credits for Investments in Certified Innovation Funds,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 15E.52 and 403.19A.

Purpose and Summary

The purpose of this proposed rule making is to update program-specific sunset dates that were extended by 2018 Iowa Acts, Senate File 2417.

Fiscal Impact

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

Jobs Impact

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

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Kristin Hanks-Bents
Iowa Economic Development Authority
200 East Grand Avenue
Des Moines, Iowa 50309
Email: kristin.hanks-bents@iowaEDA.com

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

- ITEM 1. Amend paragraph **71.4(2)“e”** as follows:
e. Sunset date. A pilot project city and the authority shall not enter into a withholding agreement with a business after June 30, ~~2018~~ 2019.
- ITEM 2. Amend subrule 116.3(6) as follows:
116.3(6) The board will not certify an innovation fund after June 30, ~~2018~~ 2023.
- ITEM 3. Amend **261—Chapter 116**, implementation sentence, as follows:
These rules are intended to implement 2013 Iowa Code section 15E.52 and ~~2013 Iowa Acts, House File 615~~.

ARC 4368C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to HIPP program eligibility
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

The proposed amendments change the start date for Health Insurance Premium Payment (HIPP) Program approval for fee-for-service and premium assistance. The earliest start date for fee-for-service and premium assistance will be the first day of the month following the month of application. The proposed amendments also change the estimated savings to the Department per household from \$60 annually to \$1,200 annually and eliminate the second cost-effective test. Finally, the proposed amendments provide technical changes to policy and definitions.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa of less than \$100,000 annually or \$500,000 over five years. These changes would reduce the number of Medicaid members who qualify for the HIPP program, move members with relatively small savings into managed care, streamline the program, and minimize administrative burden/cost.

Change in effective date: Currently, the effective date of an approved HIPP application is the first day of the month the application was received. The change would result in an effective date of no earlier than the first day of the month following the month of application. This change would eliminate, including but not limited to, the need to extract a member from managed care organization (MCO) assignment (including dental), recover MCO capitation fees, and retroactively reassign individualized services information system (ISIS) dates and case managers.

Change to the estimated savings: This change would require a higher household savings threshold in order for an application or case to be cost-effective for the program. Approved applications would be reduced by approximately 30 cases per year. An estimated 175 active cases (263 members) would gradually lose HIPP eligibility due to no longer being cost-effective.

Elimination of the second cost-effective test: Currently, if a HIPP case is not cost-effective based on the cost-effectiveness tool, staff request paid insurance claims from the past 12 months. If the value of the claims paid by the insurance company is more than the cost of the insurance premiums, deductible, and administrative cost, and saves the state at least \$60, this second test overrides the average cost-effectiveness calculation. As a result of eliminating this second test and relying only on the cost-effectiveness tool, it is estimated approximately 140 cases (210 members) would no longer qualify for the program. These cases would gradually lose HIPP eligibility due to no longer being cost-effective.

Technical changes: The purpose of these technical changes is for the HIPP program to avoid paying for insurance plans that do not have the potential to save the state money. It is estimated that fewer than ten members will be impacted by this change.

Jobs Impact

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

Waivers

A waiver is not needed as part of this statute. HIPP policy needs a state plan amendment (SPA) approval and third party liability (TPL) action plan approval from the U.S. Centers for Medicare and Medicaid Services (CMS).

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule **75.21(1)**, definitions of “Cost-effective,” “High-deductible health plan” and “HIPP-eligible member,” as follows:

~~“Cost-effective” means a determination has been made that a savings will accrue to the department by paying the insurance premium, cost sharing, wrap benefits, and administrative cost that the amount the department would pay for the member’s insurance premiums, cost sharing, wrap benefits, and administrative costs is likely to be less than the amount the department would pay through Medicaid, including managed care capitation fees, for the member. Cost-effectiveness is determined pursuant to subrule 75.21(3).~~

~~“High-deductible health plan” or “HDHP” means a health insurance plan that meets the definition found in Section 223(c)(2) of the Internal Revenue Code.~~

~~“HIPP-eligible member” means a person whose Medicaid eligibility is calculated in the cost-effective determination for HIPP. “HIPP-eligible member” is also referred to as HIPP enrollee member who has been determined eligible pursuant to subrule 75.21(3) and is used in the cost-effective test to determine eligibility for the HIPP program.~~

ITEM 2. Adopt the following **new** definitions of “Effective date of approval” and “HIPP household” in subrule **75.21(1)**:

~~“Effective date of approval” means the HIPP start date for premium payments and eligibility for an application on which all the requested documentation and information has been provided and which has been found to be cost-effective pursuant to this rule. Unless otherwise stated within this rule, the effective date of approval shall be no earlier than the first day of the month following the month of application. For applications approved on or after the 15th calendar day of the month, the effective date of approval shall be no earlier than the first day of the month following the month following the application approval date.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*HIPP household*” means at least one member is a participant in the HIPP program.

ITEM 3. Rescind the definition of “Employer-sponsored insurance” in subrule **75.21(1)**.

ITEM 4. Amend paragraph **75.21(2)“b”** as follows:

b. The insurance plan is cost-effective ~~as defined in~~ pursuant to subrule 75.21(3).

ITEM 5. Rescind paragraph **75.21(3)“d”** and adopt the following **new** paragraph in lieu thereof:

d. Annual administrative expenditures of \$150 per HIPP member covered under the health plan.

ITEM 6. Amend paragraph **75.21(3)“e”** as follows:

e. Annual ~~administrative expenditures~~ savings of \$150 ~~\$1,200~~ per HIPP ~~member covered under the health plan~~ household.

ITEM 7. Rescind paragraph **75.21(3)“f.”**

ITEM 8. Amend paragraph **75.21(5)“d”** as follows:

d. The insurance premium is used to meet a spenddown obligation under the medically needy program, ~~as provided in~~ pursuant to subrule 75.1(35), when all persons in the household are eligible or potentially eligible only under the medically needy program. When some of the household members are eligible for full Medicaid benefits under coverage groups other than medically needy, the premium shall be paid if it is determined to be cost-effective when considering only the persons receiving full Medicaid coverage. In those cases, the insurance premium shall not be allowed as a deduction to meet the spenddown obligation for those persons in the household participating in the medically needy program.

ITEM 9. Amend paragraph **75.21(5)“f”** as follows:

f. The persons covered under the insurance plan are not Medicaid-eligible on the date the decision regarding eligibility for the HIPP program is made. No retroactive payments shall be made if the ~~ease~~ member is not Medicaid-eligible on the date of decision.

ITEM 10. Amend paragraph **75.21(5)“r”** as follows:

r. The insurance plan is ~~an HDHP~~ a high-deductible health plan.

ITEM 11. Adopt the following **new** paragraph **75.21(5)“s”**:

s. There is no cost to the policyholder to cover the Medicaid-eligible member on the insurance plan.

ITEM 12. Adopt the following **new** paragraph **75.21(5)“t”**:

t. The insurance plan provider panel does not have an in-network presence in the state of Iowa.

ITEM 13. Adopt the following **new** paragraph **75.21(5)“u”**:

u. The insurance plan is not compliant with the Affordable Care Act, 42 U.S.C. Chapter 157.

ITEM 14. Adopt the following **new** paragraph **75.21(5)“v”**:

v. The member is a medically needy participant, pursuant to subrule 75.1(35).

ITEM 15. Adopt the following **new** paragraph **75.21(5)“w”**:

w. The member is a participant in Medicaid for working persons with disabilities, pursuant to subrule 75.1(39).

ITEM 16. Rescind subrule 75.21(6) and adopt the following **new** subrule in lieu thereof:

75.21(6) *Department evaluation and verification of insurance plans.* Only plans in which a member is actively enrolled shall be evaluated.

a. For employer-sponsored insurance plans, Form 470-3036, Employer Verification of Insurance Coverage, shall be used to verify the effective date of coverage and costs for persons enrolled in group health plans through an employer.

b. For individual plans, the effective date of coverage shall be verified by a certificate of coverage for the plan or by some other verification from the insurer.

ITEM 17. Rescind subrule 75.21(7) and adopt the following **new** subrule in lieu thereof:

75.21(7) *Exceptions to the effective date of approval or premium payment.* The effective date of approval shall be as defined in subrule 75.21(1) unless the department requests in writing to add a member

HUMAN SERVICES DEPARTMENT[441](cont'd)

to an available insurance plan. In such event, the member's effective date of approval shall be the first of the month in which the first premium payment is due.

ITEM 18. Amend paragraph **75.21(10)“a”** as follows:

a. Annual review of ~~ESI employer-sponsored insurance plan~~ cost-effectiveness and eligibility shall be completed using Form 470-3016, Health Insurance Premium Payment (HIPP) Program Review.

ITEM 19. Amend paragraph **75.21(10)“d”** as follows:

d. Redeterminations of cost-effectiveness shall be completed whenever:
(1) to (7) No change.

ITEM 20. Amend paragraph **75.21(10)“e”** as follows:

e. The ~~policyholder member or the member's~~ authorized representative shall report changes that may affect the availability of the insurance plan reimbursed by the HIPP program, or changes that affect the cost-effectiveness of the policy, within ten calendar days from the date of the change.

ITEM 21. Amend subrule 75.21(11) as follows:

75.21(11) Time frames for determining cost-effectiveness. The department shall determine cost-effectiveness of the insurance plan and notify the applicant of the decision regarding payment of the premiums within 65 calendar days from the date an application or referral (as defined in subrule ~~75.21(7) 75.21(1)~~) is received. ~~Additional time may be taken when, for reasons beyond the control of the department or the applicant, information needed to establish cost-effectiveness cannot be obtained within the 65-day period.~~

ITEM 22. Amend paragraph **75.21(12)“b”** as follows:

b. The department shall provide timely and adequate notice ~~as defined in~~ pursuant to 441—subrule 7.7(1) to inform the household of a decision to discontinue payment of the health insurance premium because:

(1) and (2) No change.

ITEM 23. Amend paragraph **75.21(15)“a”** as follows:

a. For ~~ESI employer-sponsored insurance~~ plans, the policyholder shall provide verification of the cost of all possible insurance plan options (i.e., single, employee/children, family).

(1) and (2) No change.

ARC 4367C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to child care assistance fees and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 170, “Child Care Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6.

Purpose and Summary

The proposed amendments revise the Child Care Assistance (CCA) fees that are based on federal poverty levels (FPL), household size, and family gross monthly income. These amendments remove the fee chart from administrative rules and ensure that the fee chart, revised annually, is published on

HUMAN SERVICES DEPARTMENT[441](cont'd)

the Department's website. Finally, these amendments provide clarification regarding change reporting requirements.

Fiscal Impact

Copay chart changes: There is no fiscal impact to the state. The proposed amendment simply allows families that have received a cost-of-living pay increase to remain at their current fee level.

Reporting requirements: The clarification on reporting requirements has no fiscal impact.

Jobs Impact

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

Waivers

This amendment does not provide a specific waiver authority because families may request a waiver of these provisions in a specified situation under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind subrule 170.2(4) and adopt the following **new** subrule in lieu thereof:

170.2(4) Reporting changes. The parent may report any changes in circumstances affecting these eligibility requirements and changes in the choice of provider to the department worker or the PROMISE JOBS worker within ten calendar days of the change.

a. If the change is timely reported within ten calendar days, the effective date of the change shall be the date when the change occurred.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. If the change is not timely reported within ten calendar days, the effective date of the change shall be the date when the change is reported to the department office or the PROMISE JOBS office.

c. Exceptions. The following changes must be reported:

(1) Changes in income when the family's gross monthly income exceeds 85 percent of Iowa's median family income.

(2) A lapse in a parent's need for service found in paragraph 170.2(2) "b" that is not temporary.

(3) A change in residency outside of the state of Iowa.

(4) No eligible child remains in the home.

d. The department worker shall disregard any reported changes that are not required to be reported unless the change would cause the authorized units to be increased or the family copay amount to be decreased.

ITEM 2. Rescind subrule 170.4(2) and adopt the following new subrule in lieu thereof:

170.4(2) Fees. Fees for services received shall be charged to clients based on household size and the family's gross monthly income. Clients receiving child care services without regard to income shall not be charged a fee. The fee is a per-unit charge that is applied to the child in the family who receives the largest number of units of service. The fee shall be charged for only one child in the family, regardless of how many children receive assistance.

a. Sliding fee schedule. The fee schedule shall be updated annually, effective July 1 of each year, to reflect updated federal poverty level guidelines. The fee schedule will be published on the department's website.

b. Collection. The provider shall collect fees from clients.

(1) The provider shall maintain records of fees collected. These records shall be available for audit by the department or its representative.

(2) When a client does not pay the fee, the provider shall demonstrate that a reasonable effort has been made to collect the fee. "Reasonable effort to collect" means an original billing and two follow-up notices of nonpayment.

c. Inability of client to pay fees. Child care assistance may be continued without a fee, or with a reduced fee, when a client reports in writing the client's inability to pay the assessed fee due to the existence of one or more of the conditions set forth below. Before reducing the fee, the worker shall assess the case to verify that the condition exists and to determine whether a reduced fee can be charged. The reduced fee shall then be charged until the condition justifying the reduced fee no longer exists. Reduced fees may be justified by:

(1) Extensive medical bills for which there is no payment through insurance coverage or other assistance.

(2) Shelter costs that exceed 30 percent of the household income.

(3) Utility costs not including the cost of a telephone that exceed 15 percent of the household income.

(4) Additional expenses for food resulting from a diet prescribed by a physician.

ITEM 3. Amend paragraph **170.4(3)"i"** as follows:

i. Transgressions. If any person subject to the record checks in paragraph 170.4(3)"g" or 170.4(3)"h" has a record of founded child abuse, dependent adult abuse, a criminal conviction, or placement on the sex offender registry, the department shall follow the process for prohibition or evaluation defined at 441—subrule ~~170.7(3)~~ 120.11(3).

(1) and (2) No change.

ARC 4369C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to aftercare services program and providing an opportunity for public comment**

The Human Services Department hereby proposes to rescind Chapter 187, “Aftercare Services Program,” Iowa Administrative Code, and to adopt a new Chapter 187 with the same title.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6.

Purpose and Summary

The Iowa Aftercare Services Program (Aftercare) is a service contracted by the Human Services Department, delivered by a network of child-serving agencies, that has been effectively transitioning youth to adulthood since 2004. The basic case management program was considerably improved with the passing of the Preparation for Adult Living (PAL) Program component (Iowa Code section 234.46) in 2006. Aftercare staff and youth have advocated for certain changes to align programming with youth development science (services extended up to the age of 23) and the Family First Act of 2018 (efforts to equalize preservices of children who age out of relative care with those of paid foster care leavers) and to ensure the safety of all involved (clearly defined termination and reentry guidelines). The Department and the Aftercare contractors believe these proposed amendments will improve services and outcomes of youth transitioning from foster care or juvenile justice to adulthood, without creating additional cost to the state.

Key changes in these proposed amendments include:

- Aftercare rules and PAL rules are merged into one division for clarity.
- The aftercare program goal is revised to a “path to” self-sufficiency.
- The maximum participant age for aftercare program eligibility is extended up to the age of 23.
- The maximum PAL stipend may change based on the age of the participant.
- Youth are required to meet “regularly” with the self-sufficiency advocate, and the specific frequency must be stated in the youth’s plan.
- Case management services shall be provided in a “safe” and “convenient” location.
- Youth are expected to contribute to vendor purchases, if they are financially able.
- Reasons for termination are revised and include a focus on personal accountability and safety.
- Youth discharged, especially due to violence, may not immediately return to the program.
- Standards for proof of purchase are increased.
- The start-up funds to aftercare participants are expanded.
- A nonapproved living arrangement is removed as a condition for termination of the PAL stipend.

Fiscal Impact

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

Jobs Impact

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind 441—Chapter 187 and adopt the following new chapter in lieu thereof:

CHAPTER 187
AFTERCARE SERVICES PROGRAM

PREAMBLE

These rules define and structure the aftercare services program, which assists youth leaving foster care, the Iowa state training school, or a court-ordered Iowa juvenile detention center in their successful transition to adulthood. The aftercare services program, including the preparation for adult living (PAL) program component, helps youth formerly in foster care, the Iowa state training school, or a court-ordered Iowa juvenile detention center to continue preparing for the challenges and opportunities presented by adulthood while receiving services and supports. The program offers services and financial benefits to eligible youth up to the age of 23. All services and supports are voluntary.

441—187.1(234) Purpose. The purpose of the aftercare services program is to provide services and supports to youth who are transitioning from foster care, the Iowa state training school, or a court-ordered Iowa juvenile detention center to adulthood. The primary goal of the program is for youth to achieve self-sufficiency and to recognize and accept their personal responsibility for the transition from adolescence to adulthood.

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—187.2(234) Aftercare services program eligibility requirements. To be eligible for aftercare services, a youth must meet the following requirements:

187.2(1) Residence. The youth must be a resident of Iowa.

187.2(2) Age. The youth must be at least 17 years of age but less than 23 years of age. Program supports and services vary by age.

187.2(3) Out-of-home placement experience.

a. Preservices. The youth must meet eligibility requirements for preservices as described below:

- (1) The youth is at least 17 years of age; and
- (2) The youth was placed in foster care, the Iowa state training school, or a court-ordered Iowa juvenile detention center; was adopted after reaching 16 years of age; or entered a subsidized guardianship arrangement after reaching 16 years of age; and

(3) The youth has access to funding for preservices provided in contract that has not been fully expended for the contract year.

b. Core services. The youth must meet eligibility requirements for core services as described below:

- (1) The youth is 18, 19, or 20 years of age; and
- (2) The youth exited foster care, the Iowa state training school, or a court-ordered Iowa juvenile detention center:

1. On or after the youth's eighteenth birthday; or
2. Between the ages of 17½ and 18 after having been in any combination of foster care, the Iowa state training school, or a court-ordered Iowa juvenile detention center for at least one day in at least 6 of the 12 calendar months prior to the youth leaving placement; or

(3) The youth was adopted from foster care on or after the youth's sixteenth birthday; or

(4) The youth entered a subsidized guardianship arrangement from foster care on or after the youth's sixteenth birthday.

c. Postservices. The youth must meet eligibility requirements for postservices as described below:

- (1) The youth is 21 or 22 years of age; and
- (2) The youth was served by the aftercare services program prior to the age of 21; and
- (3) The youth has access to funding for postservices provided in contract that has not been fully expended for the contract year.

d. Definition of foster care. For purposes of this chapter, "foster care" is defined as 24-hour substitute care for a child who is placed away from the child's parents or guardians and for whom the department or juvenile court services has placement and care responsibility through either a court order or voluntary agreement.

(1) A placement may meet the definition of foster care regardless of whether:

1. The placement is licensed and the state or a local agency makes payments for the child's care;
2. Adoption subsidy payments are being made before the finalization of adoption; or
3. There is federal matching of any payments made.

(2) Foster care may include, but is not limited to, placement in:

1. A foster family home; or
2. A foster care group home; or
3. An emergency shelter; or
4. A preadoptive home; or
5. The home of a relative or suitable person; or
6. A psychiatric medical institution for children (PMIC).

187.2(4) Responsibility. The youth must:

a. Actively take part in developing and participating in an individual self-sufficiency plan; and

b. Indicate recognition and acceptance of personal responsibility in the transition toward self-sufficiency, which includes, but is not limited to, meeting with the self-sufficiency advocate regularly and as described in the youth's individual self-sufficiency plan, as described in subrule 187.3(2).

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—187.3(234) Services and supports provided. The aftercare services program shall provide the following services and supports to eligible youth:

187.3(1) Preservices. Planning, coordination of services, and trust building activities may be provided to a youth placed out of home, as described in paragraph 187.2(3)“a,” who is expected to participate in aftercare services at 18 years of age or older. The administrator may provide funds as described in paragraph 187.3(4)“a.” However, funds provided to the youth in preservices will be deducted from available funds in the youth’s first year of participation in core services.

187.3(2) Core services. Case management services shall be offered to youth, as described in paragraph 187.2(3)“b,” at a safe and convenient location. Activities shall include, but not be limited to, all of the following:

a. Development of an individual self-sufficiency plan, based on an assessment of the youth’s strengths and needs. Each core services participant shall have a plan to identify:

- (1) The youth’s goals for achieving self-sufficiency;
- (2) The target date for reaching the goals; and
- (3) The tasks, responsible parties, time frames, and desired outcomes needed to reach the goals.

b. Services to develop a budget and money management skills training.

c. Services to assist the youth in establishing or reestablishing relationships with significant adults.

d. Services to facilitate the youth’s access to community resources.

e. Life skills training, as identified in the youth’s individual self-sufficiency plan. Life skills training shall include, but not be limited to, skills to help the youth in establishing and maintaining safe and stable housing; education goals; employment goals; health and health care coverage; and healthy relationships.

f. Additional case management activities necessary for youth to successfully transition to adulthood and as described in the individual self-sufficiency plan.

g. Individual face-to-face contact with the youth at the frequency defined in the youth’s individual self-sufficiency plan and according to the youth’s changing needs. If a youth is a resident of Iowa but is attending a postsecondary education program in another state, the program administrator or designee shall approve an alternative method for maintaining contact with the youth if and when it is a hardship for the youth to physically be in Iowa.

h. Ongoing assessment, including evaluation and coordination of the services, supports, and life skills training being provided to assist the youth in reaching self-sufficiency goals and to determine if and what progress is being made. The case manager shall amend any goals, outcomes, tasks, responsible parties, and time frames in the plan along with services, supports, and life skills training provided as necessary to assist the youth in achieving self-sufficiency.

187.3(3) Postservices. Posttransition service may be provided to youth, as described in paragraph 187.2(3)“c,” and may include, but is not limited to, life skills training, periodic check-in, referrals to needed services, and limited payments to youth. Funds, limited to an annual per-participant amount identified in the contract, may be provided to a former aftercare services participant to meet needs as described in the former participant’s individual self-sufficiency plan. Prior to receiving services or available funds, the youth must complete an individual self-sufficiency plan with an advocate or have completed one within the last six months, and the youth must complete a budget.

187.3(4) Start-up allowance. When a youth between the ages of 17 and 21 is receiving or is expected to receive core services in accordance with subrule 187.3(2), and is actively participating in the program, the program administrator or designee may authorize and provide payment to a youth as described below:

a. The start-up allowance is intended to assist in covering the initial costs of establishing the youth’s living arrangement, such as by paying rental or utility deposits, purchasing food, or purchasing necessary household items.

b. The start-up allowance is limited to \$600 per youth.

187.3(5) Vendor payments. When a youth qualifies for core services in accordance with subrule 187.3(2), and is actively participating in the program, the program administrator or designee may authorize and provide payment to a youth as described below:

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. To receive a vendor payment, the youth must demonstrate that there are no other means to meet the needs that would be covered by the vendor payment. A youth receiving a preparation for adult living (PAL) stipend, preservices or postservices is not eligible for a vendor payment.

b. Vendor payments may include, but are not limited to:

- (1) Health care-related expenses;
- (2) Transportation assistance;
- (3) Costs related to employment and education;
- (4) Clothing; and
- (5) Room and board.

c. The amount available for a 12-month period of service shall not exceed \$1,200 per youth.

187.3(6) Preparation for adult living (PAL) stipend. When an eligible youth is actively participating in the program, the administrator or designee shall deliver the preparation for adult living program as described in Iowa Code section 234.46 and as follows:

a. To be eligible for the PAL stipend, the youth must:

- (1) Meet eligibility requirements in Iowa Code section 234.46 and rule 441—187.2(234); and
- (2) Have been placed out of home in paid foster care, the Iowa state training school, or a court-ordered Iowa juvenile detention center as identified by Iowa Code chapter 232 on the youth's eighteenth birthday and have exited after having been in any combination of the same services in at least 6 of the 12 months before leaving placement; and
- (3) Be ineligible for voluntary foster care placement, due to one of the following:
 1. The youth has a high school diploma or equivalent, or
 2. The youth has reached 20 years of age, or
 3. The youth became eligible for aftercare services due to exiting the Iowa state training school or an Iowa detention center.

b. To be eligible for the PAL stipend, the youth must meet one or more of the following criteria:

- (1) Be enrolled in or actively pursuing enrollment in postsecondary education, a training program or work training; or
- (2) Be employed for 80 hours per month or be actively seeking that level of employment; or
- (3) Be attending an accredited school full-time pursuing a course of study leading to a high school diploma; or
- (4) Be attending an instructional program leading to a high school equivalency diploma.

c. The maximum monthly stipend shall be provided after completion of the youth's budget. The maximum amounts provided to a youth shall be stated in the contract and shall be based on program eligibility and guidelines, as follows:

(1) The monthly stipend shall be prorated based on the number of days of youth participation, for those entering and exiting the program during the month.

(2) When the monthly unearned income of the youth exceeds the overall maximum monthly stipend offered in the preparation for adult living program, the youth is not eligible for payments under subrule 187.3(4) unless unused startup funds remain.

(3) When the net earnings of the youth exceed the overall maximum monthly stipend offered in the preparation for adult living program, the monthly stipend shall be reduced by 50 cents for every dollar earned by the youth over the overall monthly maximum stipend.

(4) All earned and unearned income received by the youth during the 30 days before the determination shall be used to project future income. If the 30-day period is not indicative of future income, income from a longer period or verification of anticipated income from the income source may be used to project future income.

(5) Nonrecurring lump-sum payments are excluded as income. Nonrecurring lump-sum payments include, but are not limited to, one-time payments received for such things as income tax refunds, rebates, credits, refunds of security deposits on rental property or utilities, and retroactive payments for past months' benefits such as social security, unemployment insurance, or public assistance.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(6) The youth shall timely report the beginning and ending of earned and unearned income. A report shall be considered timely when made within ten days from the receipt of income or the date income ended.

(7) When the youth timely reports a change in income, the youth's prospective eligibility and stipend amount for the following month shall be determined based on the change.

(8) Recoupment shall be made for any overpayment due to failure to timely report a change in income or for benefits paid during an administrative appeal if the department's action is ultimately upheld. Recoupment may be made through a reasonable reduction of any future stipends.

(9) Recoupment shall not be made when a youth timely reports a change in income and the change is timely acted upon, but the timely notice policy in rule 441—7.7(17A) requires that the action be delayed until the second calendar month following the month of change.

(10) The stipend may be paid to the youth, the foster family, or another payee other than a department employee. The payee shall be agreed upon by the parties involved and specified in the individual self-sufficiency plan, described in subrule 187.3(2).

(11) The maximum stipend may be based on the age of the youth.

187.3(7) Postservices allowance. Youth 21 or 22 years of age who previously received aftercare services may receive postservices funds if they meet all of the following criteria:

- a. The youth is participating in postservices as described in subrule 187.3(3).
- b. A budget has been completed timely by the youth with a self-sufficiency advocate.
- c. The need has been identified in the individual self-sufficiency plan.
- d. The postservices funds approved for the youth have not exceeded \$600 for the previous 12-month period.

441—187.4(234) Termination of aftercare services.

187.4(1) A youth may be discharged from the aftercare services program for any of the following reasons:

- a. The youth fails to follow individual self-sufficiency plan components and expectations as determined by the program administrator or designee.
- b. The youth fails to meet regularly with the self-sufficiency advocate without good cause as determined by the program administrator or designee.
- c. The youth voluntarily withdraws from the program.
- d. The youth is no longer a resident of Iowa.
- e. The youth reaches 23 years of age.

187.4(2) Aftercare services and supports may be terminated for up to six months as determined by the program administrator or designee when a youth intentionally physically threatens or injures program staff or an employee of an aftercare provider agency.

187.4(3) The PAL stipend may be terminated if the youth fails to meet work or education eligibility requirements for 30 consecutive days without good cause as determined by the program administrator or designee.

187.4(4) The PAL stipend may be terminated if the youth fails to maintain satisfactory progress as defined by the education or training program in which the youth is enrolled. A youth who is not making satisfactory progress may stay in the PAL program component of the aftercare services program by choosing the work option specified in subparagraph 187.3(6)“b”(2). A PAL stipend or allowance shall not be reinstated for at least 30 days if the stipend was terminated for the reason described in this subrule.

187.4(5) The youth intentionally misrepresents income or expenditures or spends funds in a manner inconsistent with their intended purpose. The program administrator may request receipts or acceptable evidence that funds went to the intended purpose.

187.4(6) There are insufficient funds.

187.4(7) Unless otherwise stated, a youth whose aftercare service is terminated in accordance with this rule may return to the program after the passing of at least 30 days. However, if the youth has

HUMAN SERVICES DEPARTMENT[441](cont'd)

received three or more notices of termination within a 12-month period, the youth may not return until at least three months have passed from the date of the third notification.

441—187.5(234) Waiting list. The program administrator or designee shall create a waiting list when all funds for the aftercare services program are committed for the fiscal year. Names shall be entered on the waiting list on a first-come, first-served basis once the youth is determined eligible. Due to funding, it may be necessary to create more than one waiting list.

441—187.6(234) Administration. The department may contract with another state agency or a private organization to perform the administrative and case management functions necessary to administer the aftercare services program. Agencies and organizations providing services or supports shall meet the standards in rules 441—108.2(238) through 441—108.6(238).

These rules are intended to implement Iowa Code section 234.46 and Public Law 106-169, the Foster Care Independence Act of 1999.

ARC 4371C

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Proposing rule making related to trust fund allocation plans and providing an opportunity for public comment

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

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 16.181(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 16.181.

Purpose and Summary

The purpose of the proposed amendment is to update the rules in Chapter 19, which have not been revised for approximately ten years. The amendment would update the trust fund allocation plan for the Local Housing Trust Fund Program from the June 2009 version to the March 2019 version of the plan. This update would allow the final four counties that are not part of an Iowa Council of Governments region, with the Iowa Finance Authority Board’s consent, to form a new local housing trust fund together even though the counties do not serve geographically contiguous areas.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

IOWA FINANCE AUTHORITY[265](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Mark Thompson
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.725.4937
Email: mark.thompson@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 265—19.1(16) as follows:

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

ARC 4372C**IOWA FINANCE AUTHORITY[265]****Notice of Intended Action****Proposing rule making related to water quality financing program and providing an opportunity for public comment**

The Iowa Finance Authority hereby proposes to adopt new Chapter 46, “Water Quality Financing Program,” Iowa Administrative Code.

IOWA FINANCE AUTHORITY[265](cont'd)

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 16.152(4).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 16.134A and 16.151 through 16.154.

Purpose and Summary

These proposed rules are intended to implement the Water Quality Financing Program created by 2018 Iowa Acts, Senate File 512, and codified at Iowa Code sections 16.134A and 16.151 through 16.154.

Fiscal Impact

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

Jobs Impact

The program is likely to have a positive impact on jobs in Iowa by financing projects that will involve construction, engineering, and related occupations.

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Lori Beary
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.725.4900
Email: lori.beary@iowa.gov

Public Hearing

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

April 16, 2019
9 to 10 a.m.

Authority Offices
1963 Bell Avenue, Suite 200
Des Moines, Iowa

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

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

IOWA FINANCE AUTHORITY[265](cont'd)

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** 265—Chapter 46:

CHAPTER 46
WATER QUALITY FINANCING PROGRAM

265—46.1(16) Overview.

46.1(1) *Source of funds.* The water quality financing program shall consist of moneys transferred to the fund, loan interest and earnings, and moneys from other funds as provided by law.

46.1(2) *Purpose.* The purpose of the program shall be to provide financial assistance to enhance the quality of surface water and groundwater, particularly by providing financial assistance for projects designed to improve water quality by addressing point and nonpoint sources, with a higher prioritization provided to collaborative efforts.

265—46.2(16) Definitions.

“Authority” means the Iowa finance authority.

“Cost” means all costs, charges, expenses, or other indebtedness incurred by a loan recipient and determined by the authority as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.

“Eligible entity” means a municipality or a landowner, as determined by the authority, a public utility as defined in Iowa Code section 476.1, a specified industry, or a rural water district or rural water association as defined in Iowa Code section 357A.1.

“Fund” means the water quality financing program fund created pursuant to Iowa Code section 16.153.

“Iowa nutrient reduction strategy” means the same as defined in Iowa Code section 455B.171.

“Loan recipient” means an eligible entity that has received a loan under the program.

“Municipality” means a governmental body such as a state agency or a political subdivision of the state. Municipality includes but is not limited to a city, city utility, county, soil and water conservation district, sanitary district, a subdistrict of any of the foregoing districts, a state agency, or other governmental body or corporation empowered to provide sewage collection and treatment services or drinking water, or any entity jointly exercising governmental powers pursuant to Iowa Code chapter 28E or 28F, or any other combination of two or more governmental bodies or corporations acting jointly under the laws of this state in connection with a project.

“Program” means the water quality financing program created in Iowa Code chapter 16, subchapter X, part 4.

“Project” means any combination of improvements, structures, developments, tasks, actions, constructions, modifications, operations, or practices designed to improve water quality that are proposed by an eligible entity and approved by the authority. “Project” includes but is not limited to any of the following:

1. In the context of water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, including treatment works as defined in section 212 of the federal Clean Water Act, or the implementation and development of management programs established under sections 319 and 320 of the federal Clean

IOWA FINANCE AUTHORITY[265](cont'd)

Water Act, including construction and undertaking of nonpoint source water pollution control projects and related development activities authorized under those sections.

2. In the context of drinking water facilities, the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, or equipping of waterworks, water mains, extensions, or treatment facilities useful for providing potable water to residents served by a water system, including the acquisition of real property needed for any of the foregoing purposes, and such other purposes and programs as may be authorized under the federal Safe Drinking Water Act.

3. A project, operation, or practice undertaken or carried out to address watershed protection, flood prevention, or water quality improvement.

4. A project meeting the requirements of a water resource restoration sponsor project under Iowa Code section 455B.199.

“*Specified industry*” means either of the following:

1. An entity engaged in an industry identified in the Iowa nutrient reduction strategy, as determined by the authority, which industry is or will be required pursuant to the Iowa nutrient reduction strategy to collect data on the source, concentration and mass of total nitrogen or total phosphorus in its effluent, and to evaluate alternatives for reducing the amount of nutrients in its discharge; or

2. An entity implementing technology or operational improvements to reduce nutrients in its discharge.

265—46.3(16) Program administration.

46.3(1) *Cooperating agencies.* The fund shall be administered by the authority in cooperation with the department of natural resources and the department of agriculture and land stewardship.

46.3(2) *Interest rates and terms.* Interest rates and repayment terms shall be determined by the authority in cooperation with the department of natural resources and the department of agriculture and land stewardship. The interest rate shall be specified in the application. Loan and grant terms shall be negotiated with each loan recipient and grant recipient, as the case may be, but no loan shall have a term more than 20 years. Loans may be prepaid at any time with no penalty.

46.3(3) *Parts of project eligible for funding.* Only the part of the project that has a water quality protection or improvement component may be funded.

46.3(4) *Funding guidelines.* The fund shall be administered in such a manner as to provide a permanent source of water quality project financial assistance to eligible entities. Financial assistance shall be provided in the form deemed by the authority to be most convenient for the efficient financing of projects, including loans, forgivable loans, or grants.

265—46.4(16) Project funding.

46.4(1) *Annual applications.* Applications shall be taken annually.

46.4(2) *Plan requirements.* Each application shall include a plan that meets the following requirements:

a. The plan shall include one or more projects that improve water quality in the local area or watershed. Projects shall use practices identified in the Iowa nutrient reduction strategy.

b. The plan shall describe in detail the manner in which the project will be financed and undertaken, including, as applicable, the sources of revenue directed to financing the improvements as well as the eligible entities that will be receiving the revenues and how such revenues will be spent on the project.

46.4(3) *Project agreements.* The financial assistance shall be provided to the project pursuant to a written agreement between the recipient and the authority, which shall include standard terms for the receipt of program moneys and any other terms the authority deems necessary or convenient for the efficient administration of the program.

265—46.5(16) Financial agreements.

46.5(1) *Project requirements.* All projects financed under the program shall meet the following requirements:

a. The project owner shall be responsible for obtaining all necessary permits;

IOWA FINANCE AUTHORITY[265](cont'd)

b. All eligible costs shall be documented to the satisfaction of the authority before proceeds may be disbursed;

c. The recipient shall maintain records that document all costs associated with the project. The recipient shall provide access to these records to the authority upon request. The recipient shall retain such records and documents for inspection and audit purposes for a period of three years from the date of the final disbursement of funds; and

d. The recipient shall agree to provide the authority, the department of natural resources, and the department of agriculture and land stewardship or their agents access to the project site at all times during the construction process to verify that the funds are being used for the purpose intended and that the construction work meets applicable state and federal requirements.

46.5(2) Loan requirements. All loans made by the authority to finance projects under the program shall meet the following requirements:

a. The loan shall be accompanied by an enforceability opinion of counsel in a form acceptable to the authority;

b. Repayment must begin within 30 days after project completion or by the date specified in the loan agreement; and

c. The loan shall be secured by a first lien upon the dedicated source of repayment which may rank on a parity basis with other obligations or, with the approval of the executive director of the authority, may be subordinate in right of payment to one or more of the recipient's other outstanding revenue obligations.

265—46.6(16) Project scoring. The provision of financial assistance under the program shall take into account, as applicable, the number of municipalities, landowners, public utilities, specified industries, rural water districts, or rural water associations that constitute an eligible entity, and the eligible entity's financing capacity. The authority shall only provide financial assistance to eligible entities that have sufficient financing capacity and that submit an appropriate plan designed to improve water quality.

265—46.7(16) Scoring criteria.

46.7(1) Financial feasibility. Thirty-five percent of the total possible points shall be based on financial feasibility of the proposed project. Elements considered under financial feasibility shall include but not be limited to:

a. Experience of the eligible entity in financial management;

b. A detailed project budget detailing all sources of funds as well as expected project costs. This would include information on whether other funding has been received, applied for or just identified;

c. A project timeline, including information on the development of plans and specifications for the project, needed approvals and permits, and project construction start and completion dates;

d. A maintenance plan for the project, including information on the likely useful life of the project, the party or parties responsible for maintaining the project, the cost of maintenance, and how those costs will be paid; and

e. In the case of loans, the source(s) of funds for loan repayment.

46.7(2) Project collaboration. Thirty percent of the total possible points shall be based on project collaboration. Elements considered under project collaboration shall include but not be limited to:

a. A description of all parties involved in the project, including the roles, responsibilities, qualifications and experience of each party;

b. A description of any formal agreements among the parties and the status of those agreements;

c. A statement of the financial commitments of each party in the entity with respect to the project, including contributions of cash, gifts, or loans; and

d. A description of whether the project is part of a larger coordinated effort to improve water quality.

46.7(3) Water quality benefit. Thirty-five percent of the total possible points shall be based on water quality benefit. Elements considered under the water quality benefit of the project shall include but not be limited to:

IOWA FINANCE AUTHORITY[265](cont'd)

- a. The identification of the specific watershed where the project will be located;
- b. Whether a comprehensive watershed plan has been completed and water quality impairments have been identified for the watershed;
- c. Whether the goals of the project are targeted to impact the identified impairments in the watershed, including a description of methods used to determine practices and the location of practices to reach those goals;
- d. Information on how results of the project will be measured (e.g., by quantity of pollution being reduced or the percentage of pollution being reduced); and
- e. A description of how the project will use practices identified in the Iowa nutrient reduction strategy.

265—46.8(16) Termination; rectification of deficiencies; disputes.

46.8(1) Termination. The authority shall have the right to terminate and recapture any grant or loan proceeds when terms of the financial agreement have been violated. The executive director shall establish a repayment schedule for funds already disbursed to the recipient. All terminations shall be in writing.

46.8(2) Rectification of deficiencies. Failure of the recipient to implement the approved project or to comply with the applicable requirements constitutes grounds for the authority to recapture or withhold funds. The recipient is responsible for ensuring that the identified deficiency is rectified. Once the deficiency is corrected, the funds may be released.

46.8(3) Disputes. A recipient that disagrees with the authority's withholding of funds may request a formal review of the action. The recipient must submit a request in writing to the executive director within 30 days of notification by the authority of its planned action.

These rules are intended to implement Iowa Code sections 16.134A and 16.151 through 16.154.

ARC 4349C**PAROLE BOARD[205]****Notice of Intended Action****Proposing rule making related to automatic revocation of parole and providing an opportunity for public comment**

The Board of Parole hereby proposes to amend Chapter 11, "Parole Revocation," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 906.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 908.10 and 908.10A.

Purpose and Summary

The proposed amendment would conform rule 205—11.12(908) with recently amended Iowa Code sections 908.10 and 908.10A.

Fiscal Impact

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

Jobs Impact

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

PAROLE BOARD[205](cont'd)

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Steven Clarke
Board of Parole
Jessie Parker Office Building
510 East 12th Street
Des Moines, Iowa 50319

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 205—11.12(908), introductory paragraph, as follows:

205—11.12(908) Conviction of a felony or aggravated misdemeanor while on parole. When a parolee is convicted and sentenced to incarceration in Iowa for a felony or aggravated misdemeanor committed while on parole, or is convicted and sentenced to incarceration ~~under the laws of in~~ any other state of the United States or a foreign ~~government or~~ country for an offense committed while on parole and which if committed in Iowa would be a felony or aggravated misdemeanor, the parolee’s parole shall be deemed revoked as of the date of the commission of the offense.

ARC 4365C**PUBLIC EMPLOYMENT RELATIONS BOARD[621]****Notice of Intended Action****Proposing rule making related to electronic filing, confidential information, and public records and providing an opportunity for public comment**

The Public Employment Relations Board hereby proposes to amend Chapter 1, “General Provisions,” Chapter 2, “General Practice and Hearing Procedures,” Chapter 6, “Negotiations and Negotiability Disputes,” Chapter 7, “Impasse Procedures,” and Chapter 10, “Declaratory Orders”; to rescind Chapter 12, “Public Records and Fair Information Practices,” and adopt a new Chapter 12 with the same title;

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

and to amend Chapter 14, “Arbitrators,” and Chapter 16, “Electronic Document Management System,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 20 and 22.

Purpose and Summary

The following amendments are proposed after feedback and internal review. The proposed amendments seek to update filing requirements with the agency due to the use of electronic filing through the agency’s electronic document management system, clarify provisions relating to confidential information due to the use of electronic filing, and eliminate outdated provisions and language.

Items 1 and 3 require electronic filing of petitions for rule making and petitions requesting a waiver.

Item 2 modifies the definition of “protected information” for consistency with chapter 16.

Items 4 through 9, 14, 16, 17, and 33 amend outdated Iowa Code, Iowa Acts, and Iowa Administrative Code references. Item 10 provides an updated reference to the rule on fees of neutrals.

Items 11 and 12 require persons to email requests for impasse services to the agency rather than personally delivering or mailing the requests. Item 13 requires the agency to email the arbitrator list to the parties, which is consistent with current agency practice. Item 13 also removes an outdated Iowa Acts reference.

Item 15 clarifies that a petition for a declaratory order shall be electronically filed with the agency.

Item 18 rescinds and replaces Chapter 12, related to public records and fair information practices, due to the agency’s use of the electronic document management system for storage of records. The format and language of the chapter was chosen after internal consideration and review of other Iowa Administrative Code chapters regarding public records.

Items 19 through 22 amend outdated Iowa Code and Iowa Acts references and procedures relating to teacher termination adjudication.

Items 23 through 32 address the agency’s electronic document management system. The proposed amendments clarify rules regarding confidential documents or records and protected information. The proposed amendments also address the obligations of filers using the electronic document management system.

Fiscal Impact

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

Jobs Impact

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

Waivers

These rules do not provide for a waiver of their terms, but are instead subject to the agency’s general waiver provisions found at rule 621—1.9(17A,20).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 17, 2019. Comments should be directed to:

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

Amber DeSmet
 Public Employment Relations Board
 Jessie Parker Building, Suite 1B
 510 East 12th Street
 Des Moines, Iowa 50319
 Phone: 515.281.4045
 Email: amber.desmet@iowa.gov

Public Hearing

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

April 17, 2019
 10 a.m. to 12 noon

Public Employment Relations Board
 Jessie Parker Building
 510 East 12th Street
 Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 621—1.5(20) as follows:

621—1.5(20) Petition for rule making. Any person may file a petition with the board pursuant to 621—Chapter 16 for the adoption, amendment or repeal of a rule. Such petition ~~shall be in writing and~~ shall include:

1.5(1) The name and address of the person requesting the adoption, amendment or repeal of the rule.

1.5(2) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

1.5(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

1.5(4) A brief summary of any data supporting the action urged in the petition.

1.5(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition. Within 60 days after the filing of a petition, the board shall either deny the petition ~~in writing~~, stating its reasons for the denial, or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

ITEM 2. Amend subrules 1.6(11), 1.6(13) and 1.6(14) as follows:

1.6(11) "*Protected information*" means personal information, the nature of which warrants protection from unlimited public access, including:

- a. Social security numbers.
- b. Financial account numbers.
- c. Dates of birth.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

- d. Names of minor children.
- e. Individual taxpayer identification numbers.
- f. Personal identification numbers.
- g. Other unique identifying numbers.
- h. Confidential information.

1.6(13) "*Public safety unit*" means a bargaining unit with at least 30 percent of employees in the unit who are public safety employees or as required by ~~2017 Iowa Acts, House File 291, section 18,~~ Iowa Code section 20.32 for certain transit employees.

1.6(14) "*Supplemental pay*" means a payment of moneys or other thing of value that is in addition to compensation received pursuant to any other permitted subject of negotiation specified in Iowa Code section 20.9 as ~~amended by 2017 Iowa Acts, House File 291, section 6,~~ and is related to the employment relationship.

ITEM 3. Amend subrules 1.9(5) and 1.9(17) as follows:

1.9(5) *Filing of petition.* All petitions requesting a waiver must be filed ~~personally or by mail with the board at its offices at 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319~~ with the agency pursuant to ~~621—Chapter 16.~~ If the petition relates to a pending contested case proceeding or a proceeding pending before the agency which could culminate in a contested case proceeding, the petition shall be filed in the case docketed in the agency's electronic document management system (EDMS) and bear the caption of that proceeding. ~~The board shall acknowledge the filing of a petition by providing the petitioner with a file stamped copy.~~

1.9(17) *Service of ruling.* Within seven days of its issuance, the board's ruling on the petition shall be served by the board by ordinary mail upon ~~the petitioner,~~ any entity or individual to whom the ruling pertains and any other individuals or entities entitled to notice pursuant to any other provision of law if the individuals or entity representatives have not filed appearances in the case to receive service by EDMS.

ITEM 4. Amend ~~621—Chapter 1,~~ implementation sentence, as follows:

These rules are intended to implement Iowa Code section 17A.9A and ~~chapters~~ chapter 20 and 279.

ITEM 5. Amend subrule 2.3(2) as follows:

2.3(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 20 days after the mailing of the decision to the parties, a motion to vacate pursuant to subrule 2.3(3) is filed and served on all parties or, if the decision is a proposed decision within the meaning of Iowa Code section 17A.15(2), an appeal from the decision to the board on the merits is filed within the time provided by rule ~~621—9.2(20)~~ 621—9.2(17A,20) or, in cases brought pursuant to Iowa Code section ~~19A.14~~ 8A.415, a petition for review by the board on the merits is filed within the time provided by rule ~~621—11.8(19A,20)~~ 621—11.8(8A,20).

ITEM 6. Amend paragraph **2.15(1)“g”** as follows:

g. Upon an employee organization, by serving the person designated by the employee organization to receive service pursuant to ~~621—subrule 8.2(2)~~ 8.4(2) or by service upon the president or secretary of the employee organization.

ITEM 7. Amend subrule 2.20(1) as follows:

2.20(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case, or in proceedings on a petition for declaratory order in which there are two or more parties, shall not communicate directly or indirectly with any party, representative of any party or any other person with a direct or indirect interest in such case, nor shall any such party, representative or person communicate directly or indirectly with the presiding officer concerning any issues of fact or law in that case, except upon notice and opportunity for all parties to participate. Nothing in this provision precludes the presiding officer, without such notice and opportunity for all parties to participate, from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged

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in personally investigating, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish or modify the evidence in the record. The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another’s investigative work product in the course of determining whether to initiate a proceeding or exposure to factual information while performing other agency functions, including fact-gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as a presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 ~~as amended by 1998 Iowa Acts, chapter 1202.~~

ITEM 8. Amend subrule 6.4(1) as follows:

6.4(1) *Applicability.* This rule applies only to bargaining units which include at least one public safety employee, as defined in 621—subrule 1.6(12) or as required by ~~2017 Iowa Acts, House File 291, section 18,~~ Iowa Code section 20.32 concerning certain transit employees.

ITEM 9. Amend rule 621—7.1(20) as follows:

621—7.1(20) *General.* Except as provided in ~~the second paragraph of subrule 7.5(6), 7.5(6) “b,”~~ the rules set forth in this chapter are applicable only in the absence of an impasse agreement between the parties or the failure of either to utilize its procedures. Nothing in these rules shall be deemed to prohibit the parties, by mutual agreement, from proceeding directly to binding arbitration at any time after impasse.

ITEM 10. Adopt the following new rule 621—7.2(20):

621—7.2(20) *Fees of neutrals.* See rule 621—14.4(20).

ITEM 11. Amend subrule 7.3(1) as follows:

7.3(1) *Request for mediation.* Either party to an impasse may email to the agency a request ~~the board in writing~~ to appoint a mediator to the impasse.

An original and one A copy of the request for mediation shall be filed with the board emailed to the agency and shall, in addition to the request for mediation, contain:

a. The name, address, and telephone number of the requesting party, and the name, address, telephone number, and email address of its bargaining representative or of the chairperson of its bargaining team.

b. The name, address, and telephone number of the opposing party to the impasse, and the name, address, telephone number, and email address of its bargaining representative or of the chairperson of its bargaining team.

c. A description of the collective bargaining unit involved and the approximate number of employees in the unit.

d. A statement indicating whether the public employer of the unit involved is subject to the budget certification requirements of Iowa Code section 24.17 and, if the public employer is not subject to those requirements, a statement of the date upon which the public employer’s next fiscal or budget year commences.

e. A statement indicating whether the bargaining unit is a public safety or non-public safety unit as specified by Iowa Code section 20.3 ~~as amended by 2017 Iowa Acts, House File 291, section 1,~~ and rule 621—6.4(20).

f. A concise and specific listing of the negotiated items upon which the parties have reached impasse.

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ITEM 12. Amend subrule 7.5(2) as follows:

7.5(2) *Form and contents of request.* The request for arbitration shall be ~~in writing~~ emailed to the agency and shall include the name, address, email address, and signature of the requesting party and the capacity in which the requesting party is acting.

ITEM 13. Amend subrule 7.5(5) as follows:

7.5(5) *Selection of arbitrator.* Upon the filing of a timely request for arbitration, the board shall ~~serve~~ email a list of five arbitrators ~~upon~~ to the parties. Within five days of ~~service of the list from when that email is sent~~, the parties shall select their arbitrator from the list in the manner specified in Iowa Code section 20.22(4) as ~~amended by 2010 Iowa Acts, House File 2485, section 26.~~

ITEM 14. Amend paragraph 7.5(6)“c” as follows:

c. The arbitration hearing shall be limited to those factors listed in Iowa Code section 20.22 as ~~amended by 2017 Iowa Acts, House File 291, sections 12 and 13~~, and subrules 7.5(7) and 7.5(8), and such other relevant factors as may enable the arbitrator to select the most reasonable offer, in the arbitrator’s judgment, of the final offers submitted by the parties on each impasse item. Arbitrators appointed pursuant to impasse procedures agreed upon by the parties shall likewise consider these same factors.

During the hearing, the parties shall not introduce, and the arbitrator shall not accept or consider, any direct or indirect evidence regarding any subject excluded from negotiations pursuant to Iowa Code section 20.9 as ~~amended by 2017 Iowa Acts, House File 291, section 6~~, except as required for purposes of the consideration of the factors specified in subrule 7.5(7) and paragraph 7.5(8) “a.”

ITEM 15. Amend rule 621—10.1(17A,20) as follows:

621—10.1(17A,20) Who may petition. Any person, public employer or employee organization may file a petition with the board pursuant to 621—Chapter 16 for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency.

ITEM 16. Amend rule 621—10.8(17A,20) as follows:

621—10.8(17A,20) Action on petition. Within the time allowed by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board or its designee shall take action on the petition as required by that section.

ITEM 17. Amend subrule 10.9(1), introductory paragraph, as follows:

10.9(1) The board shall not issue a declaratory order where prohibited by ~~1998 Iowa Acts, chapter 1202, section 13(1)~~, Iowa Code section 17A.9(1) “b”(2) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

ITEM 18. Rescind 621—Chapter 12 and adopt the following new chapter in lieu thereof:

CHAPTER 12 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

621—12.1(17A,20,22) Definitions. As used in this chapter:

“Agency” means the public employment relations board or PERB.

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” means the board or a person lawfully delegated authority to act for the agency in implementing Iowa Code chapter 22.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” means the whole or a part of a public record as defined in Iowa Code section 22.1.

“*Record system*” means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

“*Routine use*” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected or is maintained. “*Routine use*” includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

621—12.2(17A,20,22) Statement of policy. This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

621—12.3(17A,20,22) Requests for access to records.

12.3(1) Location of record. A request for access to a record should be directed to the Chair, Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.

12.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

12.3(3) Request for access. Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, email or telephone requests shall include the name, address, email address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

12.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the agency shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 621—12.4(17A,20,22) and other applicable provisions of law.

12.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

12.3(6) Copying. A reasonable number of copies of an open record may be made in the agency’s office.

12.3(7) Fees.

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined by the custodian.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records. The hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

621—12.4(17A,20,22) Procedures for access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 621—12.3(17A,20,22).

12.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

12.4(2) Requests. The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

12.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address, email address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

12.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

12.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

621—12.5(17A,20,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7,

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

12.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

12.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be electronically filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, email address and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person submitting such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

12.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

12.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is submitted, or when the custodian receives a request for access to the record by a member of the public.

12.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

12.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record need not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

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621—12.6(17A,20,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

621—12.7(17A,20,22) Disclosures without the consent of the subject.

12.7(1) Open records are routinely disclosed without the consent of the subject.

12.7(2) To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 621—12.1(17A,20,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

621—12.8(17A,20,22) Routine use. To the extent allowed by law, the following uses are considered routine uses of agency records:

12.8(1) Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

12.8(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

12.8(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

12.8(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

12.8(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

12.8(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

621—12.9(17A,20,22) Consensual disclosure of confidential records.

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12.9(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 621—12.6(17A,20,22).

12.9(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

621—12.10(17A,20,22) Release to subject.

12.10(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 621—12.9(17A,20,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or records otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. As otherwise authorized by law.

12.10(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

621—12.11(17A,20,22) Availability of records.

12.11(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

12.11(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Records which are exempt from disclosure pursuant to Iowa Code section 22.7.

b. Minutes of closed meetings of a government body pursuant to Iowa Code section 21.5(5).

c. Mediators' documents, including proposals, notes, memorandum, or other paperwork product, relating to mediation of agency cases and collective bargaining negotiations pursuant to Iowa Code section 20.31.

d. A show of interest contained in representation and decertification case files, in which public employees indicate by original signature whether they wish to be represented by or decertify a certified employee organization for representation or decertification election pursuant to Iowa Code section 22.7(69).

e. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by the agency when disclosure of these statements would:

(1) Enable law violators to avoid detection.

(2) Facilitate disregard of requirements imposed by law.

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3.)

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential pursuant to Iowa Code sections 22.7(4), 622.10, and 622.11; Iowa R. Civ. P. 1.503; Fed. R. Civ. P. 26(b); and case law. Attorney-client communications are confidential pursuant to Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

h. Individual financial records pursuant to Iowa Code sections 422.20 and 422.72.

i. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy pursuant to Iowa Code section 17A.3(1) "e."

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- j.* Criminal investigative reports or investigative data pursuant to Iowa Code section 22.7(5).
- k.* Criminal history and intelligence data pursuant to Iowa Code sections 22.7(9), 692.3, and 692.18.
- l.* Minutes of testimony pursuant to Iowa Rules of Criminal Procedure 2.4(6)(a) and 2.5(3).
- m.* Information which is confidential under the law governing the agency providing information to this agency.
- n.* Biographical or identifying information about a child victim pursuant to Iowa Code chapter 915.
- o.* Victim registration pursuant to Iowa Code chapter 915.
- p.* Any other records made confidential by law.

12.11(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 621—12.4(17A,20,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested persons and withhold the records from inspection as provided in subrule 12.4(3).

621—12.12(17A,20,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 621—12.1(17A,20,22). Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 20, the statutes governing the subject matter of the record, and the enabling statutes of the agency, where applicable. The record systems maintained by the agency are:

12.12(1) Prohibited practice complaint case files. These files contain information which pertains to the alleged violation of Iowa Code chapter 20. A person, employee organization or public employer may file the documents contained in this type of case. Case files may include pleadings, briefs, notices, rulings, decisions, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, settlement offers, memoranda, and research materials. Cases contain personal information of the representatives and may contain personal information if the complainant or respondent is an individual. Further personal information may be included in testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product or contain settlement offers and mediators' documents. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(2) Bargaining unit determination and representative certification case files. These files contain information which pertains to the establishment of appropriate bargaining units, conduct of secret ballot elections and monitoring of the merger, and affiliation and disaffiliation of certified employee organizations. A person, employee organization or public employer may file the documents contained in these types of cases. Case files may include pleadings, briefs, tally of ballots, notices, rulings, decisions, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, settlement offers, memoranda, research materials, and investigation materials. Cases contain personal information of the representatives and may contain personal information if the petitioner or respondent is an individual. Further personal information may be included in transcript testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. Further personal information may be included in testimony and exhibits. The files may

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contain materials which are confidential as attorney work product, shows of interest, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(3) Retention and recertification election case files. These files contain information which pertains to the conduct of a retention and recertification election. A person, employee organization or public employer may file the documents contained in this type of case. Case files include pleadings, notices, voter lists, tally of ballots, orders, challenges, and objections. Cases contain personal information of the representatives. Further personal information may be included in testimony, exhibits, and other documents. The public employer is required to send to the agency a listing of employees eligible to vote in the recertification elections, and the representatives are emailed eligible employees' personal information. Cases are contained within the agency's electronic document management system and the agency's network. The files located on the agency's network may contain materials which are confidential as attorney work product, shows of interest, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(4) Negotiability dispute case files. These files contain information which pertains to specific contract proposals and whether a specific contract proposal is a mandatory, permissive or excluded subject of bargaining under Iowa Code section 20.9. An employee organization or public employer may file the documents contained in this type of case. Such files contain documents concerning the agency's determination of the negotiability question. The records may include pleadings, briefs, notices, rulings, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives. Cases filed prior to January 1, 2015, are contained on the agency's network. The files may contain materials which are confidential as attorney work product and contain settlement offers and mediators' documents. Some materials are confidential under other applicable provisions of law. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(5) Declaratory order case files. These files contain information which pertains to applicability of a statute, rule or order within the primary jurisdiction of the agency. A person, employee organization or public employer may file the documents contained in this type of case. Such files contain documents concerning the agency's determination of that question. The records may include pleadings, notices, rulings, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of the petitioner or respondent if the petitioner or respondent is an individual. Further personal information may be included in testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. The files are maintained by the agency and are indexed by the case number. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(6) Contract negotiation impasse files. These files contain information which pertains to the public employer and certified employee organization's negotiations. An employee organization or public employer may file the documents contained in the file. The records may include the request for impasse services, assignment of a mediator, interest arbitration list, selection letters, and correspondence regarding mediation and interest arbitration hearings. Mediators may maintain assigned impasse files

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which contain confidential documents related to the mediation. Files contain personal information of the representatives. The case files are paper, and each impasse is recorded in an agency database. The files are maintained by the agency and are indexed by the bargaining unit number. Copies of the documents contained in the files may be obtained through the agency.

12.12(7) Neutral files. The agency maintains biographical data on qualified mediators and arbitrators. A mediator's file contains an application, an acceptance letter, and the yearly mediator contract. An arbitrator's file contains an application, an acceptance letter, renewal applications, biographical sketches, letters of recommendation, a résumé, and decisions. Neutral files may also contain concerns expressed by employees, employer and employee organization representatives, agency-conducted investigations, and hearings and decisions issued by the agency. Cases contain personal information of the representatives and may contain personal information of the petitioner or respondent if the petitioner or respondent is an individual. Further personal information may be included in testimony, exhibits, and other documents. Neutral files contain personal information of the neutral and may contain personal information of employees and employer and employee organization representatives if they provide written comments regarding a neutral. The neutral files are paper. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. The files are maintained by the agency and are commonly indexed by the neutral's last name. Biographical sketches of neutrals are located on the agency's website. Copies of documents contained in these files may be obtained through the agency.

12.12(8) Employee organization files. Employee organizations are required to file certain documents with the agency prior to certification and annually. An employee organization's representative files the documents contained in the file. The records include the certified employee organization's constitution and bylaws, amended constitution and bylaws, registration reports, annual reports, correspondence, bargaining unit description and subsequent amendments. The employee organization files contain personal information of the representatives. Further personal information may be included in testimony and exhibits. The employee organization files are both on paper and contained within the agency's electronic document management system. The files are maintained by the agency and are indexed by the certified employee organization in paper files and by certified employee organization number if the files are on the agency's electronic document management system. Copies of the documents contained in these files may be obtained through the agency or the agency's electronic document management system.

12.12(9) State employee appeals of grievance decisions and disciplinary action case files. These files contain appeals from a response from the Iowa department of administrative services regarding an employee's grievance or appeal of a disciplinary action. A person or representative may file the documents contained in this type of case. These files contain information which pertains to the appeal. The records may include the appeal form and attachments, pleadings, briefs, notices, rulings, decisions, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, settlement offers, memoranda, and research materials. Cases contain personal information of the representative and the employee. Further personal information may be included in testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product and contain settlement offers and mediators' documents. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(10) Public safety unit determination case files. These files contain information which pertains to whether a bargaining unit is a public safety unit. An employee organization or public employer may file the documents contained in this type of case. Such files contain documents concerning the agency's determination of that question. The records may include pleadings, notices, orders, exhibits,

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transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of employees. Further personal information may be included in testimony, exhibits, and other documents. Cases are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(11) Other Iowa Code chapter 20 case files. These files contain information which pertains to objections which an employer or employee organization may make when impasse procedures are not completed prior to the applicable deadline for completion of impasse procedures, challenges which an employee organization or employer may make when the voter eligibility is challenged, and challenges which an employee organization may make postelection in retention and recertification elections. An employee organization or public employer may file the documents contained in this type of case. Further personal information may be included in testimony, exhibits, and other documents. Such files contain documents concerning the agency's determination of the question. The records may include pleadings, notices, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of employees. Cases are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(12) Grievance, fact-finding and interest arbitration decisions. The agency maintains decisions issued by neutrals. Grievance arbitration decisions prior to the year 2000 are maintained on the agency's database, and copies of a decision may be obtained through the agency. Grievance arbitration decisions after the year 2000 which the parties agreed could be made public can be obtained through the agency's searchable database system. All fact-findings and interest arbitration decisions can be obtained through the agency's searchable database system.

12.12(13) Collective bargaining agreements. The agency maintains collective bargaining agreements negotiated between the public employer and the certified employee organization. Collective bargaining agreements negotiated prior to the year 2000 are maintained on the agency's database, and copies of these collective bargaining agreements may be obtained through the agency. Collective bargaining agreements negotiated after the year 2000 can be obtained through the agency's searchable database system.

12.12(14) Personnel files. The agency maintains files containing information about agency employees and applicants for positions with the agency. The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information may be confidential under Iowa Code sections 22.7(11) and 22.7(18). Personnel files are paper files.

12.12(15) Litigation files. These files or records contain information regarding litigation or anticipated litigation which involves the agency. The records include pleadings, briefs, docket sheets, documents, general correspondence, attorneys' notes, memoranda, research materials, and investigation materials. Litigation files are paper files. The files are indexed by the name of the opposing party

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or case number. The files contain materials which are confidential as attorney work product. Some materials are confidential under other applicable provisions of law. Persons who wish to obtain copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

621—12.13(17A,20,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 621—12.1(17A,20,22). The records listed may contain information about individuals. Unless otherwise designated, the authority for this agency to maintain the record is provided by Iowa Code chapter 20, the statutes governing the subject matter of the record, and the enabling statutes of the agency, where applicable. All records are stored both on paper and in automated data processing systems unless otherwise noted.

12.13(1) Citizen inquiry and response files. Individuals and representatives write or email this agency on a variety of legal issues with regard to Iowa Code chapter 20. The agency does not generally provide legal advice to individuals but may provide general information.

12.13(2) Internal agency records. These records include agendas, minutes and materials presented during meetings.

12.13(3) Administrative records. These records include documents concerning budgets, property inventory, purchasing, yearly reports, office policies for employees, time sheets, and printing and supply requisitions.

12.13(4) Rule-making records. Official documents executed during the promulgation of agency rules and public comments are available for public inspection.

621—12.14(17A,20,22) Data processing systems. None of the data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

621—12.15(17A,20,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by an individual's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.
5. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations.

These rules are intended to implement Iowa Code chapters 17A, 20, and 22.

ITEM 19. Amend rule 621—14.2(20) as follows:

621—14.2(20) Definitions.

“Advocate” means a person who represents employers, employee organizations, or individuals or entities in labor relations or employment relations matters, including but not limited to the subjects of union representation and recognition matters, negotiations, mediation, arbitration, unfair or prohibited labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. *“Advocate”* includes representatives of employers or employees in individual cases or controversies involving workers' compensation, occupational health or safety, minimum wage, or other labor standards matters. *“Advocate”* also includes persons directly or indirectly associated with

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an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

“*Arbitrator*” means a person serving as a neutral decision-maker in interest arbitrations; or grievance arbitrations; ~~or teacher termination adjudications.~~

“*Grievance arbitration*” means the proceedings on an alleged contract violation as provided in a collective bargaining agreement entered into pursuant to Iowa Code chapter 20.

“*Grievance arbitrator*” means a person serving as a neutral decision-maker in a grievance arbitration.

“*Interest arbitration*” means the binding arbitration contemplated by Iowa Code section 20.22 or by an impasse agreement entered into pursuant to Iowa Code section 20.19.

“*Interest arbitrator*” means a person serving as a neutral decision-maker in an interest arbitration.

“*Qualified-arbitrator roster*” or “*roster*” means the agency-maintained list of arbitrators who have met the criteria set forth in this chapter.

~~“*Teacher termination adjudication*” means the proceedings contemplated by Iowa Code section 279.17.~~

~~“*Teacher termination adjudicator*” means a person serving as a neutral decision-maker in a teacher termination adjudication.~~

ITEM 20. Amend subrules 14.5(1), 14.5(3) and 14.5(4) as follows:

14.5(1) *Categories of arbitrators.* The roster shall consist of ~~three~~ two categories of arbitrators:

- a. Interest arbitrators; and
- b. Grievance arbitrators; ~~and,~~
- c. ~~Teacher termination adjudicators.~~

Persons may be listed on the roster in each category in which they meet the criteria.

14.5(3) *Knowledge and abilities.* Applicants must establish requisite knowledge and abilities as follows:

- a. For listing on the roster as an interest arbitrator:
 - (1) Good verbal and written communication skills;
 - (2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
 - (3) Knowledge of Iowa Code chapter 20, the agency’s rules, and principles and practices of contracts, public finance, and labor relations; and
 - (4) The ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, “timely” means within 15 days after the interest arbitration hearing pursuant to Iowa Code section ~~20.22(9)~~ 20.22(10) “a” or in a time frame established by an impasse agreement entered into pursuant to Iowa Code section 20.19.
- b. For listing on the roster as a grievance arbitrator:
 - (1) Good verbal and written communication skills;
 - (2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
 - (3) Knowledge of arbitral principles and practices, contracts, and labor relations; and
 - (4) The ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, “timely” means within the time frame established by the parties’ collective bargaining agreement entered into pursuant to Iowa Code chapter 20.
- c. ~~For listing on the roster as a teacher termination adjudicator:~~
 - ~~(1) Good verbal and written communication skills;~~
 - ~~(2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;~~
 - ~~(3) Knowledge of Iowa Code section 279.17; and~~
 - ~~(4) The ability to review adjudicatory records developed by another body, hear legal arguments in a fair and impartial manner, and prepare and issue clear, reasoned and timely decisions. For purposes of this subparagraph, “timely” means within 15 days after the teacher termination adjudication hearing pursuant to Iowa Code section 279.17(7).~~

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14.5(4) Experience.

~~a.~~ Applicants must demonstrate requisite experience in labor relations or arbitration in the category in which the applicant seeks listing on the roster in one of the following ways:

~~(1) a.~~ For listing on the roster as an interest arbitrator:

~~1. (1)~~ Issuance of at least four fact-finding or interest arbitration decisions or a combination thereof;

~~2. (2)~~ At least three years' experience as a mediator in collective bargaining interest disputes, with training and experience in conducting hearings and issuing reasoned awards; or

~~3. (3)~~ At least five years' experience in labor relations or labor law, with training and experience in conducting hearings and issuing reasoned awards.

~~(2) b.~~ For listing on the roster as a grievance arbitrator:

~~1. (1)~~ Issuance of at least four grievance awards; or

~~2. (2)~~ At least five years' experience in labor relations or labor law, with training and experience in conducting hearings and issuing reasoned awards.

~~(3) For listing on the roster as a teacher termination adjudicator:~~

~~1. Issuance of at least four decisions rendered in an appellate capacity; or~~

~~2. At least five years' experience in the field of education, with training and experience in reviewing adjudicatory records and issuing reasoned decisions.~~

~~b.—The board may give credit against the years of experience requirement to a candidate who has received a master's or equivalent degree in a related area or who has adjudicatory experience in a field or fields other than labor relations.~~

ITEM 21. Amend paragraph **14.6(4)“b”** as follows:

~~b.~~ Successful completion of the program will result in the participant's inclusion on the roster as an interest arbitrator. Participants must satisfy the criteria for grievance arbitrators ~~and teacher termination adjudicators~~ outlined in subrules 14.5(3) and 14.5(4) prior to inclusion on the roster under those categories ~~that category~~.

ITEM 22. Amend **621—Chapter 14**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 20.1, 20.6, and 20.22 ~~and 279.17~~.

ITEM 23. Amend rule 621—16.1(20) as follows:

621—16.1(20) Effective date and scope. This chapter governs the filing of ~~all~~ documents in ~~adjudicatory~~ all proceedings before the agency that are filed on or after September 24, 2014, or those proceedings converted to electronic proceedings upon the board's order. This chapter also governs the filing of all documents ~~in adjudicatory proceedings converted to electronic proceedings upon the board's order~~ required to be filed by employee organizations pursuant to 621—Chapter 8. To the extent the rules in this chapter are inconsistent with any other administrative rule of the board, the rules in this chapter shall govern.

ITEM 24. Amend rule 621—16.2(20) as follows:

621—16.2(20) Definitions.

“Agency record” means for all cases the electronic files maintained in EDMS, filings the agency maintains in paper form when permitted by these rules, and exhibits and other materials filed with or delivered to and maintained by the agency.

“Confidential” means agency files, documents, or information excluded from public access by federal or state law or administrative rule, court rule, court order, or case law.

“EDMS” means the electronic document management system, the agency's electronic filing and case management system.

“Electronic filing” means the electronic transmission of a document to the electronic document management system together with the production and transmission of a notice of electronic filing.

“Electronic record” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

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“*Electronic service*” means the electronic transmission of a link where the registered users who are entitled to receive notice of the filing may view and download filed documents.

“*Nonelectronic filing*” means a process by which a paper document or other nonelectronic item is filed with the agency.

“*Notice of electronic filing*” means a document generated by the electronic document management system when a document is electronically filed.

“*PDF*” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

“*Protected information*” means personal information, the nature of which warrants protection from unlimited public access, including:

1. Social security numbers.
2. Financial account numbers.
3. Dates of birth.
4. Names of minor children.
5. Individual taxpayer identification numbers.
6. Personal identification numbers.
7. Other unique identifying numbers.
8. Confidential information.

“*Public*” refers to agency files, documents, or information that is not confidential or protected.

“*Public access terminal*” means a computer located at the agency’s office where the public may view, print, and electronically file documents.

“*Registered user*” means an individual who has registered for an e-filing account through the agency’s EDMS. A registered user can electronically file documents and electronically view and download files through the use of a username and password. In cases in which the registered user has entered an appearance or filed an answer, the registered user will electronically serve and receive notice of electronic filing in cases in which the registered user has appeared.

“*Remote access*” means a registered user’s ability to electronically search, view, copy, or download electronic documents in an electronic record without the need to physically visit the agency’s office.

“*Signature*” means a the following:

1. For a registered user electronically filing a document in EDMS, “signature” means the registered user’s username and password accompanied by one of the following:

1. “Digitized signature” means an embeddable image of a person’s handwritten signature;
2. “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or
3. “Nonelectronic signature” means a handwritten signature applied to an original document that is then scanned and electronically filed.

- “Digitized signature” means an embeddable image of a person’s handwritten signature;
- “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or

- “Nonelectronic signature” means a handwritten signature applied to an original document that is then scanned and electronically filed.

2. For a party signing a document that another registered user will electronically file, “signature” means the signatory’s name affixed to the document as a digitized or nonelectronic signature.

ITEM 25. Amend paragraph **16.3(1)“a”** as follows:

a. *Registration required.* Every individual filing documents or viewing or downloading filed documents ~~filed in an adjudicatory proceeding~~ must register as a registered user of the electronic document management system.

ITEM 26. Adopt the following **new** paragraph **16.3(1)“h”**:

h. *Agency-initiated registration.* The agency may complete the registration process on behalf of an individual in certain instances and email the username and password to the user. When the agency completes the registration process, the user is required to promptly log in and change the password.

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Following initial notification regarding account registration, the user is required to promptly update and maintain accurate contact information for the EDMS account.

ITEM 27. Amend subrule 16.4(1) as follows:

16.4(1) *Electronic filing mandatory.* Unless otherwise required or authorized by these rules, ~~all documents in adjudicatory~~ all proceedings commenced on or after January 1, 2015, and documents required to be filed pursuant to 621—Chapter 8 must be filed using the agency's electronic document management system.

ITEM 28. Adopt the following **new** subrule 16.6(3):

16.6(3) *Returned filing.* A rejected filing is not filed. In such instances, the date and time of filing will be when the filer submits a corrected document and it is approved.

ITEM 29. Amend rule 621—16.8(20) as follows:

621—16.8(20) ~~Format and redaction~~ **Redaction of electronic documents.** ~~All documents must be converted to a PDF format before they are filed in the electronic document management system.~~

16.8(1) *Responsibilities of filers generally.*

a. Prior to filing any document, the registered user shall ensure that the document is certified as confidential or the confidential information is omitted or redacted in accordance with 621—subrule 2.13(2), and that protected information is omitted or redacted in accordance with 621—subrule 2.13(3). This responsibility exists even when the filer did not create the document.

b. The agency will not review filings to determine whether appropriate omissions or redactions have been made. The agency will not, on the agency's own initiative, redact or restrict access to documents containing protected information.

16.8(2) *Omission and redaction requirements.*

a. Protected information that is not material to the proceedings. A filer may redact protected information from documents filed with the agency when the information is not material to the proceedings.

b. Protected information that is material to the proceedings. When protected information is material to the proceedings, a filer must certify the document as confidential when submitting the filing to the agency.

16.8(3) *Information that may be redacted.* A filer may redact the following information from documents available to the public unless the information is material to the proceedings:

a. Driver's license numbers.

b. Information concerning medical treatment or diagnosis.

c. Personal financial information.

d. Sensitive security information.

e. Home addresses.

16.8(4) *Improperly included protected information.* A party may ask the agency to restrict access to improperly included protected information from a filed document. The agency may order a properly redacted document to be filed.

ITEM 30. Rescind rule 621—16.9(20) and adopt the following **new** rule in lieu thereof:

621—16.9(20) *General requirements when filing documents.*

16.9(1) *Format.* All documents must be converted to a PDF before they are filed in EDMS. Documents submitted must be properly scanned, which includes having the pages in the correct order and facing right-side up and having the scanned content of the document be legible.

16.9(2) *Separating documents.* Each document must be separated and uploaded with the correct document type selection on the document upload page. Any attachments to a document shall be uploaded as such and linked to the correct document prior to submission.

16.9(3) *Selecting document types.* For each electronically filed document, a filer must choose an accurate document type from the options listed on the document upload page. Once a document is submitted into EDMS, only the agency may make corrections to the document type the filer has chosen.

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16.9(4) Correcting errors. If a filer discovers an error in the electronic filing or docketing of a document, the filer must contact the agency as soon as possible. When contacting the agency, the filer must have available the case number of the document that was filed or docketed erroneously. If the agency discovers an error in the filing or docketing of a document, the agency will ordinarily notify the filer of the error and advise the filer of what further action the filer must take, if any, to address the error.

ITEM 31. Amend rule 621—16.12(20) as follows:

621—16.12(20) Transcripts, briefs and exhibits.

16.12(1) Transcripts. If a hearing or oral argument is transcribed, the transcript shall be made available to registered users electronically after final agency action.

16.12(2) Briefs. Briefs and memoranda shall be electronically filed. Page numbers should be located at the bottom center of each page and numbered consecutively using Arabic whole numbers. The cover page should be numbered one.

16.12(3) Exhibits. Prior to offering an exhibit, the submitting party must redact the exhibit pursuant to rule 621—16.8(20). A party's exhibits admitted into evidence at a hearing shall be electronically filed by the party not later than the date ordered by the presiding officer or board. All exhibits shall be marked with an identifying number or letter, whichever is applicable. For each exhibit, the pages must be numbered consecutively with the first page numbered one.

ITEM 32. Adopt the following new rule 621—16.13(20):

621—16.13(20) Public access with exceptions for closed hearings.

16.13(1) General rule. All filings with the agency are public unless system-restricted or filed with restricted access. Electronic filing does not affect public access to agency files.

16.13(2) Closed hearings. For proceedings in which a party has elected the right to a closed hearing, all initial pleadings must be filed without restriction. All briefs, exhibits, and transcripts must be filed as “confidential.” The decision constituting final agency action will be filed with unrestricted access.

ITEM 33. Amend **621—Chapter 16**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 20.24 ~~as amended by 2014 Iowa Acts, House File 2172.~~

ARC 4366C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]**Notice of Intended Action****Proposing rule making related to bargaining unit determinations and representative certifications and providing an opportunity for public comment**

The Public Employment Relations Board hereby proposes to amend Chapter 4, “Bargaining Unit and Bargaining Representative Determination,” and Chapter 5, “Elections,” and to adopt new Chapter 15, “Retention and Recertification Elections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 20.

Purpose and Summary

This Notice of Intended Action affects rules relating to bargaining unit determination and representative certifications. The proposed amendments establish a procedure for bargaining units to

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merge; transfer retention and recertification election procedures into their own chapter for ease of use to the reader; and update and clarify provisions related to electronic filing requirements. The agency proposes these amendments after feedback and internal review.

Items 1, 3, and 4 are conforming amendments due to the transfer of retention and recertification election procedures from Chapter 5 to Chapter 15.

Items 2 and 5 require electronic filing of objections to bargaining unit determination and representative certification case files. These amendments are proposed due to feedback and to provide consistency of filing requirements with the agency.

Items 6 and 7 establish a procedure for the merger of units. Item 6 relates to the merger of two bargaining units represented by the same certified employee organization. Item 7 relates to the merger of two bargaining units represented by affiliated certified employee organizations. Under current agency rules, merging two units requires the filing of two amendment of unit petitions and, in some cases, an amendment of certification petition. The proposed amendments would reach the same result and allow the agency to assess the appropriateness of the merger while streamlining the process.

Item 8 proposes an increase in the election fee assessed to certified employee organizations for certification and decertification elections. The fee would increase from \$1 per eligible voter with a \$10 minimum to \$1.50 per eligible voter with a \$15 minimum. Item 8 also removes language relating to retention and recertification election procedures as that language is transferred to new Chapter 15; specifies the electronic filing requirements; adds an explanation for the term "election period"; and contains conforming amendments.

Item 9 removes language relating to retention and recertification election procedures as that language is transferred to new Chapter 15. Item 9 also requires submission of voter eligibility challenges by electronic filing due to feedback and to provide consistent requirements for filing with the agency.

Item 10 rescinds the rule relating to retention and recertification election procedures as that language is transferred to new Chapter 15. Item 11 renumbers the remainder of the rules in the chapter due to the transfer of retention and recertification election procedures into a separate chapter.

Item 12 provides consistency with the statute in allowing the agency to dismiss a decertification election petition if the petition is not filed within a time frame that will allow the agency to complete the election by the statutory deadlines.

Items 13 and 14 clarify the method for certification of results of amendment of unit elections and professional/nonprofessional elections in accordance with the agency's practices and Iowa Code chapter 20.

Item 15 updates the implementation language of Chapter 5.

Item 16 proposes the addition of new Chapter 15, which relates exclusively to retention and recertification election procedures to provide for ease of use for the reader. The retention and recertification election procedures are currently contained in Chapter 5. This item, in effect, transfers the provisions to Chapter 15 with reorganization of some of the provisions and revisions to some provisions. In particular, the rules relating to voter eligibility challenges and postelection challenges were reorganized but were not substantively revised. In addition to the transfer and reorganization, a new provision is proposed to require that employer and certified employee organization representatives have an agent for service or a representative, for purposes of the bargaining unit case files, listed on the agency's electronic document management system and keep the listing up to date.

Similar to the increase in election fees proposed for certification and decertification elections, new Chapter 15 contains increases in the election fee assessed to certified employee organizations for retention and recertification elections. The fee would increase from \$1 per eligible voter with a \$10 minimum to \$1.50 per eligible voter with a \$15 minimum. This fee increase is necessary due to a change in the election services vendor that provides election services for retention and recertification elections.

The provisions regarding the timing of election periods have been revised to reflect current agency policy and Iowa Code section 20.15(2). The proposed language also clarifies statutory requirements and election procedures to provide that the agency will not conduct a retention and recertification election if the agency does not receive the collective bargaining agreement in a timely manner. Existing provisions relating to notice to the agency when the agency has not initiated a retention and recertification election

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and an entity believes the election is required pursuant to statute are reorganized. The proposed language would change the notification deadline to seven days after the notice of the intent to conduct the election should have been filed.

Fiscal Impact

Although the implementation of Iowa Code section 20.6(7) and the subsequent increase in the fee in these rules will cause an increase in the expenditure of funds by the agency and affected persons, due primarily to the contract with a new vendor to conduct elections on the agency's behalf and the requirement that these costs be paid by the employee organizations involved, the agency does not anticipate these expenditures will exceed \$100,000 per year or \$500,000 within five years.

Jobs Impact

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

Waivers

These rules do not provide for a waiver of their terms, but are instead subject to the agency's general waiver provisions found at rule 621—1.9(17A,20).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 17, 2019. Comments should be directed to:

Amber DeSmet
Public Employment Relations Board
Jessie Parker Building, Suite 1B
510 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.4045
Email: amber.desmet@iowa.gov

Public Hearing

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

April 17, 2019
10 a.m. to 12 noon

Public Employment Relations Board
Jessie Parker Building
510 East 12th Street
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

The following rule-making actions are proposed:

ITEM 1. Amend subrule 4.1(2) as follows:

4.1(2) Representation elections.

a. Initial certification, retention and recertification, and decertification elections. The initial certification, retention and recertification, and decertification of an employee organization require elections in accordance with ~~621—Chapter 5~~ 621—Chapters 5 and 15. The three types of elections affecting the bargaining representative determination or an employee organization's certification status are as follows:

(1) A certification election, which is initiated by the filing of a petition by the employee organization or the public employer, for the initial certification of an employee organization to be the exclusive bargaining representative for a bargaining unit of public employees;

(2) A retention and recertification election, which is initiated by the filing of notice by the agency, for the retention and recertification of a certified employee organization; and

(3) A decertification election, which is initiated by a public employee of a bargaining unit, for the decertification of an existing certified employee organization that represents the unit.

b. Other elections—professional/nonprofessional unit and amendment of unit. When a bargaining unit is determined or amended, an election may be required as provided in 621—Chapter 5. The two types of other elections are as follows:

(1) A professional and nonprofessional election occurs when the agency files an order directing the election after determining that professional and nonprofessional employees are appropriately included in the same bargaining unit.

(2) An amendment of unit election occurs when the agency files an order directing the election after determining that a job classification or classifications are appropriately amended into a bargaining unit, but a question of representation exists. A question of representation exists when the ~~amended classifications existed at the time the bargaining unit was originally determined and those classifications would separately constitute an appropriate unit~~ job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

ITEM 2. Amend paragraph **4.2(6)“c”** as follows:

c. Objections to the proposed decision must be electronically filed with the agency, ~~electronically, by ordinary mail or by personal delivery~~, by the date posted in the notice of proposed decision. Objections ~~shall be in writing and~~ shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, telephone number, and email address, if available. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the agency deems the objections to be of substance, the parties may, with agency approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the agency of the amendment. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.

ITEM 3. Amend subrule 4.4(7) as follows:

4.4(7) Professional and nonprofessional elections. See subrule 4.2(5) and rule ~~621—5.8(20)~~ 621—5.7(20).

ITEM 4. Amend subrule 4.6(3) as follows:

4.6(3) Elections; when required. When a question of representation exists, the agency will conduct an amendment of unit election pursuant to rule ~~621—5.9(20)~~ 621—5.8(20). A question of representation exists when the job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

ITEM 5. Amend paragraph **4.8(5)“b”** as follows:

b. Objections to the proposed decision must be electronically filed with the agency, ~~electronically, by ordinary mail or by personal delivery~~, by the date specified in the notice. Objections ~~shall be in writing~~

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address, telephone number and email address. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. When an objection is raised, the agency may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.

ITEM 6. Adopt the following new rule 621—4.9(20):

621—4.9(20) Merger of units represented by the same certified employee organization. A certified employee organization may petition the agency to merge two of the bargaining units the organization represents into one successive unit. This proceeding does not apply to school districts' and area education agencies' reorganizations and mergers pursuant to Iowa Code chapter 273 or 275.

4.9(1) Petition. A petition to amend a bargaining unit may be filed by a certified employee organization to reflect a merger of two agency-determined bargaining units which have the same public employer and are represented by the same certified employee organization. The petition shall contain:

- a. The names, addresses, telephone numbers, and email addresses of the public employer and the employee organization or their respective representatives.
- b. A listing of all PERB cases relevant to the first unit and its certification history followed by a current description of the unit.
- c. A listing of all PERB cases relevant to the second unit and its certification history followed by a current description of the unit.
- d. An identification and description of the proposed amended unit.
- e. The names and addresses of any other employee organizations which claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.
- f. A statement identifying the current status of the units as either public safety units or non-public safety units and the change, if any, to the status of the unit, which would result from the requested merger.
- g. A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant factors.

4.9(2) Accompanying documents. The successive employee organization must file its petition with an affidavit(s) that establishes the following for each unit:

- a. The act or occurrence (merger), which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and
- b. Substantial continuity of representation has been maintained.

4.9(3) Notice. Upon the filing of a petition, the agency shall file a notice to employees, giving notice that a petition for the merger of two units has been filed and setting forth the rights of employees under Iowa Code chapter 20. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.9(4) Procedure—decision. Insofar as applicable, rule 621—4.2(20) shall apply.

ITEM 7. Adopt the following new rule 621—4.10(20):

621—4.10(20) Merger of two units represented by affiliated certified employee organizations. A certified employee organization may petition the agency to amend a bargaining unit the organization represents to merge another bargaining unit of employees into the successive unit. The unit of employees added must be represented by an affiliated certified employee organization. This proceeding does not apply to school districts' and area education agencies' reorganizations and mergers pursuant to Iowa Code chapter 273 or 275.

4.10(1) Petition. A combined petition to amend a bargaining unit and an employee organization's certification may be filed by a successive employee organization to reflect a merger of two

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

agency-determined bargaining units that have the same public employer and are represented by affiliated certified employee organizations. The combined petition shall contain:

- a. The names, addresses, telephone numbers, and email addresses of the public employer and the employee organization or their respective representatives.
- b. A listing of all PERB cases relevant to the first unit and its certification history followed by a current description of the unit.
- c. A listing of all PERB cases relevant to the second unit and its certification history followed by a current description of the unit.
- d. An identification and description of the proposed amended unit.
- e. The names and addresses of any other employee organizations which claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.
- f. A statement identifying the current status of the units as either public safety units or non-public safety units and the change, if any, to the status of the unit, which would result from the requested merger.
- g. A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant factors.

4.10(2) *Accompanying documents.* The successive employee organization must file its petition with the following:

- a. An affidavit(s) that establishes the following:
 - (1) The act or occurrence, which the requested amendment would reflect, was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process; and
 - (2) Substantial continuity of representation has been maintained.
- b. Updated agency reports if there is a change in the employee organization's name or if there is a change to the employee organization's governing body. The reports shall include the following:
 - (1) An updated PERB annual report that covers the time period from the last annual report to the time of the filing of the petition.
 - (2) An updated PERB registration report.
 - (3) An updated constitution and bylaws.
- c. Final agency reports for dissolved organizations resulting from a merger. The final agency report shall include a PERB annual report that covers the time period from the last annual report to the time of the merger and shall reflect the closing of the books and accounts of the dissolved employee organization. The certified employee organization may wait and submit its final agency reports following the board's tentative approval of the amendment of certification.

4.10(3) *Notice.* The agency shall file a notice to employees, giving notice that a petition to merge two units and amend the certification of the successive employee organization has been filed and setting forth the rights of employees under Iowa Code chapter 20. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by email or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.10(4) *Procedure—decision.* Insofar as applicable, rules 621—4.2(20) and 621—4.8(20) shall apply.

4.10(5) *Elections.* Should the agency determine, in any case, it is appropriate to merge one unit into the successive unit, the agency shall file an order directing that an election be conducted to determine whether the employees of the unit getting merged into the successive unit wish to be represented by the successive certified employee organization. The election shall be conducted in accordance with rule 621—5.8(20).

ITEM 8. Amend rule 621—5.1(20) as follows:

621—5.1(20) *General procedures.* The agency shall determine the date of the election or election period, and the place, method, and other procedural aspects of conducting an election held pursuant to Iowa Code chapter 20. Elections shall be conducted under the direction and supervision of the agency

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

or its election agent and shall be by secret ballot. Parties shall electronically file all documents in the applicable adjudicatory case file in the agency's electronic document management system (EDMS) unless the rules specify otherwise.

5.1(1) Election types. There are five types of elections:

- a. Certification election.
- b. Retention and recertification election. Specific rules addressing retention and recertification elections are contained in 621—Chapter 15.
- c. Decertification election.
- d. Professional and nonprofessional election.
- e. Amendment of unit election.

5.1(2) Election fees.

a. For certification, ~~retention and recertification~~, and decertification elections, the employee organization is responsible for and shall prepay the election fees in accordance with this chapter and rules relevant to the specific election. Employee organizations intervening in a certification election shall pay a proportionate share of the election fees.

b. A certified employee organization may file a written request with the agency for an extension of time in which to pay its election fees. The employee organization may file the request after the filing of a certification or decertification petition, but no later than 7 seven days after the agency's filing of an order directing an election. ~~For a retention and recertification election, a certified employee organization may file a request after the agency's filing of its intent to conduct an election, but shall file the request no later than the date the election fee is due as provided in the notice of intent to conduct an election.~~ In no event will the agency conduct an election prior to an employee organization's payment of election fees.

c. A certified employee organization may file notice of nonpayment to indicate that it will not pay the election fees for a decertification ~~or retention and recertification~~ election. The notice of nonpayment may be filed at any time, but must be filed no later than 7 seven days after the agency's filing of an order for a decertification election ~~or no later than 30 days prior to the commencement of a retention and recertification election period.~~ The notice shall be signed by an authorized representative of the organization, state that the organization will not pay the election fees, and acknowledge that the agency will not conduct the applicable election and the employee organization's certification will be revoked.

d. ~~For retention and recertification elections, the applicable election fee is based upon the number of employees on the voter eligibility list submitted to the agency pursuant to subrule 5.2(2).~~ For certification and decertification elections, the applicable election fee is based upon the list provided pursuant to 621—subrule 4.3(3) to verify the showing of interest.

(1) When the list contains ~~40 ten~~ or fewer eligible voters, the election fee is ~~\$40~~ \$15. When the list contains more than ~~40 ten~~ eligible voters, the election fee is ~~\$4~~ \$1.50 per eligible voter. When the number of eligible voters on the list contains more than 50 eligible voters and subsequent for determining fees increases or decreases as contemplated by subparagraph 5.2(2)“a”(2) or 5.2(2)“b”(2) or due to successful challenges pursuant to subrule 5.2(3) and the increases or decreases alter the number of eligible voters by 5 percent ten or more, the employee organization shall make an additional payment to reflect the increased number of eligible voters or, in the case of a decrease, the agency shall reimburse the employee organization for its overpayment.

(2) ~~The agency will not request additional payment and will not reimburse the employee organization for an amount less than \$10.~~ The agency will not refund the election fee in the event the election fee is paid and the agency has performed duties to conduct the election but the election does not occur.

5.1(3) Date of election. For purposes of this chapter, the date of an election shall be the date on which the ballots were tallied.

5.1(4) Election period. For purposes of this chapter, an election period begins at the time and on the date the agency sets for when eligible voters may first cast a ballot and ends at the time and on the date the agency sets for the tally of ballots.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

ITEM 9. Amend rule 621—5.2(20) as follows:

621—5.2(20) Eligibility—voter eligibility lists.

5.2(1) Eligible voters.

~~a. Certification, decertification, professional/nonprofessional, amendment of unit elections.~~ For certification, decertification, professional/nonprofessional, or amendment of unit elections, eligible voters are those employees who:

(1) ~~a.~~ Were employed and included in the bargaining unit on the date of the order directing an election unless another date is agreed upon by the parties and the agency, and

(2) ~~b.~~ Are employed in the bargaining unit on the date of the election.

~~b. Retention and recertification elections.~~

(1) ~~For retention and recertification elections, eligible voters are those employees who were employed and included in the bargaining unit on the date of the order directing the election, or were employed on another date or dates agreed upon by the parties and the agency.~~

(2) ~~In addition to voter eligibility challenges made pursuant to subrule 5.2(3), employee organizations may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections.~~

~~1. The certified employee organization may file a postelection challenge to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board's findings and conclusions.~~

~~2. The employer is responsible for ensuring the accuracy of the list after its submission and throughout the election period. The employer shall promptly notify the certified employee organization whenever an eligible voter leaves employment and is no longer in the bargaining unit prior to the close of the election or election period.~~

5.2(2) Eligible Certification, decertification, professional/nonprofessional, and amendment of unit elections—eligible voter list.

~~a. Certification, decertification, professional/nonprofessional, and unit amendment elections—eligible voter list.~~

(1) ~~a.~~ List for determining fees. The agency will determine the election fee based on the initial employer-provided list of employees used to verify the showing of interest pursuant to 621—subrule 4.3(3).

(2) ~~b.~~ Voter eligibility list.

~~1. (1) When the agency files an order that an election, other than a retention and recertification election, be conducted, the employer shall, within seven days of the notice or order, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency.~~

~~2. (2) The agency shall file the list of eligible voters' names and job classifications. This list shall become the official voting list for the election to be conducted. The agency shall provide to the employee organization the voter list with containing the employees' contact information. The employer or employee organization shall email proposed additions or deletions of employees' names, changes in job classifications, addresses, contact information, or other eligible voter changes to the agency and to the other party. The parties may further amend the list by agreement.~~

~~b. Retention and recertification elections—eligible voter list.~~

(1) ~~List for determining fees.~~

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

1.—~~The agency will determine the election fee based on the following initial employer-provided list of employees. When the agency files a notice of intent to conduct a retention and recertification election, the employer shall, within seven days of the notice, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list.~~

2.—~~The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the employee organization the voter list with the employees' contact information.~~

~~(2) Voter eligibility list.~~

1.—~~When the agency files an order that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the original list the employer provided for determining fees is unchanged, the employer does not need to email this second list. The original list, if unchanged, or this second list will become the final list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voter list for the election to be conducted. The agency shall provide to the employee organization the voter list with the employees' contact information.~~

2.—~~The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.~~

5.2(3) Challenges.

a. Types of challenges. Voter eligibility challenge.

(1) A party may challenge, for good cause, the eligibility of any voter. The agency shall attempt to resolve the challenge. Whenever challenged ballots are unresolved and determinative of the outcome of an election, a hearing to determine the eligibility of the challenged voter(s) shall be scheduled and conducted. After the conclusion of the hearing, the board may, if necessary, order a new election, and the cost may be taxed to the nonprevailing party.

~~(2) In addition to voter eligibility challenges made pursuant to this subrule, employee organizations may make postelection challenges to the total number of bargaining unit employees for the employee organizations' respective retention and recertification elections in accordance with paragraph 5.2(1) "b."~~

b. Methods and timing of voter eligibility challenges. A party may challenge the eligibility of a voter as follows by electronically filing a completed voter eligibility form in the case file and in accordance with the following:

(1) In-person elections. A party shall challenge a voter's eligibility prior to the time the voter deposits the voter's ballot in the ballot box. In the event of a challenge, the challenged voter may mark the ballot in secret, and the election agent shall segregate the ballot by causing it to be placed in a challenged-ballot envelope with appropriate markings and depositing it in the ballot box.

(2) Mail-ballot elections. A party shall challenge a voter's eligibility prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both the secret envelope and the outer envelope shall remain sealed until the challenge is resolved.

(3) Telephonic/web-based elections. A party shall challenge a voter's eligibility ~~in writing to the agency with a copy to the other interested party. For retention and recertification elections, a party shall challenge that voter's eligibility at least seven days prior to the commencement of the election period~~

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

for telephonic/web-based elections. For all other elections utilizing this method, a party shall challenge that voter's eligibility prior to the end of the election period.

ITEM 10. Rescind rule **621—5.6(20)**.

ITEM 11. Renumber rules **621—5.7(20)** to **621—5.10(20)** as **621—5.6(20)** to **621—5.9(20)**.

ITEM 12. Amend renumbered subrule 5.6(1) as follows:

5.6(1) Eligible voter list. Upon the agency's determination that a decertification petition is supported by an adequate showing of interest in accordance with rule 621—4.3(20), the agency shall file an order directing that an election be conducted in a specified manner not less than 150 days before the expiration date of the bargaining unit's collective bargaining agreement and that the employer submit a list of eligible voters pursuant to rule 621—5.2(20), unless the election is barred by subrule ~~5.7(6)~~ **5.6(6)**. The agency may dismiss a decertification petition if, in the agency's discretion, an election cannot be conducted at least 150 days before the expiration date of the bargaining unit's collective bargaining agreement.

ITEM 13. Amend renumbered subrule 5.7(6) as follows:

5.7(6) Certification of results.

a. Upon completion of a valid professional/nonprofessional election in which separate majorities of ~~the eligible voters~~ employees voting in both the professional and nonprofessional categories voted in favor of their inclusion in the same bargaining unit, the agency shall define a bargaining unit which includes both professional and nonprofessional employees.

b. Upon completion of a valid professional/nonprofessional election in which separate majorities of ~~the eligible voters~~ employees voting in one or both of the professional and nonprofessional categories did not vote in favor of employees' inclusion in the same bargaining unit, the agency shall not define a bargaining unit which includes both professional and nonprofessional employees.

ITEM 14. Amend renumbered subrule 5.8(6) as follows:

5.8(6) Certification of results.

a. Upon completion of a valid amendment of unit election in which a majority of ~~the eligible voters~~ employees voting cast ballots in favor of representation by the certified employee organization, the agency shall file an order amending the unit as previously determined to be appropriate by the agency.

b. Upon completion of a valid amendment of unit election in which a majority of ~~the eligible voters~~ employees voting did not cast ballots in favor of representation by the certified employee organization, the agency shall file an order dismissing the amendment of unit petition.

ITEM 15. Amend **621—Chapter 5**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 20 as ~~amended by 2017 Iowa Acts, House File 291.~~

ITEM 16. Adopt the following new 621—Chapter 15:

CHAPTER 15 RETENTION AND RECERTIFICATION ELECTIONS

621—15.1(20) General procedures. The agency shall determine the date of the election or election period, and the place, method, and other procedural aspects of conducting a retention and recertification election held pursuant to Iowa Code chapter 20. Elections shall be conducted under the direction and supervision of the agency or its election agent and shall be by secret ballot.

Each election will be assigned a "BU" case number in the agency's electronic document management system (EDMS). A party shall electronically file all documents in its respective BU case file unless the rules specify otherwise.

Employers and certified employee organizations shall have a representative or agent for service listed in the applicable BU case file in EDMS. Employers and certified employee organizations have a continuing duty to update the representative or agent for service in the BU case file in EDMS.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

15.1(1) Election fees.

a. The employee organization is responsible for and shall prepay the election fees in accordance with this chapter.

b. A certified employee organization may file a written request with the agency for an extension of time in which to pay its election fees. A certified employee organization may file a request after the agency's filing of its intent to conduct an election, but shall file the request no later than the date the election fee is due as provided in the notice of intent to conduct an election. In no event will the agency conduct an election prior to an employee organization's payment of election fees.

c. A certified employee organization may file notice of nonpayment to indicate that it will not pay the election fees. The notice of nonpayment may be filed at any time, but must be filed no later than 30 days prior to the commencement of the election period. The notice shall be signed by an authorized representative of the organization, state that the organization will not pay the election fees, and acknowledge that the agency will not conduct the applicable election and the employee organization's certification will be revoked.

d. The applicable election fee is based upon the number of employees on the voter eligibility list submitted to the agency pursuant to subrule 15.2(2).

(1) When the list contains ten or fewer eligible voters, the election fee is \$15. When the list contains more than ten eligible voters, the election fee is \$1.50 per eligible voter. When the number of eligible voters on the list for determining fees increases or decreases as contemplated by paragraph 15.2(2) "b" or due to successful challenges pursuant to subrule 15.2(3) and the increases or decreases alter the number of eligible voters by ten or more, the employee organization shall make an additional payment to reflect the increased number of eligible voters or, in the case of a decrease, the agency shall reimburse the employee organization for its overpayment.

(2) The agency will not refund the election fee in the event the election fee is paid and the agency has performed duties to conduct the election but the election does not occur.

15.1(2) Date of election. For purposes of this chapter, the date of an election shall be the date on which the ballots were tallied.

15.1(3) Election period. For purposes of this chapter, an election period begins at the time and on the date the agency sets for when eligible voters may first cast a ballot and ends at the time and on the date the agency sets for the tally of ballots.

621—15.2(20) Eligibility—voter eligibility lists.**15.2(1) Eligible voters.**

a. Eligible voters are those employees who were employed and included in the bargaining unit on the date of the order directing the election, or were employed on another date or dates agreed upon by the parties and the agency.

b. The employer is responsible for ensuring the accuracy of the list after its submission and throughout the election period. The employer shall promptly notify the certified employee organization whenever an eligible voter leaves employment and is no longer in the bargaining unit prior to the close of the election or election period.

15.2(2) Initial eligible voter list.*a. List for determining fees.*

(1) The agency will determine the election fee based on the following initial employer-provided list of employees. When the agency files a notice of intent to conduct a retention and recertification election, the employer shall, within seven days of the notice, email to the agency an alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

(2) The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the employee organization the voter list containing the employees' contact information.

b. Final voter eligibility list.

(1) When the agency files an order that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the original list the employer provided for determining fees is unchanged, the employer does not need to email this second list. The original list, if unchanged, or this second list will become the final list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voter list for the election to be conducted. The agency shall provide to the employee organization the voter list containing the employees' contact information.

(2) The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

15.2(3) Voter eligibility challenges.

a. General. A party may challenge, for good cause, the eligibility of any voter. The agency shall attempt to resolve the challenge. Whenever challenged ballots are unresolved and determinative of the outcome of an election, a hearing to determine the eligibility of the challenged voter(s) shall be scheduled and conducted. After the conclusion of the hearing, the board may, if necessary, order a new election, and the cost may be taxed to the nonprevailing party.

b. Methods and timing of voter eligibility challenges. A party may challenge the eligibility of a voter by electronically filing a completed voter eligibility form in the BU case file and in accordance with the following:

(1) In-person elections. A party shall challenge a voter's eligibility prior to the time the voter deposits the voter's ballot in the ballot box. In the event of a challenge, the challenged voter may mark the ballot in secret, and the election agent shall segregate the ballot by causing it to be placed in a challenged-ballot envelope with appropriate markings and depositing it in the ballot box.

(2) Mail-ballot elections. A party shall challenge a voter's eligibility prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both the secret envelope and the outer envelope shall remain sealed until the challenge is resolved.

(3) Telephonic/web-based elections. A party shall challenge a voter's eligibility at least seven days prior to the commencement of the election period for telephonic/web-based elections.

15.2(4) Postelection challenges. A certified employee organization may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections. The certified employee organization may file a postelection challenge to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board's findings and conclusions.

621—15.3(20) Methods of voting—general procedures. See rule 621—5.3(20).

621—15.4(20) Objections to an election. See rule 621—5.4(20).

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

621—15.5(20) Retention and recertification election process.**15.5(1) Timing of election periods.**

a. When an employer and certified employee organization are parties to a collective bargaining agreement, the agency shall conduct an election, prior to the expiration of a collective bargaining agreement between an employer and a certified employee organization, to determine if the employees in a represented bargaining unit wish to retain and recertify the unit's certified representative.

b. For a certified employee organization that is a party to a collective bargaining agreement with a June 30 expiration date, the organization's retention and recertification election shall occur not earlier than June 1 nor later than November 1 in the year prior to the expiration of the agreement.

c. For a certified employee organization that is a party to a collective bargaining agreement with an expiration date other than June 30, the organization's retention and recertification election shall occur not earlier than 365 days nor later than 270 days prior to the expiration of the agreement, except as provided in subrule 15.5(9).

d. If the certified employee organization has paid the applicable election fee in a timely manner as provided in subrule 15.5(5), the organization's status shall not be adversely affected if the election is not concluded in compliance with this rule.

e. The public employer shall email to the agency a collective bargaining agreement within ten days of the date on which the agreement was entered into, as required by Iowa Code section 20.29. However, for purposes of scheduling retention and recertification elections, all collective bargaining agreements must be submitted to the agency at least 50 days prior to the commencement of the retention and recertification election period. The agency shall not conduct an election if the employer and certified employee organization are not parties to a collective bargaining agreement or if the collective bargaining agreement is submitted to the agency fewer than 50 days before the commencement of the retention and recertification election period.

When scheduling a retention and recertification election, if a collective bargaining agreement indicates the agreement is for a term of one year but does not clearly specify the effective commencement and termination dates, the agency will presume the collective bargaining agreement is for a term of one year commencing July 1 and ending June 30 unless the agreement clearly states an alternate term and effective dates.

f. An extension of a collective bargaining agreement will alter the timing of the retention and recertification election only if the parties have reached agreement on the extension and have notified the agency in writing prior to the date the fee is due as set forth in the notice of intent to conduct the election. Should the parties' collective bargaining agreement inclusive of any extensions exceed five years, the agency will, for purposes of scheduling the election, presume a maximum duration of five years pursuant to Iowa Code section 20.9 or two years pursuant to Iowa Code section 20.15, whichever is applicable.

15.5(2) General procedure.

a. Upon determining that a retention and recertification election is required, the agency shall file a notice of intent to conduct an election which shall contain the dates of the election period; the place, method, and purpose of the election; the date the voter list for determining fees is due; and the date upon which the employee organization shall pay the applicable election fee. The agency shall order the public employer's submission of the voter eligibility list in accordance with rule 621—15.2(20) and subrule 15.5(4).

b. Following the public employer's submission of the list of eligible voters as provided in subrule 15.5(4) and the agency's receipt of the applicable election fee from the certified employee organization, the agency will file an order directing a retention and recertification election and a notice of election, copies of which shall be promptly posted by the employer in the manner and locations customarily used for the posting of information to employees. If a public employer customarily distributes information to employees by additional means, such as by email or hard copy, the public employer shall also promptly distribute such notice to employees by those means. Such notices shall contain a sample ballot or script and shall set forth the dates of the election period; the time, place, method, and purpose of the election; and such additional information as the agency may deem appropriate.

15.5(3) Objection and notice regarding notice of intent to conduct an election.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

a. The certified employee organization or public employer may file an objection asserting that the election should not be conducted for reasons set forth in the objection. The objection shall be in writing and electronically filed no later than seven days following the date of the notice of intent to conduct an election. The agency may conduct a preliminary investigation of the objection and determine if the objection has merit. The agency may informally resolve objections and will dismiss objections without merit. The agency will schedule hearings for all other objections. Hearings on objections shall be conducted pursuant to 621—Chapter 2. The objecting party shall present its evidence first.

b. If the agency fails to file a notice of intent to conduct an election, the public employer or certified employee organization may file with the agency a notice asserting the election should be conducted for reasons set forth in the notice. The notice shall be in writing and electronically filed no later than seven days following the date the notice of intent to conduct an election should have been filed pursuant to the retention and recertification election schedule as set forth by the agency. The parties shall submit to the agency all relevant information requested. The agency shall conduct an investigation to determine whether the election is required by statute and rule.

15.5(4) *Eligible voter list for determining election fee.*

a. The public employer shall email to the agency a list of the employees in the bargaining unit in question within seven days of the filing of the notice of intent to conduct an election. This list shall be organized alphabetically and contain the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. The employer shall separately email the certified employee organization to confirm that the employer provided the agency with the voter list and will provide the date the list was emailed to the agency and the number of employees on the list. The agency shall file the list of eligible voters' names and job classifications. The agency shall provide to the certified employee organization the list with the employees' contact information. The certified employee organization shall use this list to determine the election fee as provided in subrule 15.5(5).

b. If the public employer fails to submit the list of eligible voters to the agency by the deadline set in the notice, the agency will not conduct the election and will file an order recertifying the employee organization.

15.5(5) *Payment of election fee.* A certified employee organization shall pay the applicable election fee as set forth in the notice of intent to conduct the election, except as otherwise authorized by this subrule. The election fee shall be paid by check payable to the agency and is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed. The agency may grant a certified employee organization's written request for an extension of time to pay the fee for good cause if the request is filed as set forth in the notice of intent to conduct the election. The agency will not conduct an election prior to receiving the applicable election fee. The certified employee organization's failure to pay the applicable election fee by the deadline set in the notice shall result in revocation of the organization's certification.

15.5(6) *Final voter eligibility list.*

a. When the agency files an order directing that the retention and recertification election be conducted, the employer shall, within seven days of the order, email to the agency a second alphabetical list of the names; addresses; email addresses, if known; telephone numbers; and job classifications of the employees eligible to vote. If the list the employer previously provided pursuant to subrule 15.5(4) is unchanged, the employer does not need to email a subsequent list. The agency shall file the list of eligible voters' names and job classifications. This list shall become the official eligible voting list for the election to be conducted. The agency shall provide to the certified employee organization the voter list containing the employees' contact information.

b. The employer shall not add to or delete from the list any employee name after the submission of the above-described voter eligibility list. By contacting the employer, the certified employee organization may propose additions to or deletions from the list of employees' names prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

prior to the commencement of the election period for telephonic/web-based elections. The parties may amend the list by agreement prior to the date of the election for in-person elections, prior to the date the ballots are mailed for mail-ballot elections, or seven days prior to the commencement of the election period for telephonic/web-based elections.

15.5(7) Ballots. Ballots shall contain the question “Do you want [name of certified employee organization] to be retained and recertified and continue to be your exclusive bargaining representative?” followed by the choices “Yes” or “No.”

15.5(8) Certification of results.

a. Upon completion of a valid retention and recertification election in which an employee organization received the votes of a majority of employees in the bargaining unit, the agency shall file an order recertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid retention and recertification election in which an employee organization did not receive the votes of a majority of employees in the bargaining unit, the agency shall file an order decertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

15.5(9) Elections for employee organizations that represent employees of school districts, area education agencies, and community colleges. If certified employee organizations representing employees of a school district, area education agency, or community college would otherwise be scheduled for a retention and recertification election to be held between May 1 and September 30, the agency will postpone those elections until October of that calendar year and the timelines of subrules 15.5(2), 15.5(4), and 15.5(5) will apply.

These rules are intended to implement Iowa Code chapter 20.

ARC 4364C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Notice of Intended Action

**Proposing rule making related to whistleblower actions
and providing an opportunity for public comment**

The Public Employment Relations Board hereby proposes to adopt Chapter 17, “State Employee Whistleblower Actions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 70A.28.

Purpose and Summary

Iowa Code section 70A.28 tasks the Public Employment Relations Board with hearing appeals of certain state employees for adverse employment action taken as a result of an employee’s disclosure of information protected by that section. This proposed chapter provides the procedural framework for such an appeal by a state executive branch employee. The procedure is similar to that used when a state employee appeals a grievance decision or disciplinary action pursuant to Iowa Code chapter 8A.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

Fiscal Impact

State employee whistleblower actions involve state Executive Branch employees who allege that the State has violated whistleblower provisions and that the violation has resulted in an adverse employment action. If these allegations are proven, the State may have remedial obligations.

Jobs Impact

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

Waivers

These rules do not provide for a waiver of their terms, but are instead subject to the agency's general waiver provisions found at rule 621—1.9(17A,20).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 17, 2019. Comments should be directed to:

Amber DeSmet
Public Employment Relations Board
Jessie Parker Building, Suite 1B
510 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.4045
Email: amber.desmet@iowa.gov

Public Hearing

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

April 17, 2019
10 a.m. to 12 noon

Public Employment Relations Board
Jessie Parker Building
510 East 12th Street
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Adopt the following **new** 621—Chapter 17:

CHAPTER 17
STATE EMPLOYEE WHISTLEBLOWER ACTIONS

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

621—17.1(20,70A) Notice of appeal rights. A state executive branch employee, except a merit system employee or an employee covered by a collective bargaining agreement, may file an appeal with the public employment relations board for adverse employment action taken as a result of the employee's disclosure of information protected by Iowa Code section 70A.28.

621—17.2(20,70A) Filing of appeal.

17.2(1) *Timeline.* The employee must file the appeal within 30 calendar days following the later of the effective date of the action or the date a finding is issued to the employee by the office of ombudsman pursuant to Iowa Code section 2C.11A.

17.2(2) *Method of filing.* Appeals shall be electronically filed pursuant to 621—Chapter 16.

621—17.3(20,70A) Service of appeal. The agency shall serve a copy of the appeal upon the Iowa department of administrative services director (hereinafter referred to as the director) by ordinary mail in the manner specified in rules 621—2.15(20) and 621—16.10(20).

621—17.4(20,70A) Content of appeal.

17.4(1) The appeal shall contain the following:

- a. Name, address, telephone number, and email address of the appealing employee;
- b. Name of agency/department by which the appealing employee is/was employed;
- c. A brief statement of the reasons for the employee's appeal;
- d. A statement of the requested remedy;
- e. The name, address, telephone number, and email address of the appealing employee's representative, if any;
- f. The signature of the appealing employee or employee's representative;
- g. A statement of whether the employee requests a hearing open to the public; and
- h. A statement of whether the employee filed a complaint with the office of ombudsman and the date of the filing, if applicable.

17.4(2) Completion of the State Employee Whistleblower Action Appeal Form shall constitute compliance with all of the requirements in subrule 17.4(1).

621—17.5(20,70A) Content of director's response to the appeal.

17.5(1) The director shall have 15 days from the date of service of the employee's appeal in which to file a motion or answer with the agency.

17.5(2) The motion or answer shall contain the following:

- a. The names of the appealing employee and the employing agency/department;
- b. The name, address, telephone number, and email address of the employing agency's/department's representative;
- c. The response or answer to the employee's appeal, which shall specifically admit or deny each allegation of the appeal and may set forth additional facts deemed to constitute a defense. If the appellee is without knowledge sufficient to make an admission or denial concerning an allegation, the answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the substance of the allegation. Additional facts set forth in the answer shall be deemed denied by the appellant;
- d. The signature of the employing agency's/department's representative.

17.5(3) The director's motion or answer shall be electronically filed pursuant to 621—Chapter 16.

621—17.6(20,70A) Right to a hearing. An employee appealing adverse employment action pursuant to Iowa Code section 70A.28 has a right to a hearing which is closed to the public unless the employee requests a hearing open to the public. Hearings will otherwise be conducted in accordance with 621—Chapter 2.

621—17.7(20,70A) Final decisions.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

17.7(1) When a majority of the board presides at the reception of the evidence in a state employee whistleblower action proceeding, the decision of the board is the final decision of the agency.

17.7(2) When a majority of the board does not preside at the reception of the evidence in a state employee whistleblower action proceeding, the presiding officer shall make a proposed decision that becomes the final decision of the agency without further proceedings unless:

- a.* There is an appeal to the board filed within 20 days of the filing of the proposed decision, or
- b.* The board, within 20 days of the filing of the proposed decision, determines to review the decision on its own motion.

621—17.8(20,70A) Review by board. Proceedings on the board's review of the proposed decision shall be in accordance with 621—Chapter 9.

621—17.9(20,70A) Other rules. Any matters not specifically addressed by the rules contained in this chapter shall be governed by the general provisions of the rules of the agency.

These rules are intended to implement Iowa Code chapters 20 and 70A.

ARC 4361C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action****Proposing rule making related to the WIC program
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 73, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 135.11 and 135.16A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 135.11 and 135.16A and 42 U.S.C. Section 1786.

Purpose and Summary

The State of Iowa WIC Program now has a Program Integrity Coordinator who monitors all aspects of WIC fraud within the Iowa WIC Program. Federal regulations require state WIC agencies to establish procedures designed to control participant violations and establish sanctions for participant violations. Federal regulations include specific requirements for mandatory participant disqualifications.

Updates to the rules about participant violations/sanctions are proposed to help ensure that violations/sanctions are handled in the most efficient manner. It was determined that it would be beneficial to make changes to how participant violations and sanctions are given. Instead of receiving points for violations, participants will be given a specific sanction depending on the violation. Violations and sanctions are now investigated and given by the Program Integrity Coordinator instead of handled by local WIC agencies. More information regarding restitution requirements is added to the rules. Updating the violation and sanction process for program participants is important to ensure efficient monitoring of any fraud or abuse that occurs within the program and to ensure program integrity. The vendor violation/sanction process is different than the participant violation/sanction process and works well, and there is not a need to change the vendor violation point structure at this time.

A few changes are proposed regarding the WIC food package information. Iowa now approves WIC-eligible foods more frequently than every three years. These proposed amendments reflect this

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change in practice. A few other updates are also made to the eligibility requirements for certain foods. Finally, new definitions for “conventional eggs,” “eggs,” and “specialty eggs” are added, and subrule 73.8(3) is amended to incorporate the language in Iowa Code section 135.16A that requires grocery vendors participating in the WIC Program to stock conventional eggs. These changes will help to ensure that participants have the best variety and availability of WIC-eligible foods possible.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver and variance provisions contained in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Kimberly Stanek
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: kimberly.stanek@idph.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 641—73.2(135) as follows:

641—73.2(135) Adoption by reference. Federal regulations in 7 CFR Part 246 found at <http://www.fns.usda.gov/sites/default/files/wic/WICRegulations-7CFR246.pdf> www.gpo.gov/fdsys/pkg/CFR-2018-title7-vol4/pdf/CFR-2018-title7-vol4-part246.pdf (effective as of February 13, 1985, as amended through January 1, 2016)

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2018, and any additional amendments), WIC EBT operating rules found at <http://www.fns.usda.gov/sites/default/files/wic/WIC-EBT-Operating-Rules-September-2014.pdf> (effective as of November 2009, as amended through September 2014, and any additional amendments), the WIC EBT technical implementation guide found at <http://www.fns.usda.gov/sites/default/files/WICEBT-TechnicalImplementationGuide.pdf> (as amended through September 30, 2012, and any additional amendments), FNS Handbook 901 v2 found at <http://www.fns.usda.gov/sites/default/files/2015-08-26-FNS-Handbook%20901-v1-8-1.pdf> http://www.fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_Internet_Ready_Format.pdf (as amended through ~~May 28, 2015~~ January 2017, and any additional amendments), and FNS Instruction 113-1 found at <http://www.fns.usda.gov/sites/default/files/113-1.pdf> (effective as of November 8, 2005, and any additional amendments) shall be the authority for rules governing the Iowa WIC program and are incorporated by reference herein. The Iowa WIC Policy and Procedure Manual, which provides procedural guidance in the implementation of these regulations to contract agencies administering the WIC programs and which contains policies and procedures as approved by the United States Department of Agriculture, is incorporated herein by reference.

ITEM 2. Amend rule 641—73.3(135) as follows:

641—73.3(135) Availability of rules and policy and procedure manual. Copies of the federal rules and the Iowa WIC Policy and Procedure Manual adopted by reference in 641—73.2(135) are available from: Chief, Bureau of Nutrition and ~~Health Promotion~~ Physical Activity, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; (515)281-7095 or 1-800-532-1579.

ITEM 3. Amend rule **641—73.4(135)**, definitions of “Nutrition education,” “Postpartum woman,” “Vendor overcharge,” “Vendor violation,” “WIC program” and “WIC Vendor Instructions and Agreement Booklet,” as follows:

“*Nutrition education*” means an individual or group education session and the provision of ~~information and educational~~ materials designed to improve health status, achieve positive change in dietary and physical activity habits, and emphasize relationships between nutrition, physical activity, and health, all in keeping with the individual’s personal, and cultural, ~~and socioeconomic~~ preferences of the individual.

“*Postpartum woman*” means a woman up to six months ~~postpregnancy who is not breastfeeding~~ after termination of pregnancy.

“*Vendor overcharge*” means intentionally charging the department more for authorized supplemental foods than is permitted under the WIC vendor agreement. It is not a vendor overcharge when a vendor submits a food instrument for redemption and the department makes a price adjustment to the food instrument.

“*Vendor violation*” means any intentional or unintentional action of a vendor’s current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the WIC vendor agreement or federal or state statutes, regulations, policies, or procedures governing the WIC program.

“*WIC program*” means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786.

“*WIC Vendor Instructions and Agreement Booklet*” means the grocery vendor application, grocery vendor application guidance, special purpose vendor application, special purpose vendor application guidance, and ~~vendor agreement~~ WIC Vendor Agreement and Handbook.

ITEM 4. Adopt the following **new** definitions of “Conventional eggs,” “Dual participation,” “Eggs,” “Exempt infant formula,” “Participant violation,” “Proxy,” “Specialty eggs,” “WIC-eligible nutritionals” and “WIC vendor agreement” in rule **641—73.4(135)**:

“*Conventional eggs*” means eggs other than specialty eggs.

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“Dual participation” means simultaneous participation in the WIC program in one or more than one WIC clinic, or participation in the WIC program and in the commodity supplemental food program (CSFP) during the same period of time.

“Eggs” means shell eggs that are graded as “AA,” “A,” or “B” pursuant to 7 CFR Part 56, Subpart A, and that are sold at retail in commercial markets.

“Exempt infant formula” means an infant formula that meets the requirements for an exempt infant formula under Section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR Parts 106 and 107.

“Participant violation” means any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates federal or state statutes, regulations, policies, or procedures governing the WIC program. Participant violations include, but are not limited to, deliberately making false or misleading statements or deliberately misrepresenting, concealing, or withholding facts to obtain benefits; selling or offering to sell WIC benefits, including cash-value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or online; exchanging or attempting to exchange WIC benefits, including cash value vouchers, food instruments, EBT cards, or supplemental foods for cash, credit, services, nonfood items, or unauthorized food items, including supplemental foods in excess of those listed on the participant’s food instrument; threatening to harm or physically harming clinic, farmer, or vendor staff; and dual participation.

“Proxy” means any person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain and transact food instruments or cash-value vouchers or to obtain supplemental foods on behalf of a participant.

“Specialty eggs” means eggs produced by domesticated chickens, and sold at retail in commercial markets, if the chickens producing such eggs are advertised as being housed in any of the following environments:

1. Cage-free.
2. Free-range.
3. Enriched colony cage.

“WIC-eligible nutritionals” means certain enteral products that are specifically formulated to provide nutritional support for individuals with a qualifying condition, when the use of conventional foods is precluded, restricted, or inadequate. Such WIC-eligible nutritionals must serve the purpose of a food, meal or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding; and may not be a conventional food, drug, flavoring, or enzyme. WIC-eligible nutritionals include many, but not all, products that meet the definition of medical food in Section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

“WIC vendor agreement” means the WIC Vendor Agreement and Handbook.

ITEM 5. Amend subrule 73.5(1) as follows:

73.5(1) The competent professional authority (CPA) shall conduct ~~either the diet history or the health history part of the certification process or both histories~~ the nutrition interview and shall attest to the applicant’s eligibility for services after the certification process is completed.

ITEM 6. Amend subrule 73.6(3) as follows:

73.6(3) *Time frame for services.*

a. The date of initial visit shall be the day on which an applicant first requests services from a contract agency. A visit to another WIC program office to complete a common application form does not constitute an initial visit.

b. Pregnant women shall be certified for the duration of their pregnancy and for up to six weeks postpartum. Pregnant women precertified with referral data require a full certification within 30 days.

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~~c. Priority II infants precertified with referral data require a full certification within 30 days of the infant's birth.~~

ITEM 7. Amend paragraph 73.7(1)"b" as follows:

b. *Claiming food instruments and benefits.* Enrolled participants are required to appear in person to claim food instruments and benefits when they have appointments to certify or have face-to-face, scheduled nutrition education contacts. ~~Missed attendance may entitle contract agencies to deny that month's benefit.~~ Enrolled participants who complete their nutrition education contacts via a state-approved Internet nutrition education platform are not required to appear in person to claim food instruments and benefits. A proxy may pick up food instruments as described in the Iowa WIC Policy and Procedure Manual.

ITEM 8. Amend paragraph 73.7(2)"b" as follows:

b. *Mailing of WIC food instruments.* Mailing of food instruments to participants is allowed only in specific situations as described in the Iowa WIC Policy and Procedure Manual. Any mailing of WIC food instruments ~~on a clinicwide basis~~ must have prior approval from the state.

ITEM 9. Amend paragraph 73.7(4)"a" as follows:

a. *Grocery WIC vendor agreement.* To qualify for a grocery WIC vendor agreement with the Iowa WIC program, a retail outlet shall meet all of the following criteria:

(1) to (6) No change.

(7) A vendor shall charge a price to WIC participants that is equal to or less than the price charged to all other customers. ~~The prices charged to WIC participants for the average of all WIC items, as reported on the application, at the time of the on-site review, and throughout the agreement period, shall not exceed 105 percent of the average prices of all other WIC vendors in the same peer group.~~ The vendor's average price for any category of WIC items, as reported on the application, at the time of the on-site review, and throughout the agreement period, shall not exceed 115 percent of the average price charged for the same category by all other WIC vendors in the same peer group. Categories refer to the broad groupings of items rather than specific brands. For purposes of making the price comparisons, the average price for all other WIC vendors in the peer group shall be computed from the most recent Price Assessment Reports on file from those vendors. If a vendor intends to comply with this provision by charging WIC participants a lower price than the price charged to other customers, the WIC price for each approved item must be identified on the package or shelf front.

(8) to (15) No change.

ITEM 10. Amend paragraph 73.7(4)"d" as follows:

d. *Reauthorization.* If ownership of an authorized vendor changes during the agreement period, the agreement becomes void. The new owner must file an application and be approved prior to accepting WIC food instruments. ~~Vendor agreements are~~ The WIC vendor agreement is valid only for the period of time specified, and a vendor may not continue accepting food instruments past the expiration date unless a new agreement is signed. When a currently authorized vendor makes application for a subsequent agreement, an agreement shall be signed only if the vendor has been assessed less than 60 violation points under paragraph 73.19(2)"b" during a contract period.

Vendors must complete a new application and sign a new WIC vendor agreement at least every three years to continue accepting WIC food instruments.

The department shall send the vendor written notice at least 30 days prior to the expiration of the agreement that it does not intend to offer the vendor a new agreement if the vendor has been assessed 60 or more violation points under paragraph 73.19(2)"b" during a contract period or if any of the following conditions are in effect:

(1) No change.

(2) Any of the selection criteria listed in 73.7(4)"a" and "b" above are no longer met.

Expiration of a WIC vendor agreement is not subject to appeal. A vendor who is not offered a new agreement by the department has the right to file a new application. If that application is denied, the vendor has the right to appeal.

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ITEM 11. Amend paragraph 73.7(5)“a” as follows:

a. Routine or representative monitoring is used for vendors for which there is no record of violations or complaints or other indication of problems. It may include any or all of the following: use of a food instrument or observation of a participant, educational buys, review of inventory levels, review of vendor policies on return items, and review of employee training procedures. The results of the monitoring are reviewed with the owner or manager on duty, and a follow-up letter confirming the findings is sent from the department. Routine monitoring may be performed by the department or by contract agency staff under the direction of the department. Depending on the nature and severity of violations noted, the department may schedule additional visits, initiate a compliance investigation, or apply sanctions.

Educational buy monitoring is a specialized type of routine monitoring. Department or contract agency staff attempt to use a WIC food instrument to purchase unauthorized types or brands of foods to test the level of training of vendor employees. At the conclusion of the transaction, the results of the buy are discussed with the vendor owner or manager on duty. ~~The transaction is then voided, and the merchandise returned to the shelves.~~ After an educational buy is conducted, the purchased food may be donated. Educational buys are used on authorized vendors selected by the department. If unauthorized items are allowed to be purchased, the vendor shall agree to a corrective action training plan. A follow-up educational buy is scheduled within 30 to 90 days. A letter is sent from the department documenting the violation. By signing a WIC vendor agreement, a vendor gives consent for educational buys by the department or contract agency. Vendors are not notified in advance that an educational buy is scheduled. The protocol for educational buys, including procedures, appropriate items to purchase, and forms to be used, is specified in the Iowa WIC Policy and Procedure Manual.

ITEM 12. Amend subrule 73.8(3) as follows:

73.8(3) *Criteria for approving products for inclusion in the WIC food package.*

a. and b. No change.

c. ~~Changes to the approved food list take effect on October 1 in years when new vendor contracts are signed. Inquiries from food companies about new and continuing products must be received prior to February 1 of the year vendor contracts expire to be guaranteed consideration can be submitted at any time. Food items that are required to be listed by brand on the approved food list will be reviewed and approved on a quarterly basis. Food items that are not required to be listed by brand on the approved food list will be reviewed and approved as they are received.~~ The state reserves the right to change the food list more frequently if necessary.

d. Cereals shall meet federal guidelines for content and shall also meet the following conditions:

~~(1) If a group of cereals from one manufacturer have similar names and package designs and some of the cereals do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants.~~

~~(2) (1) The brand is carried by current Iowa WIC-approved vendors. Any private-label (store) brands that meet the selection criteria will also be considered.~~

~~(3) (2) The department reserves the right to limit the number of approved cereals for administrative efficiency.~~

e. Juices shall meet the federal guidelines for vitamin C content and all of the following conditions:

(1) Juices are 100 percent juice and contain no added sugar, sweeteners or artificial sweeteners.

~~(2) The brand is carried by current Iowa WIC-approved vendors. Any private-label (store) brands that meet the selection criteria will also be considered.~~

~~(3) The product form and marketing approach are consistent with the promotion of good nutrition and education.~~

~~(4) If a group of juices from one manufacturer have similar names and package designs and some of the juices do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants. Single-strength and concentrated varieties of juice with the same brand name will be evaluated separately.~~

~~(5) Frozen fruit juices must be single flavors.~~

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- f.* The following conditions apply to dairy products:
- (1) to (3) No change.
 - (4) Yogurt shall meet federal guidelines for content and shall also meet the following conditions:
 1. The brand or any private-label (store) brand is carried by current Iowa WIC-approved vendors.
 2. Nonfat, lowfat, and whole yogurts cannot contain artificial sweeteners. No frozen yogurt, yogurt tubes, or drinkable yogurts are allowed.
- g.* and *h.* No change.
- i.* Eggs shall be fresh, Grade A large chicken eggs. Eggs which have a retail value of 115 percent or higher than the state average for this product shall may not be approved.
- j.* If a vendor offers specialty eggs for retail sale, the vendor shall maintain an inventory of conventional eggs for retail sale sufficient to meet federal and state requirements for participation in the WIC program.
- ~~*k.*~~ *k.* Any brand of tuna or salmon qualifies if it is either water- or oil-packed, in cans or pouches, chunked, solid, or flaked. Fish packaged with other items such as crackers, relish or other flavorings may not be purchased. Albacore tuna is not allowed.
- ~~*l.*~~ *l.* Commercial infant formula shall meet the following conditions:
- (1) to (4) No change.
- ~~*m.*~~ *m.* At least two whole grain options that meet federal guidelines will be provided.
- ~~*n.*~~ *n.* Infant food fruits, vegetables and meats must meet the federal guidelines.
- ~~*o.*~~ *o.* Fresh and frozen vegetables and fruits that meet federal guidelines will be available for purchase with cash-value benefits specifically for fruits and vegetables.
- ~~*p.*~~ *p.* Soy beverages shall meet federal guidelines.
- ~~*q.*~~ *q.* Tofu shall meet federal guidelines.
- ~~*r.*~~ *r.* Products will be evaluated for use in the Iowa WIC program based on nutrient content, packaging, container size, labeling, availability to wholesale distributors, cost and participant preference. The state reserves the right to limit the number of foods, infant formulas, exempt infant formulas, and WIC-eligible nutritionals for the WIC-approved food list based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, changes in appropriation of funds and administrative efficiency.
- s.* The approved food list provides more specifics on what is allowed or not allowed for each of the WIC-approved foods.
- ~~*t.*~~ *t.* In addition to the criteria specified above, the department reserves the right to further restrict the number and types of brands of any products in order to contain the cost of the food package through competitive procurement of rebate contracts or other similar means.
- ~~*u.*~~ *u.* The department reserves the right to discontinue specific brand names and products if the cost is 115 percent or more higher than the state average for that particular product. ~~The department reserves the right to add or delete products pursuant to federal regulations.~~
- v.* If a group of food products within a food category from one manufacturer have similar names and package designs and some of the food products do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants.
- w.* The department reserves the right to make changes to the criteria for approving products for inclusion in the WIC food package.
- x.* The department reserves the right to add or delete products pursuant to federal regulations.
- ITEM 13. Amend paragraph **73.9(1)“c”** as follows:
- c.* Nutrition education shall be based on information obtained through the ~~diet and health histories~~ nutrition interview and shall be tailored to the specific nutrition need of the participant.

ITEM 14. Amend rule 641—73.12(135) as follows:

641—73.12(135) Right to appeal—participant.

73.12(1) and **73.12(2)** No change.

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73.12(3) *Request for hearing.* A request for hearing by an individual or the individual's parent, guardian, or other representative must be made in writing or verbally. The request for hearing shall be made to the contract agency within ~~90~~ 60 days from the date the individual receives notice of the decision or action that is the subject of appeal.

73.12(4) *Denial or dismissal of request.* The request for hearing shall not be denied or dismissed unless:

- a. The request is not received within the required time frame;
- b. The request is withdrawn in writing by the appellant or a representative of the appellant; or
- c. The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to WIC program eligibility have changed in such a way as to justify a hearing.

~~**73.12(4)**~~ **73.12(5)** *Receipt of benefits during appeal.* ~~Participants who are involuntarily terminated from the WIC program prior to the end of the standard certification period shall continue to receive WIC program benefits while the decision to terminate is under administrative appeal, provided that subsequent certifications are completed as required. Participants who appeal the termination of benefits within the 15-day advance adverse action notice period must continue to receive WIC program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first, provided that subsequent certifications are completed as required. Participants who are terminated because of categorical ineligibility (e.g., a child over five years of age) shall not continue to receive benefits during the administrative appeal period. Participants who are terminated at the end of a certification period for failure to reapply, following notice of expiration of certification, shall not continue to receive benefits during the administrative appeal period. Applicants who are denied WIC program benefits at the initial certification or at subsequent recertifications, due to a finding of ineligibility, shall not receive benefits during the administrative appeal period.~~

~~**73.12(5)**~~ **73.12(6)** *Hearing officer.* The hearing officer shall be impartial, shall not have been directly involved in the initial determination of the action being contested, and shall not have a personal stake in the decision. If the party filing the appeal objects prior to a scheduled hearing to a contract agency director serving as a hearing officer in a case involving the director's own agency, another hearing officer shall be selected and, if necessary, the hearing shall be rescheduled as expeditiously as possible. Contract agencies may seek the assistance of the state WIC office in the appointment of a hearing officer.

~~**73.12(6)**~~ **73.12(7)** *Notice of hearing.* The hearing officer shall schedule the time, place and date of the hearing as expeditiously as possible. Parties shall receive notice of the hearing at least ten days in advance of the scheduled hearing. The hearing shall be accessible to the party requesting the hearing. The hearing shall be scheduled within three weeks from the date the contract agency received the request for a hearing, or as soon as possible thereafter, unless a later date is agreed upon by the parties.

~~**73.12(7)**~~ **73.12(8)** *Conduct of hearing.* The hearing shall be conducted in accordance with federal regulations found at 7 CFR 246.23. Copies of these regulations are available from the contract agency and the department.

- a. and b. No change.

~~**73.12(8)**~~ **73.12(9)** *Decision.* Decisions of the hearing officer shall be in writing and shall be based on evidence presented at the hearing. The decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations or policy. The decision shall be issued within 45 days of the receipt of the request for a hearing, unless a longer period is agreed upon by the parties.

~~**73.12(9)**~~ **73.12(10)** *Appeal of decision to the department.* If either party to a hearing receives an unfavorable decision, that decision may be appealed to the department. Such appeals must be made within 15 days of the mailing date of the decision. Appeals shall be sent to the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

~~**73.12(10)**~~ **73.12(11)** *Contested case.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the Iowa department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The

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information upon which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to the Iowa department of inspections and appeals.

73.12(12) *Receipt of benefits during appeal to the department.* If the decision being appealed concerns disqualification from the WIC program, the appellant shall not continue to receive benefits while an appeal to the department of a decision rendered on appeal at the local level is pending.

73.12(11) **73.12(13)** *Hearing.* Parties shall receive notice of the hearing in advance. The administrative law judge shall schedule the time, place and date of the hearing so that the hearing is held as expeditiously as possible. The hearing shall be conducted according to the procedural rules of the Iowa department of inspections and appeals found in 481—Chapter 10, ~~Iowa Administrative Code~~.

73.12(12) **73.12(14)** *Decision of administrative law judge.* The administrative law judge's decision shall be issued within 60 days from the date of request for hearing. When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final decision without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule ~~73.12(13)~~ **73.12(15)**.

73.12(13) **73.12(15)** *Appeal to director.* Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

73.12(14) **73.12(16)** *Record of hearing.* Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. to f. No change.

73.12(15) **73.12(17)** *Decision of director.* An appeal to the director shall be based on the record of the hearing before the administrative law judge. The decision and order of the director becomes the department's final decision upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

73.12(16) **73.12(18)** *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

73.12(17) **73.12(19)** *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

73.12(18) **73.12(20)** *Benefits after decision.* If a final decision is in favor of the person requesting a hearing and benefits were denied or discontinued, benefits shall begin immediately and continue pending further review should an appeal to district court be filed. If a final decision is in favor of the contract agency, benefits shall be terminated, if still being received, as soon as administratively possible after the issuance of the decision. Benefits denied during an administrative appeal period may not be awarded retroactively following a final decision in favor of a person applying for benefits.

ITEM 15. Amend subrule 73.13(1), introductory paragraph, as follows:

73.13(1) *Right of appeal.* The right of appeal shall be granted when a vendor's application to participate is denied. The right to appeal shall also be granted when, during the course of the contract or agreement period, a vendor is disqualified or any other action which affects participation is taken. For

PUBLIC HEALTH DEPARTMENT[641](cont'd)

participating vendors, a minimum of ~~30~~ 15 days' advance notice will be given before the effective date of the action. The right to appeal shall not be granted in the following circumstances:

ITEM 16. Amend subrule 73.19(1) as follows:

73.19(1) Participant violation. Violations may be ~~detected~~ reported by contract agency staff, by vendors, the public, FNS staff, or by department staff. ~~Information obtained by the department is forwarded to the contract agency for appropriate action.~~ All suspected cases of fraud will be investigated by the department. All sanctions will be administered by the department. Contract agencies will be notified of any actions taken against WIC participants by the department.

a. Whenever possible, the participant is ~~counseled in person~~ contacted via telephone concerning the violation. Documentation is maintained according to procedures set forth in the Iowa WIC Policy and Procedure Manual.

b. Participants who violate WIC program regulations are subject to sanction in accordance with the schedule below:

Violation	Points Per Event
1. Attempting to purchase unauthorized brands/types of foods (i.e., incorrect brands of cereal, juices, etc.).	3
2. Attempting to cash food instruments outside of valid dates.	4
3. Attempting to redeem WIC food instruments at an unauthorized vendor.	4
4. Redeeming WIC food instruments that were reported as lost or stolen.	5
5. Attempting to purchase more than the quantity of foods specified in the food benefits.	5
6. Verbal abuse or harassment of WIC or vendor employees.	5
7. Verbal abuse or harassment on social media.	5
8. Threat of physical abuse of WIC or vendor employees.	10
9. Threat of physical abuse of WIC or vendor employees on social media.	10
10. Attempting to sell, return, or exchange foods for cash or credit.	10
11. Attempting to purchase unauthorized (non-WIC) foods, such as meat, canned goods, etc.	10
12. Attempting to purchase items that are not food.	10
13. Sale or exchange of WIC food instruments for cash or credit or giving away WIC foods.	10
14. Attempting to redeem food instrument issued to another participant.	10
15. Receiving more than one set of benefits for the same time period.	10
16. Knowing and deliberate misrepresentation of circumstances to obtain benefits (resulting in a false determination of eligibility).	10
17. Attempting to steal WIC food instruments from a contract agency or participant.	10
18. Physical abuse of WIC contract agency or vendor employees.	10
19. Attempting to pick up food instruments for a child that is not currently in their care.	10
20. Other violations of this chapter or the Iowa WIC Policy and Procedure Manual.	

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ViolationSanction Action

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|----|--|--|
| 1. | <u>Intentional false statement(s) or misrepresentation of income, name, residence, family size (including receiving and using benefits for children no longer in the family), medical data, pregnancy, and/or date of birth to obtain WIC benefits.</u> | <u>One-year disqualification and pay full restitution</u> |
| 2. | <u>Return of WIC foods to vendor for unapproved food items, nonfood items, credit or cash (attempted or actual). Claim amount less than \$100.</u>

<u>Buy, trade, exchange, transfer, sell, or offer to buy, trade, exchange, transfer, sell, or allow any other person to buy, trade, exchange, transfer, sell or offer to buy, trade, exchange, transfer or sell eWIC card/benefits for unapproved food items, nonfood items, cash or favors. Claim amount less than \$100.</u> | <u>Two-month disqualification and pay full restitution</u>

<u>Subsequent violation of any claim amount: one-year disqualification and pay full restitution</u> |
| 3. | <u>Return of WIC foods to vendor for unapproved food items, nonfood items, credit or cash (attempted or actual). Claim amount greater than \$100.</u>

<u>Buy, trade, exchange, transfer, sell, or offer to buy, trade, exchange, transfer, sell or allow any other person to buy, trade, exchange, transfer, sell or offer to buy, trade, exchange, transfer, or sell WIC foods for unapproved food items, nonfood items, cash or favors. Claim amount greater than \$100.</u> | <u>One-year disqualification and pay full restitution</u> |
| 4. | <u>Creating a public nuisance or disrupting normal activities through verbal misconduct or physical disruptions at the local WIC agency, farmers market, or vendor location.</u> | <u>First violation: Education/counseling</u>
<u>Second subsequent violation: Warning letter</u>

<u>Third subsequent violation: Two-month disqualification</u>

<u>Fourth subsequent violation: Any subsequent violation(s) will result in a one-year disqualification.</u> |
| 5. | <u>Verbal abuse or harassment of WIC staff, vendors, farmers market vendors and/or other WIC participants. This includes verbal abuse or harassment in person, on social media, or over the telephone.</u> | <u>Two-month disqualification</u>

<u>Subsequent violation will result in a one-year disqualification.</u> |

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- | | | |
|-----|--|--|
| 6. | <u>Physical abuse (directly or indirectly carrying out the actual harm or threatening to do harm) of WIC staff, vendors, vendor staff, farmers market vendors, farmers market vendor staff, and/or other WIC participants.</u> | <u>Any violation will result in a one-year disqualification.</u> |
| 7. | <u>Destruction of property, theft of eWIC card(s) or theft from a local WIC agency, vendor, vendor staff, farmers market vendor, farmers market vendor staff, and/or another WIC participant.</u> | <u>Any violation will result in a one-year disqualification.</u> |
| 8. | <u>Collusion with staff to improperly obtain benefits.</u> | <u>One-year disqualification and pay full restitution</u> |
| 9. | <u>Dual participation resulting from intentional misrepresentation.</u> | <u>One-year disqualification and pay full restitution</u> |
| 10. | <u>Trafficking WIC food benefits, WIC benefits, or WIC items and/or collusion with an authorized vendor.</u> | <u>One-year disqualification and pay full restitution</u> |
| 11. | <u>Other violations of this chapter or the Iowa WIC Policy and Procedure Manual.</u> | <u>As appropriate per this chapter or the Iowa WIC Policy and Procedure Manual</u> |

~~e. The accumulation of 10 violation points within a 12-month period will result in a 2-month disqualification.~~

~~The accumulation of 10 additional violation points within a 12-month period following the disqualification will result in a 3-month disqualification. The participant must then reapply for the WIC program and be scheduled for a certification.~~

c. Local law enforcement may be notified in appropriate cases.

d. Fifteen days' notice must be given prior to all disqualifications. In all cases, the participant must be informed of the reason for the disqualification, of the right to appeal the decision through the fair hearing process, and of eligibility to reapply for the WIC program receive WIC services at the end of the disqualification period.

e. A disqualification generally applies may apply to all members of a family who are on the WIC program. The competent professional authority may waive the disqualification for one or more members of the family if it is determined that a serious health risk may result from WIC program disqualification. The reason for this waiver must be documented in the participant's file.

f. Violations are cumulative. However, a participant will not have sanctions assessed for committing a second violation when the second violation occurs before the participant receives notice of the first violation and the second violation is the same as the first. A participant who commits the same violation a second time following receipt of a notice for the first violation is subject to a one-year disqualification.

g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement statement(s) or intentionally misrepresenting, concealing, or withholding facts, the department shall collect the cash value of the improperly used food instruments or sells or attempts to sell benefits the participant received from the WIC program and is disqualified from the WIC program, the participant may be required to make restitution of the cash value of the improperly received or used WIC benefits. Collection of overpayment is not required when the department determines it is not cost effective to do so The department may establish a claim against the participant for the full value of the improperly received benefits.

~~The contract agency department shall issue a written notice of restitution and disqualification. The written notice lists the serial numbers and dollar value of the food instruments for which payment is required.~~

~~The participant is required to surrender any unspent food instruments and send payment to the department in check or money order for those food instruments that have been cashed.~~

If the participant chooses a repayment plan for claims, the department will assist in developing a payment schedule. If the participant has not paid the department directly within 30 days of the notice

PUBLIC HEALTH DEPARTMENT[641](cont'd)

of restitution and disqualification, the department will pursue collection of the dollar amount owed and benefits will be discontinued until the claim is paid.

h. The department may decide not to impose a mandatory disqualification if a family makes full restitution for a monetary claim, establishes a repayment schedule within 30 days of receipt of the letter demanding repayment, makes full restitution or agrees to a repayment schedule or, in the case of a participant who is an infant, a child, or under the age of 18, the state or local agency approves the designation of a proxy. The department may permit the participant to receive WIC services before the end of a mandatory disqualification period if full restitution is made or a repayment schedule is agreed upon or, in the case of a participant who is an infant, a child, or under the age of 18, the department or local agency approves the designation of a proxy. All decisions are at the discretion of the department.

i. When a disqualification period has ended, the individual disqualified may be reinstated if the individual's certification period is still current. If the individual's certification period is not current, the individual will need to complete a certification appointment.

~~*h. j.* Each contract agency~~ The department shall maintain a master list of all participant violation notices, disqualifications, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

ITEM 17. Amend paragraph **73.19(2)“b”** as follows:

b. Administrative and procedural violation points. Administrative and procedural violations are offenses to the provisions of the WIC vendor agreement that do not rise to the level of fraud against the WIC program or its participants.

These violations are an indication of a vendor's inattention to or disregard of the requirements of a the WIC vendor agreement. It is in the department's interest to record and consider these violations when considering whether to continue its contractual relationship with the vendor.

One or more transactions prior to notification of the vendor constitute only one violation if they contain the same error.

The assignment of violation points does not limit the department's right to effect stronger penalties and sanctions in cases in which there is evidence of an intentional or systematic practice of abusing or defrauding the Iowa WIC program.

Violation	Points Per Event
1. Developing and using promotional materials including stickers, tags, labels, or channel strips with the WIC service mark to identify WIC-approved foods.	5
2. Developing and using vendor-created WIC vendor identification decals to indicate vendor is an authorized vendor.	5
3. Failure to allow WIC participants to leave the vendor with WIC foods that were debited/removed from their eWIC account during a WIC transaction.	5
4. Failure to post eWIC signs in the cash register lane that has a working WIC terminal if the vendor is not integrated.	5
5. Failure to provide vendor ECR system participant receipts to WIC participants during each WIC transaction.	5
6. Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument.	10
7. Refusal to accept valid WIC food instruments from participants.	10
8. Discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification, or disallowing the use of coupons or other vendor discounts in WIC transactions that are allowed in non-WIC transactions.	10
9. Treating WIC customers differently by offering them incentive items, vendor discounts, coupons, or other promotions that are not offered to non-WIC customers.	10
10. Providing to WIC participants incentive items not prior authorized by the department.	10

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Violation	Points Per Event
11. Failure to carry out corrective action plan developed as a result of monitoring visit.	10
12. Accepting the return of food purchased with WIC food instruments for cash or credit toward other purchases.	10
13. Issuing "rain checks" or credit in exchange for WIC food instruments.	10
14. Stocking out-of-date, stale, or moldy WIC foods.	10
15. Failure to submit vendor price assessment reports as requested.	10
16. Failure to train all employees and ensure their knowledge regarding WIC program procedures set forth in the vendor's current agreement and in the current publication of the Iowa WIC program's vendor instruction booklet.	10
17. Requiring WIC participants to purchase a particular brand when other WIC-approved brands are available.	10
18. Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount.	10
19. Requiring to enter the PIN for the participant and/or asking for the participant's PIN.	10
20. For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package.	15
21. Contacting WIC participants in an attempt to recover funds not paid by WIC.	15
22. Providing false information on the price assessment report.	15
23. Knowingly entering false information or altering information on the eWIC receipt/benefits.	10
24. Requiring other cash purchases to redeem WIC food instruments.	15
25. Failure to obtain infant and/or special needs formula from an approved source listed by the <u>State Iowa</u> WIC program.	15
26. Offering incentive items with a value of more than \$1.99.	15
27. Scanning any UPC code that is not affixed to the actual item being purchased by the WIC participant.	20
28. Failure to allow purchase of up to the full amount of WIC foods authorized on the food instrument if such foods are available and desired by the WIC participant.	20
29. Other violations of this chapter or the <u>WIC</u> vendor agreement or the Iowa WIC Policy and Procedure Manual.	<u>As appropriate per this chapter, the WIC Vendor Agreement and Handout, or the Iowa WIC Policy and Procedure Manual</u>

ITEM 18. Amend paragraph **73.19(2)"g"** as follows:

g. The following ~~items do~~ does not have a point value, but shall result in or extend a disqualification period:

(1) ~~Failure to return WIC vendor stamp(s) to the WIC program within ten days of effective date of disqualification, or expiration of agreement following denial of subsequent application, shall result in a 30-day extension of a disqualification period.~~

(2) For each month in which a vendor accepts WIC food instruments during a disqualification period, the disqualification period shall be extended by 30 days.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 19. Amend rules 641—73.23(135) and 641—73.24(135) as follows:

641—73.23(135) Grant application procedures for contract agencies. Private, nonprofit or public agencies wishing to provide WIC services ~~shall~~ may be required to file a letter of intent to make application to the department no later than April 1 of the competitive year. Applications shall be to administer WIC services for a specified project period, as defined in the request for proposal, with an annual continuation application. The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are considered public records in accordance with Iowa Code chapter 22, after a notice of award is made by the department. Notification of the availability of funds and grant application procedures will be provided in accordance with the department rules found in 641—Chapter 176.

Contract agencies are selected on the basis of the grant applications submitted to the department. The department will consider only applications from private, nonprofit or public agencies. ~~In the case of competing applications, the contract will be awarded to the agency that scores the highest number of points in the review.~~ Copies of review criteria are available from: Chief, Bureau of Nutrition and ~~Health Promotion~~ Physical Activity, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; (515)281-7095 or 1-800-532-1579.

641—73.24(135) Participant rights. The ~~special—supplemental—nutrition~~ WIC program ~~for women, infants and children~~ shall be open to all eligible persons regardless of race, color, sex, creed, age, mental/physical handicap or national origin. The USDA Nondiscrimination Statement can be found on the following USDA ~~Web—site~~ website: <http://www.fns.usda.gov/sites/default/files/cr/Nondiscrimination-Statement.pdf>.

ARC 4362C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rule making related to local public health services and providing an opportunity for public comment

The Public Health Department hereby proposes to amend Chapter 80, “Local Public Health Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 135.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.11.

Purpose and Summary

The proposed amendments clarify, using simpler language, the definitions for “core public health functions” and “essential public health services,” change the narrowly defined education requirements to the broader category of “health-related field” and make technical changes to clearly ensure the grandfathering of people who already provide services under this chapter.

Fiscal Impact

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

Jobs Impact

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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's variance and waiver provisions contained in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Jill Lange
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: jill.lange@idph.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **641—80.2(135)**, definitions of “Core public health functions” and “Essential public health services,” as follows:

“*Core public health functions*” means the functions of assessment, policy development, and assurance:

1. Assessment means regular collection, analysis, interpretation, and communication of information about health conditions, risks, and assets in a community.

2. Policy development means ~~development~~ formulation, implementation, and evaluation of plans and policies, for public health in general and priority health needs in particular, in a manner that incorporates scientific information and community values in accordance with state public health policy.

3. Assurance means ~~ensuring, by encouragement, regulation, or direct action,~~ that programs and interventions which maintain and improve health are carried out by encouragement, regulation or direct action.

“*Essential public health services*” means activities carried out by the authorized agency fulfilling core public health functions. Essential public health services include:

1. Monitoring health status to identify and solve community health problems.
2. ~~Diagnosing~~ Identifying and investigating health problems and health hazards in the community.
3. Informing, educating and empowering people about health issues.
4. Mobilizing community partnerships and action to identify and solve health problems.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

5. Developing policies and plans that support individual and community health efforts.
6. Enforcing laws and regulations that protect health and ensure safety.
7. Linking people to needed health services and assuring the provision of health care when otherwise unavailable.
8. ~~Assuring~~ Recruiting and maintaining a competent public health and personal health care workforce.
9. Evaluating effectiveness, accessibility, and quality of personal and population-based health services.
10. Researching for new insights and innovative solutions to health problems.

ITEM 2. Amend subrules 80.3(4) to 80.3(6) as follows:

80.3(4) *Coordination of public health services.*

a. The authorized agency is responsible for determining the ability of a job applicant to meet the requirements outlined in the job description. At a minimum, individuals responsible for coordinating public health services shall meet one of the following criteria:

(1) Be a registered nurse (RN) who is licensed to practice nursing in the state of Iowa and who has a recommended minimum of two years of related public health experience; or

(2) Possess a bachelor's degree or higher in ~~public health, health administration, nursing, health and human services,~~ a health-related field or other applicable field from an accredited college or university; or

(3) Be an individual with two years of related public health experience.

b. Individuals who are responsible for the coordination of public health services on or before ~~June 30, 2015~~ January 1, 2019, are exempt from the criteria in paragraph 80.3(4) "*a.*"

80.3(5) *Coordination of home care aide services.*

a. The authorized agency is responsible for determining the ability of a job applicant to meet the requirements outlined in the job description. At a minimum, individuals performing coordination of home care aide services shall meet one of the following criteria:

(1) Be a registered nurse (RN) licensed to practice nursing in the state of Iowa; or

(2) Possess a bachelor's degree or higher in ~~public health, health administration, nursing, health and human services,~~ a health-related field or other applicable field from an accredited college or university; or

(3) Be a licensed practical nurse (LPN) licensed to practice nursing in the state of Iowa; or

(4) Be an individual with two years of related public health experience.

b. Individuals who are responsible for the coordination of home care aide services on or before ~~June 30, 2015~~ January 1, 2019, are exempt from the criteria in paragraph 80.3(5) "*a.*"

80.3(6) *Home care aide services.*

a. The authorized agency shall ensure that each individual assigned to perform home care aide services meets one of the following:

(1) Be an individual who has completed orientation to home care in accordance with agency policy. At a minimum, orientation shall include four hours on the role of the home care aide; two hours on communication; two hours on understanding basic human needs; two hours on maintaining a healthy environment; two hours on infection control in the home; and one hour on emergency procedures. The individual shall have successfully passed an agency written test and demonstrated the ability to perform skills for the assigned tasks; or

(2) Be an individual who possesses a license to practice nursing as an LPN or RN in the state of Iowa.

b. Individuals who were hired under the requirements of Chapter 80 on or before ~~May 16, 2018~~ January 1, 2019, are exempt from the criteria in ~~paragraph~~ paragraphs 80.3(5) "*a.*" and 80.3(6) "*a.*"

c. The authorized agency shall ensure that services or tasks assigned are appropriate to the individual's prior education and training.

d. The authorized agency shall ensure documentation of each home care aide's completion of at least 12 hours of annual in-service (prorated to employment).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- e.* The authorized agency shall establish policies for supervision of home care aides.
- f.* The authorized agency shall maintain records for each consumer. The records shall include:
 - (1) An initial assessment;
 - (2) A plan of care;
 - (3) Assignment of home care aide;
 - (4) Assignment of tasks;
 - (5) Reassessment;
 - (6) An update of the plan of care;
 - (7) Home care aide documentation; and
 - (8) Documentation of supervision of home care aides.

ARC 4363C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

**Proposing rule making related to medical cannabidiol program
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 154, “Medical Cannabidiol Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 124E.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 124E.2, 124E.4 and 124E.11.

Purpose and Summary

The proposed amendments will implement needed updates to the rules to provide proper oversight of the program. These amendments are in response to issues that have become apparent since the program was initiated. Updates include:

- A mechanism to update the list of debilitating conditions when new conditions are approved by the Board of Medicine;
- Revisions to the definitions of “debilitating medical condition,” “plant material” and “stability” and the addition of a definition of “owner”;
- Prohibitions for health care practitioners, including self-certifying, advertising certification services, or accepting remuneration beyond a consultation fee for certifying conditions;
- A mechanism to allow patients and primary caregivers to cancel their registration cards;
- Simplification of labeling requirements for manufacturers and dispensaries; and
- Movement of laboratory testing requirements for manufacturers to the laboratory testing requirements and acceptance criteria document where the requirements can be updated as needed.

Fiscal Impact

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

Jobs Impact

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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's variance and waiver provisions contained in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Randy Mayer
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: randall.mayer@idph.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **641—154.1(124E)**, definitions of “Debilitating medical condition,” “Plant material” and “Stability,” as follows:

“*Debilitating medical condition*” means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:
 - Severe or chronic pain.
 - Nausea or severe vomiting.
 - Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.
5. Crohn's disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
 - Severe or chronic pain.
 - Nausea or severe vomiting.
 - Cachexia or severe wasting.
8. Parkinson's disease.

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9. Untreatable pain.

10. Any medical condition that is recommended by the medical cannabidiol board and adopted by the board of medicine by rule pursuant to Iowa Code section 124E.5 and that is listed in 653—subrule 13.15(1).

~~“Plant material” means any cannabis plant, cutting, trimming, flower, or clone that has roots or that is cultivated with the intention of growing roots of *Cannabis sativa* L. or *Cannabis indica*.~~

~~“Stability” or “stable” means that after storage of an unopened package of medical cannabidiol at a licensed manufacturing facility or dispensary facility, the contents shall not vary in concentrations of THC and CBD by more or less than 15 percent by weight in milligrams per milliliter (mg/ml) for liquids and milligrams per gram (mg/g) for solids from the concentration indicated on the package label than an amount determined by the department and listed in the laboratory testing requirements and acceptance criteria document described in subrule 154.69(1). Thus, after storage, a solid product labeled as containing a concentration of CBD of 10 milligrams per gram shall have a detected concentration of CBD that is no more than 11.50 milligrams per gram and no less than 8.50 milligrams per gram.~~

ITEM 2. Adopt the following **new** definition of “Owner” in rule **641—154.1(124E)**:

“Owner” means a person with a 5 percent or greater ownership interest in a manufacturer or dispensary.

ITEM 3. Amend rule 641—154.2(124E), catchwords, as follows:

641—154.2(124E) Health care practitioner certification—duties and prohibitions.

ITEM 4. Adopt the following **new** subrule 154.2(4):

154.2(4) Health care practitioner prohibitions.

a. A health care practitioner shall not accept, solicit, or offer any form of remuneration from or to any individual, including but not limited to a patient, a primary caregiver, or an employee, financial backer, or principal of a medical cannabidiol manufacturer or dispensary, to certify a patient’s condition, other than accepting a fee for a patient consultation to determine if the patient should be issued a certification of a qualifying debilitating medical condition.

b. A health care practitioner shall not accept, solicit, or offer any form of remuneration from or to any individual, including but not limited to a patient, a primary caregiver, or an employee, financial backer, or principal of a medical cannabidiol manufacturer or dispensary, to certify an individual as a primary caregiver for a patient with respect to the use of medical cannabidiol, other than accepting a fee for a consultation to determine if the individual is a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol.

c. A health care practitioner shall not advertise certifying a qualifying debilitating medical condition as one of the health care practitioner’s services.

d. A health care practitioner shall not certify a qualifying debilitating medical condition for a patient who is the health care practitioner or a family or household member of the health care practitioner.

e. A health care practitioner shall not be designated to act as a primary caregiver for a patient for whom the health care practitioner has certified a qualifying debilitating medical condition.

f. A health care practitioner shall not receive or provide medical cannabidiol product samples.

ITEM 5. Amend subrule 154.3(4) as follows:

154.3(4) Every patient 18 years of age or older must obtain a valid medical cannabidiol registration card to use medical cannabidiol in Iowa. The department may waive this requirement for a patient who is unable to obtain a card because of health, mobility, or other issues as long as the patient has designated a primary caregiver.

ITEM 6. Amend rule 641—154.6(124E) as follows:

641—154.6(124E) Denial and cancellation. The department may deny an application for a medical cannabidiol registration card, or may cancel or direct the department of transportation to cancel a medical cannabidiol registration card, for any of the following reasons:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

1. Information contained in the application is illegible, incomplete, falsified, misleading, deceptive, or untrue.

2. The department or the department of transportation is unable to verify the identity of the applicant from the photo identification or other documentation presented pursuant to paragraph 154.3(1)“d”(2)“3” or 154.4(1)“c”(3)“4.”

3. The applicant violates or fails to satisfy any of the provisions of Iowa Code chapter 124E or these rules.

4. A patient, the patient’s legal guardian, or other person with durable power of attorney requests in writing that the department cancel the patient’s medical cannabidiol registration card.

5. A primary caregiver requests in writing that the department cancel the primary caregiver’s medical cannabidiol registration card.

6. The department becomes aware of the death of a patient or primary caregiver.

ITEM 7. Adopt the following **new** subrule 154.16(7):

154.16(7) Recall of medical cannabidiol products. The department may require a manufacturer to recall medical cannabidiol from dispensaries and patients when there is potential for serious health consequences from use of the products as determined by the department. Situations that may require a recall include but are not limited to:

a. The distribution, sale, or use of the medical cannabidiol creates or poses an immediate and serious threat to human life or health.

b. Other procedures available to the department to prevent or remedy a situation would result in an unreasonable delay that may place the health of patients at risk.

ITEM 8. Amend rule 641—154.17(124E) as follows:

641—154.17(124E) Manufacturer operations.

154.17(1) Operating documents. ~~The operating documents of a manufacturer shall include all of the following:~~

a. A manufacturer shall maintain operating documents that accurately reflect the manufacturer’s standard operating procedures. Upon a request, a manufacturer shall make the operating documents available to the department through secure electronic mail, an electronic file-sharing service, or other secure means.

~~a. b.~~ The operating documents of a manufacturer shall include all of the following:

(1) Procedures for the oversight of the manufacturer, including descriptions of operational and management practices regarding:

(1) 1. The forms and quantities of medical cannabidiol products that are produced at the manufacturing facility;

(2) 2. The methods of planting, harvesting, drying, and storing cannabis;

(3) 3. The estimated types and amounts of all crop inputs used in the production of medical cannabidiol;

(4) 4. The estimated types and amounts of medical cannabidiol waste and plant material waste to be generated;

(5) 5. The disposal methods for all waste materials;

(6) 6. Employee training methods for the specific phases of production;

(7) 7. Biosecurity measures and standard operating procedures used in the production and manufacturing of medical cannabidiol;

(8) 8. Strategies for identifying and reconciling discrepancies in inventory of plant material or medical cannabidiol;

(9) 9. Sampling strategy and quality testing for labeling purposes;

(10) 10. Medical cannabidiol packaging and labeling procedures;

(11) 11. Procedures for recall and market withdrawal of medical cannabidiol;

(12) 12. Plans for responding to a security breach at a manufacturing facility or while medical cannabidiol is in transit to a dispensary;

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- ~~(13)~~ 13. A business continuity plan;
- ~~(14)~~ 14. Records relating to all transport activities; and
- ~~(15)~~ 15. Other information requested by the department.
- ~~b.~~ (2) Procedures to ensure accurate record keeping.
- ~~e.~~ (3) Procedures for the implementation of appropriate security measures to deter and prevent the theft of medical cannabidiol and unauthorized entrance into areas containing medical cannabidiol.
- c. Operating documents may be trade secrets if designated as such by a manufacturer and shall be considered confidential records pursuant to Iowa Code section 22.7(3).

154.17(2) No change.

154.17(3) *Criminal background investigations.*

a. A manufacturer shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history record check.

b. An employee of a manufacturer shall not have been convicted of a disqualifying felony offense and shall be subject to a background investigation conducted by the department of public safety, including but not limited to a national criminal history background check.

c. An applicant or licensed manufacturer shall respond within 30 days to a request from the department or the department of public safety for more information to complete a background investigation and national criminal history background check on an owner, investor, or employee.

154.17(4) No change.

ITEM 9. Amend subrule 154.21(3) as follows:

154.21(3) *Package labeling.*

a. A manufacturer shall ensure that all medical cannabidiol packaging is labeled with the following information:

- (1) The name ~~and address~~ of the manufacturer ~~where the medical cannabidiol was manufactured~~;
- (2) The medical cannabidiol's primary active ingredients, including concentrations of tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic acid. Concentrations of tetrahydrocannabinolic acid and cannabidiolic acid may be omitted if the manufacturer uses chemical decarboxylation or other means to substantially remove the acids from the product prior to testing;
- ~~(3) Directions for use of the product, including recommended and maximum amount by age and weight, if applicable;~~

~~(4) (3) All ingredients of the product shown with common or usual names, including any colors, artificial flavors, and preservatives, listed in descending order by predominance of weight;~~

(4) (3) All ingredients of the product shown with common or usual names, including any colors, artificial flavors, and preservatives, listed in descending order by predominance of weight;

~~(5) (4) Instructions for storage, including light and temperature requirements, if any;~~

~~(6) (5) Product expiration date;~~

~~(7) (6) The date of manufacture and lot number;~~

~~(8) (7) A notice with the statement, including capitalization: "This product has not been analyzed or approved by the United States Food and Drug Administration. There is limited information on the side effects of using this product, and there may be associated health risks and medication interactions. This product is not recommended for use by pregnant or breastfeeding women. KEEP THIS PRODUCT OUT OF REACH OF CHILDREN.";~~

~~(9) (8) The universal warning symbol provided by the department; and~~

~~(10) (9) A notice with the statement: "This medical cannabidiol is for therapeutic use only. Use of this product by a person other than the patient listed on the label is unlawful and may result in the cancellation of the patient's medical cannabidiol registration card. Return unused medical cannabidiol to a dispensary for disposal."~~

b. Labeling text shall not include any false or misleading statements.

c. A package may contain multiple labels if the information required by this rule is not obstructed.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~d. Labeling text font size shall be no smaller than 6 point~~ A manufacturer shall ensure that directions for use of the product, including recommended and maximum amount by age and weight, if applicable, are included with the product.

ITEM 10. Adopt the following **new** subrule 154.24(4):

154.24(4) *Entry into the department's secure sales and inventory tracking system.* Unless otherwise provided in these rules, a manufacturer shall adhere to the following schedule for entering data into the department's secure sales and inventory tracking system.

a. A manufacturer shall enter data in real time for data related to:

- (1) Inventory of plant material, medical cannabidiol, and waste material;
- (2) Transport of plant material, waste material, and laboratory samples; and
- (3) Sales of medical cannabidiol to dispensaries.

b. A manufacturer shall enter data within five business days for data related to:

- (1) Application and use of crop inputs and other solvents and chemicals; and
- (2) Other manufacturing and production records not related to inventory of plant material, medical cannabidiol, and waste material.

ITEM 11. Amend subrule 154.25(2) as follows:

154.25(2) *Record-keeping and tracking requirements* Crop inputs and plant batches.

a. All crop inputs used by a manufacturer must be approved by the department prior to the first application of the input. The manufacturer shall use the department's secure sales and inventory tracking system to maintain an electronic record of all crop inputs ~~for at least five years~~. The record shall include the following:

- (1) The date of input application;
- (2) The name of the employee applying the crop input;
- (3) The crop input that was applied;
- (4) The plants that received the application;
- (5) The amount of crop input that was applied; and
- (6) A copy of or electronic link to the safety data sheet for the crop input applied.

b. At the time of planting, all plants shall be tracked in a batch process with a unique batch number that shall remain with the batch through final processing into medical cannabidiol.

c. A manufacturer shall record any removal of plants from the batch, including the reason for removal, on a record maintained at the manufacturing facility for at least five years.

d. Each batch or part of a batch of cannabis plants that contributes to a lot of medical cannabidiol shall be recorded in the department's secure sales and inventory tracking system or other manifest system.

ITEM 12. Amend paragraph **154.26(3)“b”** as follows:

b. Conduct sampling and testing of all plant material and medical cannabidiol lots using acceptance criteria that are protective of patient health. The sampling and testing results shall be approved by the department and laboratory personnel and shall ensure that lots of medical cannabidiol meet allowable health risk limits for contaminants. Testing of plant material and lots shall occur as follows: described in the laboratory testing requirements and acceptance criteria document described in subrule 154.69(1).

~~(1) At a minimum, testing of lots for cannabinoid potency and all microbiological impurities except microbiological toxins shall occur after packaging but before transport or sale to a dispensary;~~

~~(2) At a minimum, testing of lots for residual solvents and processing chemicals, pesticides, and metals shall occur at the process lot stage. A packaged product that contains medical cannabidiol solely from process lots that passed laboratory testing for residual solvents and processing chemicals, pesticides, and metals does not need to be retested for these analytes provided that solvents and processing chemicals are not used during the processing into the packaged product;~~

~~(3) Testing of lots for residual solvents and processing chemicals shall also occur after packaging but before transport or sale to a dispensary if solvents or processing chemicals are used in the production process after the testing of the process lot has occurred;~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 13. Amend paragraph **154.30(1)“j”** as follows:

j. Failure of a manufacturer's business owner or investors to have a satisfactory result in a background investigation or national criminal history background check conducted by the department of public safety and as determined by the department.

ITEM 14. Adopt the following **new** subrule 154.40(7):

154.40(7) Recall of medical cannabidiol products. The department may require a dispensary to recall medical cannabidiol from the dispensary facility and patients when there is potential for serious health consequences from use of the products as determined by the department. Situations that may require a recall include but are not limited to:

a. The distribution, sale, or use of the medical cannabidiol creates or poses an immediate and serious threat to human life or health.

b. Other procedures available to the department to prevent or remedy a situation would result in an unreasonable delay that may place the health of patients at risk.

ITEM 15. Adopt the following **new** paragraph **154.41(3)“c”**:

c. An applicant or licensed dispensary shall respond within 30 days to a request from the department or the department of public safety for more information to complete a background investigation and national criminal history background check on an owner, investor, or employee.

ITEM 16. Amend subparagraph **154.46(2)“a”(4)** as follows:

(4) Issue a label that contains the following information:

1. The medical cannabidiol tracking number; and

2. ~~The date and time the medication is being dispensed~~ patient's registry identification number;

3. ~~The name and address of the dispensary;~~

4. ~~The patient's registry identification number, name, and date of birth;~~

5. ~~The patient's address; and~~

6. ~~Any specific instructions for use based upon manufacturer or departmental guidelines. Labeling text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.~~

ITEM 17. Adopt the following **new** subparagraph **154.46(2)“a”(5)**:

(5) Ensure the following information, which may be printed on a secondary label or package insert, is issued with dispensed medical cannabidiol:

1. The patient's name;

2. The date and time the medical cannabidiol is dispensed;

3. The name and address of the dispensary;

4. Any specific instructions for use based upon manufacturer guidelines or department rules.

Labeling text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

ITEM 18. Amend subparagraph **154.46(3)“a”(4)** as follows:

(4) Issue a label that contains the following information:

1. The medical cannabidiol tracking number; and

2. ~~The date and time the medication is being dispensed~~ patient's registry identification number;

3. ~~The name and address of the dispensary;~~

4. ~~The patient's registry identification number, name, and date of birth;~~

5. ~~The primary caregiver's registry identification number, name, and date of birth;~~

6. ~~The patient's address; and~~

7. ~~Any specific instructions for use based upon manufacturer or departmental guidelines. Labeling text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.~~

ITEM 19. Adopt the following **new** subparagraph **154.46(3)“a”(5)**:

(5) Ensure the following information, which may be printed on a secondary label or package insert, is issued with dispensed medical cannabidiol:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

1. The patient's name;
 2. The primary caregiver's name;
 3. The date and time the medical cannabidiol is dispensed;
 4. The name and address of the dispensary;
 5. Any specific instructions for use based upon manufacturer guidelines or department rules.
- Labeling text shall not include any false, misleading, or unsubstantiated statements regarding health or physical benefits to the patient.

ITEM 20. Amend paragraph **154.48(2)“a”** as follows:

a. A dispensary shall accept at no charge unused, expired, or unwanted medical cannabidiol from any patient or primary caregiver. A dispensary shall provide all returned medical cannabidiol to the manufacturer for disposal.

ITEM 21. Amend subrule 154.72(1) as follows:

154.72(1) Cannabinoids.

a. For each unique lot of medical cannabidiol, and if asked to do so by a requester for other medical cannabis goods, a laboratory shall, at minimum, test for and report measurements for the following cannabinoid analytes:

- (1) THC;
- (2) THCA;
- (3) CBD; and
- (4) CBDA;
- ~~(5) CBG; and~~
- ~~(6) CBN.~~

b. A laboratory shall report that the primary sample passed or failed THC potency testing if ~~the detected concentration of THC does not exceed 3 percent by weight in milligrams per milliliter (mg/ml) for liquids and milligrams per gram (mg/g) for solids and if the detected concentration of THC does not vary from the manufacturer's labeled concentration by more than 15 percent by weight in mg/ml for liquids and mg/g for solids~~ according to guidance in the laboratory testing requirements and acceptance criteria document described in subrule 154.69(1). Thus, ~~a solid product labeled as containing a concentration of THC of 10 mg/g shall have a detected concentration of THC that is no more than 11.50 mg/g and no less than 8.50 mg/g.~~

~~*c.* A laboratory shall report that the primary sample failed THC potency testing if the detected concentration of THC exceeds 3 percent by weight in mg/ml for liquids and mg/g for solids or if the detected concentration of THC varies from the labeled concentration of THC by more than 15 percent by weight in mg/ml for liquids and mg/g for solids.~~

~~*d. c.* A laboratory shall report that the primary sample passed or failed CBD potency testing if the detected concentration of CBD does not vary from the manufacturer's labeled concentration by more than 15 percent by weight in mg/ml for liquids and mg/g for solids according to guidance in the laboratory testing requirements and acceptance criteria document described in subrule 154.69(1). Thus, a solid product labeled as containing a concentration of CBD of 10 mg/g shall have a detected concentration of CBD that is no more than 11.50 mg/g and no less than 8.50 mg/g.~~

~~*e.* A laboratory shall report that the primary sample failed potency testing if the detected concentration of CBD varies from the labeled concentration of CBD by more than 15 percent by weight in mg/ml for liquids and mg/g for solids.~~

~~*f. d.* For each cannabinoid analyte test, a laboratory shall issue a certificate of analysis that contains the following:~~

~~(1) Concentrations of cannabinoid analytes in mg/ml for liquids and mg/g for solids, or other measures approved by the department.~~

~~(2) Whether the primary sample passed or failed the test in accordance with paragraphs 154.72(1)“b” and 154.72(1)“e.” paragraph 154.72(1)“b.”~~

~~*g. e.* The laboratory may test for and provide test results for additional cannabinoid analytes if asked to do so by a requester.~~

ARC 4360C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action****Proposing rule making related to organization of the department and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 170, “Organization of the Department,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in 2017 Iowa Acts, House File 653, division XXIII, and 2018 Iowa Acts, Senate File 2418, section 110 [Iowa Code section 135.15].

State or Federal Law Implemented

This rule making implements, in whole or in part, 2017 Iowa Acts, House File 653, division XXIII, and 2018 Iowa Acts, Senate File 2418, section 110.

Purpose and Summary

The proposed amendments are minor cleanup actions related to recent legislation. 2018 Iowa Acts, Senate File 2418, section 110, updated the name of the “oral health bureau” to the “oral and health delivery system bureau.” The proposed amendment in Item 1 updates the bureau name. 2017 Iowa Acts, House File 653, division XXIII, removed all references to the Office of Minority and Multicultural Health from the Iowa Code. House File 653 removed the underlying statutory authority for Chapter 82, which was rescinded in 2018. The proposed amendment in Item 2 rescinds the paragraph that refers to that office. The proposed amendment in Item 3 reletters the remaining paragraphs in subrule 170.7(6).

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s variance and waiver provisions contained in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Bob Russell
 Oral and Health Delivery System Bureau
 Department of Public Health
 Lucas State Office Building
 321 East 12th Street
 Des Moines, Iowa 50319
 Email: bob.russell@idph.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **170.7(6)“b”** as follows:

b. The oral and health delivery system bureau, overseen by the public health dental director, promotes and advances health behaviors to reduce the risk of oral diseases and improve the oral health status of all Iowans. Programs are in place targeting pregnant women, children, and youth for the prevention, early identification, referral, and treatment of oral disease.

ITEM 2. Rescind paragraph **170.7(6)“d.”**

ITEM 3. Reletter paragraphs **170.7(6)“e”** to **“h”** as **170.7(6)“d”** to **“g.”**

ARC 4351C

REGENTS BOARD[681]

Notice of Intended Action

Proposing rule making related to traffic and parking at universities and providing an opportunity for public comment

The Board of Regents hereby proposes to amend Chapter 4, “Traffic and Parking at Universities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 262.9 and 262.69.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 262.69.

Purpose and Summary

Currently, subrule 4.71(2) limits sanctions for violations of University of Northern Iowa parking rules to \$50 for each offense. The proposed amendment in Item 1 eliminates the \$50 per-sanction limit in

REGENTS BOARD[681](cont'd)

order to facilitate a more efficient process for operational changes to the system of parking rates. In accordance with existing rules, all proposed parking rates will continue to be subject to University and Board of Regents approval.

The proposed amendment in Item 2 revises subrule 4.71(4) to increase the time period for filing an appeal of a registration violation or parking violation from seven days to ten days. The purpose of the proposed amendment is to deter nonpayment and permit additional time to file an appeal.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 681—19.18(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322-7905
Phone: 515.281.6456
Email: aimee.claeys@iowaregents.edu

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 4.71(2) as follows:

4.71(2) Sanctions. Reasonable monetary sanctions may be imposed upon students, employees, and visitors for violation of vehicle registration or parking rules. The amount of such sanctions, ~~not to exceed \$50 for each offense,~~ shall be established by the university and approved by the state board of regents except sanctions established by statute will be imposed at the current statutory amount. A schedule of all sanctions for improper registration and parking shall be published and available for public inspection

REGENTS BOARD[681](cont'd)

during normal business hours in the office of the supervisor and in the office of the state board of regents. Registration and parking sanctions may be assessed against the owner or operator of the vehicle involved in each violation or against any person in whose name the vehicle is registered or parking privileges have been granted and charged to ~~their~~ that person's university account. Registration and parking sanctions may be added to student tuition bills or may be deducted from student deposits or from the salaries or wages of employees or from other funds in the possession of the university.

ITEM 2. Amend subrule 4.71(4) as follows:

4.71(4) Hearing. Students and employees may have a hearing on any registration or parking violation. A hearing request shall be submitted to the supervisor in writing within ~~seven~~ ten days after notice of the violation was given and shall state the grounds of the hearing request. The supervisor may allow additional time within which to request a hearing for good cause shown. Hearings shall be conducted by an impartial committee to be chosen in a manner approved by the president of the university. The person requesting said hearing shall be afforded the opportunity for an administrative hearing by the hearing committee and shall be given reasonable notice of the time and place of the hearing. The decision of the hearing committee shall be final and may be reviewed *de novo* by the district court as provided by law.

ARC 4352C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to assessor or deputy assessor continuing education and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 124, "Courses," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 441.8.

Purpose and Summary

The purpose of this rule making is to clarify that a one-hour course for continuing education for an assessor or deputy assessor is intended to be 60 minutes in length.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

REVENUE DEPARTMENT[701](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Tim Reilly
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.725.2294
Email: tim.reilly@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 701—124.3(441) as follows:

701—124.3(441) Petitioning to add, delete or modify courses. The director accepts and encourages the public to provide input into the development of the assessor education program. Any person or group may petition to add, delete or modify all or part of the program by submitting a written request for the committee’s consideration.

The overriding consideration in determining whether a specific course is acceptable as continuing education is that it be a formal program of learning which contributes directly to the professional competence of an assessor or deputy assessor.

A continuing education course will qualify only if:

1. An outline of the course content and a description or copy of the final examination are prepared and filed with the director. In addition, any course changes are required to be filed with the director.
2. The course is at least one hour (~~50-minute~~ 60-minute period) in length.
3. The course is conducted by a qualified instructor, discussion leader, or lecturer. A qualified instructor, discussion leader, or lecturer is any individual whose background, training, education or experience makes it appropriate for that person to lead a discussion on the subject matter of the particular course.
4. Certificates of attendance must be sent to the director and the student.
5. An organization or person desiring accreditation of a course shall apply to the director for accreditation at least 60 days in advance of the commencement of the course on an application provided by the director (Form 51-002 “Application for Course Certification”). The director shall approve or deny the application. The application shall state the dates; subjects offered; total hours of instruction; names and qualifications of the instructor, discussion leader, or lecturer; a statement of the objectives of

REVENUE DEPARTMENT[701](cont'd)

the course and how the objectives will be attained; an outline of the course content; a copy of the final examination; and any other pertinent information.

ARC 4356C

SECRETARY OF STATE[721]

Notice of Intended Action

**Proposing rule making related to safe at home program
and providing an opportunity for public comment**

The Secretary of State hereby proposes to amend Chapter 6, "Safe at Home Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 9E.3 and 17A.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 9E.2 as amended by 2018 Iowa Acts, House File 2252.

Purpose and Summary

This proposed amendment facilitates the administration of the Safe at Home Program, an address confidentiality program, in accordance with Iowa Code chapter 9E. The amendment is proposed based on a recommendation from the Legislative Services Agency following the passage of 2018 Iowa Acts, House File 2252.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Secretary of State no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Molly Widen
Office of the Secretary of State
Lucas State Office Building, First Floor
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.5864
Email: molly.widen@sos.iowa.gov

SECRETARY OF STATE[721](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 721—6.1(9E) as follows:

721—6.1(9E) Definitions. For purposes of this chapter, the terms defined in this rule have the meanings given them.

“*Address*” means a residential street address, school address, or work address of an individual, as specified on the individual’s application to be a program participant.

“*Applicant*” means an adult, a parent or guardian acting on behalf of an eligible minor, or a guardian acting on behalf of an incapacitated person as defined in Iowa Code section 633.701.

“*Designated address*” means the mailing address assigned to a program participant by the secretary.

“*Domestic abuse*” means the same as defined in Iowa Code section 236.2.

“*Domestic abuse assault*” means the same as defined in Iowa Code section 708.2A.

“*Eligible person*” means a person who is all of the following:

1. A resident of this state.
2. An adult, a minor, or an incapacitated person as defined in Iowa Code section 633.701.
3. A victim of domestic abuse, domestic abuse assault, sexual abuse, stalking, or human trafficking as evidenced by the filing of a petition pursuant to Iowa Code section 236.3 or a criminal complaint or information pursuant to Iowa Code section 708.2A, 708.11, or 710A.2, or any violation contained in Iowa Code chapter 709.

For purposes of this definition, a person determined to be a sexually violent predator pursuant to Iowa Code section 229A.7, ~~or a person required to register as a sex offender under Iowa Code chapter 692A,~~ or a person determined to be a sexually violent predator or required to register as a sex offender pursuant to similar law laws of another state is not an eligible person.

“*Human trafficking*” means a crime described in Iowa Code section 710A.2.

“*Mail*” means first-class letters and flats delivered via the United States Postal Service, including priority, express, and certified mail, and excluding packages, parcels, periodicals, and catalogues, unless they are clearly identifiable as pharmaceuticals or clearly indicate that they are sent by a state or county government agency.

“*Program*” means the address confidentiality program established in Iowa Code chapter 9E.

“*Program participant*” means an individual certified by the secretary as a program participant under Iowa Code section 9E.3.

“*Safe at home card*” means the official participation card that is issued by the secretary of state to each program participant, that must state the program participant’s name, designated address, and certification expiration date, and that must include a space for the signature of the program participant.

“*Safe at home program*” means the program authorized by Iowa Code chapter 9E.

“*Secretary*” means the secretary of state.

“*Sexual abuse*” means a violation of any provision of Iowa Code chapter 709.

“*Stalking*” means the same as defined in Iowa Code section 708.11.

ARC 4357C**SECRETARY OF STATE[721]****Notice of Intended Action****Proposing rule making related to election forms and instructions and providing an opportunity for public comment**

The Secretary of State hereby proposes to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 47.1.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423B.1.

Purpose and Summary

The Secretary of State has determined that as a result of 2018 Iowa Acts, Senate File 2417, an amendment to rule 721—21.804(423B) is necessary to keep the administrative rule in compliance with the Iowa Code. By defining “qualified counties,” Senate File 2417 added a new category of counties and provided for a new method of initiating a local option sales and services tax election. This rule making allows for the new method of initiating a local option sales and services tax election, provided for in Iowa Code section 423B.1(4)“b” as amended by 2018 Iowa Acts, Senate File 2417, section 232, to be utilized for elections held after March 5, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Secretary of State no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Molly Widen
Office of the Secretary of State
Lucas State Office Building, First Floor
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.5864
Email: molly.widen@sos.iowa.gov

SECRETARY OF STATE[721](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 721—21.804(423B) as follows:

721—21.804(423B) Local option sales and services tax elections in qualified counties. ~~This rule applies to local option sales and services tax elections held in qualified counties on March 5, 2019, and shall not apply to any local option sales and services tax election held in qualified counties after March 5, 2019. For local option sales and services tax elections held in qualified counties after March 5, 2019, rule 721—21.800(423B) shall control.~~

21.804(1) For purposes of this rule, “qualified county” means a county with a population in excess of 400,000, a county with a population of at least 130,000 but not more than 131,000, or a county with a population of at least 60,000 but not more than 70,000, according to the 2010 federal decennial census. The treatment of contiguous cities as one incorporated area for the purpose of determining whether a majority of those voting favors imposition does not apply to elections on the question of imposition of a local sales and services tax in all or a portion of a county that is a qualified county if the election occurs on or after January 1, 2019.

~~**21.804(2)** Petitions requesting imposition, rate change, use change, or repeal of local sales and services taxes shall be filed with the county board of supervisors.~~

~~*a.*—Each person signing the petition shall include the person’s address (including street number, if any) and the date that the person signed the petition.~~

~~*b.*—Within 30 days after receipt of the petition, the county board of supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition, rate change, use change, or repeal of a local option sales and services tax. In the notice the supervisors shall include the date of the election.~~

~~*c.*—The local option sales and services tax election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4)“a” but no sooner than 84 days after the date upon which notice is given to the county commissioner of elections.~~

~~**21.804(3)** As an alternative to the method of initiating a local option tax election described in subrule 21.804(2), governing bodies of cities and the county may initiate a local option tax election by filing motions with the county commissioner of elections pursuant to Iowa Code section 423B.1(4)“b” as amended by 2018 Iowa Acts, Senate File 2417, section 232, requesting submission of a local option tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a sufficient number of motions, the county commissioner of elections shall notify affected jurisdictions of the local option tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4)“a” but no sooner than 84 days after the date upon which the commissioner received the motion triggering the election.~~

21.804(4) 21.804(2) As an alternative to the methods of initiating a local option sales and services tax election described in subrules 21.804(2) and 21.804(3) rule 721—21.800(423B), the governing body of a city located in a county that is a qualified county, or the governing body of a qualified county

SECRETARY OF STATE[721](cont'd)

for the unincorporated area of the qualified county, may initiate a local option sales and services tax election by filing a motion with the county commissioner of elections pursuant to Iowa Code section 423B.1(4) “b” as amended by 2018 Iowa Acts, Senate File 2417, section 232, requesting submission of a local option sales and services tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a motion, the county commissioner shall notify affected jurisdictions of the local option sales and services tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4) “a” but no sooner than 62 84 days after the date upon which the commissioner received the motion triggering the election. ~~This subrule applies to motions received by the county commissioner of elections on or after January 1, 2019.~~

21.804(5) 21.804(3) Notice of local option sales and services tax election.

a. Not less than 60 days before the date that a local option sales and services tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include sample ballots but shall include all of the information that will appear on the ballot for each city and for the voters in the unincorporated areas of the county.

b. The city councils and the county supervisors, as applicable, shall provide to the county commissioner the following information to be included in the notice and on the ballots for imposition elections:

(1) The rate of the tax.

(2) The date the tax will be imposed, which shall be the next implementation date provided in Iowa Code section 423B.6 following the date of the election and at least 90 days after the date of the election, except that an election to impose a local option sales and services tax on a date immediately following the scheduled repeal date of an existing similar tax may be held at any time that otherwise complies with the requirements of Iowa Code chapter 423B. The imposition date shall be uniform in all areas of the county voting on the tax at the same election.

(3) The approximate amount of local option sales and services tax revenues that will be used for property tax relief in the jurisdiction.

(4) A statement of the specific purposes other than property tax relief for which revenues will be expended in the jurisdiction.

c. ~~If either of the methods of initiating a local option sales and services tax election described in subrules 21.804(2) and 21.804(3) is utilized, the information to be included in the notice shall be provided to the commissioner by the city councils of each city in the county not later than 67 days before the date of the election. If the method of initiating a local option sales and services tax election described in subrule 21.804(4) is utilized, then the~~ The information to be included in the notice shall be provided to the county commissioner of elections by the governing body of the city or the county for the unincorporated area of the county, as applicable, not later than 62 67 days before the date of the election. If a jurisdiction fails to provide the information in subparagraphs 21.804(5) “b”(1), 21.804(5) “b”(3), and 21.804(5) “b”(4), the following information shall be substituted in the notice and on the ballot:

(1) One percent (1%) for the rate of the tax.

(2) Fifty percent (50%) for property tax relief.

(3) The specific purpose for which the revenues will otherwise be expended is: Any lawful purpose of the city (or county).

d. The notice of election provided for in Iowa Code section 49.53 shall also be published at the time and in the manner specified in that section.

This rule is intended to implement Iowa Code section 423B.1.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking

TREASURER OF STATE(cont'd)

Ronald L. Hansen, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for March is 4.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective March 9, 2019, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .40%
32-89 days	Minimum .40%
90-179 days	Minimum .50%
180-364 days	Minimum .70%
One year to 397 days	Minimum 1.05%
More than 397 days	Minimum 1.10%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

April 1, 2018 — April 30, 2018	4.50%
May 1, 2018 — May 31, 2018	4.50%
June 1, 2018 — June 30, 2018	4.50%
July 1, 2018 — July 31, 2018	5.00%
August 1, 2018 — August 31, 2018	5.00%
September 1, 2018 — September 30, 2018	5.00%
October 1, 2018 — October 31, 2018	5.00%

USURY(cont'd)

November 1, 2018 — November 30, 2018	5.00%
December 1, 2018 — December 31, 2018	5.25%
January 1, 2019 — January 31, 2019	5.00%
February 1, 2019 — February 28, 2019	4.75%
March 1, 2019 — March 31, 2019	4.75%
April 1, 2019 — April 30, 2019	4.75%

ARC 4370C**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]****Notice of Intended Action****Proposing rule making related to county of residence upon discharge and providing an opportunity for public comment**

The Commission on Veterans Affairs hereby proposes to amend Chapter 10, “Iowa Veterans Home,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 35D.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, House File 2445.

Purpose and Summary

An amendment is required due to the enactment of House File 2445 in the 2018 Legislative Session. This proposed rule making updates wording regarding county of settlement.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 801—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

Timon Oujiri
Commandant, Iowa Veterans Home
1301 Summit Street
Marshalltown, Iowa 50158
Phone: 641.753.4309
Fax: 641.753.4278
Email: timon.oujiri@ivh.state.ia.us

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Amend rule 801—10.41(35D) as follows:

801—10.41(35D) County of ~~settlement~~ residence upon discharge. A member does not acquire legal ~~settlement~~ residency in Marshall County, the county in which IVH is located, unless the member is voluntarily or involuntarily discharged from IVH, ~~continuously resides in the county for a period of one year subsequent to the discharge and during that year is not readmitted to IVH and does not receive any services from IVH~~ and the member meets county of residence requirements. For purposes of this rule, “county of residence” means the same as defined in Iowa Code section 331.394.

ARC 4373C

COLLEGE STUDENT AID COMMISSION[283]**Adopted and Filed****Rule making related to change of address**

The College Student Aid Commission hereby amends Chapter 1, “Organization and Operation,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 261.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 261.

Purpose and Summary

The amendment reflects the new address of the Commission.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4080C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on February 22, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 283—Chapter 7.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 1, 2019.

The following rule-making action is adopted:

COLLEGE STUDENT AID COMMISSION[283](cont'd)

Amend subrule 1.2(1) as follows:

1.2(1) Location. The commission is located at ~~430 East Grand Avenue, Third Floor~~ 475 S.W. Fifth Street, Suite D, Des Moines, Iowa 50309-1920 4608; telephone (515)725-3400; Internet site www.iowacollegeaid.gov. Office hours are 8 a.m. to 4:30 p.m., Monday to Friday. Offices are closed on Saturdays and Sundays and on official state holidays designated in accordance with state law.

[Filed 2/27/19, effective 5/1/19]

[Published 3/27/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/27/19.

ARC 4374C

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Rule making related to loan forgiveness program

The College Student Aid Commission hereby amends Chapter 34, "Registered Nurse and Nurse Educator Loan Forgiveness Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 261.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 261.

Purpose and Summary

The amendment reflects changes to Iowa Code section 261.116 that were enacted in 2018 Iowa Acts, Senate File 2415, section 20. Section 20 replaces the Registered Nurse and Nurse Educator Loan Forgiveness Program with the Health Care Loan Repayment Program. Administrative rules have been adopted for new Chapter 26, "Health Care Loan Repayment Program." This rule making rescinds existing Chapter 34.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 24, 2018, as **ARC 4081C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on February 22, 2019.

Fiscal Impact

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

Jobs Impact

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

COLLEGE STUDENT AID COMMISSION[283](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 283—Chapter 7.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 1, 2019.

The following rule-making action is adopted:

Rescind and reserve **283—Chapter 34**.

[Filed 2/27/19, effective 5/1/19]

[Published 3/27/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/27/19.

ARC 4375C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rule making related to export trade assistance program

The Economic Development Authority hereby amends Chapter 72, "Iowa Export Trade Assistance Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 15.108.

Purpose and Summary

These amendments update Chapter 72, Iowa Export Trade Assistance Program (ETAP). The amendments update outdated terms and eliminate references to outdated or unused practices. Some of the updates include changing the terms "department" to "authority," "foreign" to "international," and "freight" to "shipping."

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 2, 2019, as **ARC 4203C**. No public comments were received. No changes from the Notice have been made.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Adoption of Rule Making

This rule making was adopted by the Authority on February 22, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 261—72.1(78GA,ch197) as follows:

261—72.1(78GA,ch197) Purpose. The purpose of the Iowa export trade assistance program is to promote the development of international trade activities and opportunities for exporters in the state of Iowa through encouraging increased participation in ~~overseas~~ international trade shows and trade missions by providing financial assistance to successful applicants.

ITEM 2. Amend rule 261—72.2(78GA,ch197) as follows:

261—72.2(78GA,ch197) Definitions.

“Department Authority” means ~~the Iowa department of economic development authority.~~

“Division” means ~~the international division of the department.~~

“Exporter” means a person or business that sells one of the following outside of the United States:

- A manufactured product.
- A value-added product.
- An agricultural product.
- A service.

“Sales representative” means a contracted representative of an Iowa firm with the authority to consummate a sales transaction.

“Trade mission” means a mission event led by the ~~Iowa department of economic development authority~~ or designated representative. Qualified trade missions must include each of the following:

- Advanced operational and logistical planning.
- Advanced scheduling of individualized appointments with prequalified prospects interested in participants' product or service being offered.
- Background information on individual prospects prior to appointments.

Trade missions may also include:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- In-depth briefings on market requirements and business practices for the targeted country.
- Interpreter services.
- Development of a trade mission directory prior to the event containing individual company data regarding the Iowa company and the products being offered.
- Technical seminars delivered by the mission participants.

ITEM 3. Amend rule 261—72.3(78GA,ch197) as follows:

261—72.3(78GA,ch197) Eligible applicants. The export trade assistance program is available to Iowa firms either producing or adding value to products, or both, or providing exportable services in the state of Iowa. To be eligible to receive trade assistance, applicants must meet all five of the following criteria:

1. Be an entity employing fewer than 500 individuals, 75 percent or more of whom are employed within the state of Iowa,
2. Exhibit products or services or samples of Iowa manufactured, processed or value-added products or agricultural commodities in conjunction with ~~a foreign~~ an international trade show or trade mission (~~catalog exhibits are permitted if they are used in conjunction with the exhibit of a product or service or in association with the firm's participation in a trade mission~~),
3. Have at least one full-time employee or sales representative ~~attend~~ participate in the trade show or participate in the trade mission,
4. Provide proof of deposit or executed payment agreement for a trade show, or payment of the trade mission participation fee, and
5. Be considered by ~~IDED~~ the authority as compliant with past ETAP contractual agreements.

ITEM 4. Amend rule 261—72.4(78GA,ch197), introductory paragraph, as follows:

261—72.4(78GA,ch197) Eligible reimbursements. The ~~department's~~ authority's reimbursement to approved applicants for assistance shall not exceed 75 percent of eligible expenses. Total reimbursement shall not exceed \$4000 per event. Payments will be made by the ~~department~~ authority on a reimbursement basis upon submission of proper documentation and approval by the ~~department~~ authority of paid receipts received by the ~~division~~ authority. Reimbursement is limited to the following types of expenses:

ITEM 5. Amend paragraphs **72.4(1)“d”** and **“g”** as follows:

- d.* ~~Freight Shipping~~ costs associated with shipment of equipment or exhibit materials to the participant's booth and return.
- g.* Per diem (lodging and meals) for the day immediately before the opening day of the trade show through the day immediately after the closing day of the trade show; per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in ~~foreign~~ international areas; and per diem will be paid for only one sales representative.

ITEM 6. Amend paragraphs **72.4(2)“b”** to **“e”** as follows:

- b.* Per diem (lodging and meals) for each day identified in the official mission itinerary. Per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in ~~foreign~~ international areas and will be paid for only one sales representative.
- c.* ~~Freight Shipping~~ costs associated with shipment of equipment or exhibit materials to the participant's meeting site and return.
- d.* ~~Presentation equipment at the meeting site.~~
- e-d.* Interpreter fees, if not included in the participation fee, and as needed during the trade mission.

ITEM 7. Amend rule 261—72.5(78GA,ch197) as follows:

261—72.5(78GA,ch197) Applications for assistance. The application for assistance shall be available on the authority's website. To ~~access~~ qualify for the export trade assistance program, the applicant shall:

- 72.5(1)** Complete the export trade assistance program's application form and ~~return~~ submit it to the ~~division~~ authority prior to trade event participation. Successful applicants will be required to enter into a contract for reimbursement with the ~~department~~ authority prior to trade event participation.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

72.5(2) Exhibit products or services or samples of Iowa products in conjunction with a ~~foreign~~ an international trade show or trade mission (~~catalog exhibits are permitted if they are used in conjunction with the exhibit of a product or service or in association with the firm's participation in a trade mission~~).

72.5(3) Have in attendance at the trade show or trade mission at least one full-time employee or sales representative of the applicant.

72.5(4) Pay all expenses related to participation in the trade event and submit eligible, documented expenses for reimbursement from the ~~department~~ for eligible, documented expenses authority.

72.5(5) Complete the final report form and ~~return~~ submit it to the ~~division~~ authority before final reimbursement can be made.

ITEM 8. Amend rule 261—72.6(78GA,ch197) as follows:

261—72.6(78GA,ch197) Selection process. Applications will be reviewed in the order received by the ~~division~~ authority. Successful applicants will be funded on a first-come, first-served basis to the extent funds are available. When all funds have been committed, applications shall be held in the order they are received. In the event that committed funds are subsequently available, the applications shall be processed in the order they were received for events that have not yet occurred.

ITEM 9. Amend rule 261—72.7(78GA,ch197) as follows:

261—72.7(78GA,ch197) Limitations. A participant in the export trade assistance program shall not utilize the program's benefits more than three times during the state's fiscal year. Participants shall not utilize export trade assistance program funds ~~for participation in the same trade show during two consecutive state fiscal years,~~ or for participation in the same trade show more than two times. Participants shall not utilize export trade assistance program funds for participation in multiple trade shows in the same country during the same state fiscal year.

ITEM 10. Amend rule 261—72.8(78GA,ch197) as follows:

261—72.8(78GA,ch197) Forms. The following forms are available from the ~~department~~ authority and will be used by the ~~department~~ authority in the administration of the export trade assistance program:

1. ETAP application form,
2. ETAP final report (claim) form,
3. Reimbursement Grant agreement.

[Filed 2/26/19, effective 5/1/19]

[Published 3/27/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/27/19.

ARC 4376C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Rule making related to conveyance safety

The Elevator Safety Board hereby amends Chapter 71, "Administration of the Conveyance Safety Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 89A.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 89A.

LABOR SERVICES DIVISION[875](cont'd)

Purpose and Summary

The ASME A17.3 Code requires upgrades of some older elevators. These amendments will reduce the fee for alteration permits linked to ASME A17.3 and clarify which ASME A17.3 upgrades need an alteration permit.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 16, 2019, as **ARC 4237C**. No public comments were received. Item 4 was revised to clarify that the reduced rate for an alteration permit will apply not only within 120 days after an inspection report is issued, but also if the application is submitted before an inspection report is issued.

Adoption of Rule Making

This rule making was adopted by the Board on February 26, 2019.

Fiscal Impact

Reducing the alteration fee linked to ASME A17.3 will cause a slight reduction of receipts to the elevator safety fund.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 66.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** subrule 71.10(4):

71.10(4) Work required by ASME A17.3 (2011) qualifies as normal maintenance and does not require an alteration permit except for work performed to comply with ASME A17.3 (2011) 2.3.3, 3.4.4.1(a), 3.4.4.2, 3.5.3, 3.5.5(a) and (b), 3.5.7, 3.6.1, 3.6.2, 3.8.1(a), 3.8.3(a), 3.10.1, 3.10.4(b) through (g), 3.10.4(i) through (k), 3.10.4(m), 3.10.4(r), 3.10.4(w), 3.10.7, 3.10.9, 3.10.10, 4.4.2, 4.4.3, and 4.7.3.

ITEM 2. Amend paragraph **71.16(4)“a”** as follows:

a. The Except as set forth below, the fee for any elevator alteration permit shall be \$500 and shall cover the initial print review, alteration permit, and initial inspection.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 3. Reletter paragraph **71.16(4)“d”** as **71.16(4)“e.”**

ITEM 4. Adopt the following **new** paragraph **71.16(4)“d”**:

d. The fee for an initial print review, elevator alteration permit, and initial inspection shall be \$250 if both of the following conditions are met:

(1) The only changes covered by the elevator alteration permit application are required by ASME A17.3 (2011) as adopted in 875—Chapters 72 and 73; and

(2) The elevator alteration permit application is submitted before or no later than 120 days after the issuance of an inspection report describing ASME A17.3 requirements.

[Filed 2/26/19, effective 5/1/19]

[Published 3/27/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/27/19.

ARC 4377C

MEDICINE BOARD[653]

Adopted and Filed

Rule making related to medical conditions for which medical cannabidiol may be used

The Board of Medicine hereby amends Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapters 124E, 148 and 272C.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 124E.

Purpose and Summary

This rule making amends rule 653—13.15(124E,147,148,272C), which establishes the standards of practice for the use of medical cannabidiol, by adding “severe, intractable pediatric autism with self-injurious or aggressive behaviors” to the list of debilitating medical conditions for which medical cannabidiol may be used.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 16, 2019, as **ARC 4241C**. A public hearing was held on February 5, 2019, at 9 a.m. at the Board’s office, Suite C, 400 S.W. Eighth Street, Des Moines, Iowa. The Board received public comment both at the hearing and outside the hearing that was supportive of adding “severe, intractable pediatric autism with self-injurious or aggressive behaviors” to the list of debilitating medical conditions for which medical cannabidiol may be used. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on February 25, 2019.

Fiscal Impact

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

MEDICINE BOARD[653](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 1, 2019.

The following rule-making action is adopted:

Amend subrule **13.15(1)**, definition of “Debilitating medical condition,” as follows:

“*Debilitating medical condition*” means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:
 - Severe or chronic pain.
 - Nausea or severe vomiting.
 - Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.
5. Crohn's disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
 - Severe or chronic pain.
 - Nausea or severe vomiting.
 - Cachexia or severe wasting.
8. Parkinson's disease.
9. Untreatable pain.
10. Ulcerative colitis.
11. Severe, intractable pediatric autism with self-injurious or aggressive behaviors.

[Filed 2/25/19, effective 5/1/19]

[Published 3/27/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/27/19.

ARC 4378C

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Rule making related to updates to racing and gaming rules

The Racing and Gaming Commission hereby amends Chapter 3, “Fair Information Practices,” Chapter 5, “Track, Gambling Structure, and Excursion Gambling Boat Licensees’ Responsibilities,” Chapter 6, “Occupational and Vendor Licensing,” Chapter 7, “Greyhound Racing,” Chapter 8, “Wagering, Simulcasting and Advance Deposit Wagering,” Chapter 10, “Thoroughbred and Quarter Horse Racing,” Chapter 11, “Gambling Games,” and Chapter 12, “Accounting and Cash Control,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 99D.7 and 99F.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 99D and 99F and 2018 Iowa Acts, House File 2349.

Purpose and Summary

- Item 1 updates a reference to the Iowa Rules of Civil Procedure.
- Item 2 updates an Iowa Code reference.
- Item 3 updates the rule regarding confidential records to be consistent with 2018 Iowa Acts, House File 2349, which amends Iowa Code sections 99D.7(23) and 99F.4(22).
- Item 4 updates audit requirements for licensees.
- Item 5 clarifies that contracts with licensed manufacturers and distributors for nongaming items are not exempt from Commission approval.
- Item 6 changes the definition of a designated wagering area.
- Items 7 and 8 clarify occupational licensing requirements.
- Item 9 clarifies that a person may file for a new license upon expiration of any suspension of 365 days or more.
- Item 10 updates the rule to clarify the specific lease required.
- Item 11 updates language to be consistent with that in Chapter 10.
- Item 12 amends the definition of “minus pool.”
- Item 13 clarifies payments of purses. In addition, the content of subrules 10.6(14) and 10.6(15), which are rescinded in Item 18, is incorporated into subrule 10.4(15).
- Item 14 clarifies the consequences if a trainer or designee is not present for the administration of furosemide.
- Item 15 clarifies the consequences of a horse’s not being in the paddock at the required time.
- Item 16 clarifies the jockey suspension rule.
- Item 17 clarifies Iowa-foaled horse requirements for specific races.
- Item 18 is addressed with Item 13.
- Item 19 changes how long positive drug test results are retained.
- Item 20 updates subrule 11.5(1) to be consistent with subrule 11.7(6).
- Item 21 allows for coin pusher mechanical devices.
- Item 22 updates requirements for linked progressive slot machines.
- Item 23 clarifies retention for card boxes and receipts for the playing cards.

RACING AND GAMING COMMISSION[491](cont'd)

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 7, 2018, as **ARC 4107C**. A public hearing was held on November 27, 2018, at 9 a.m. at the Commission's Office, Suite 100, 1300 Des Moines Street, Des Moines, Iowa. No one attended the public hearing.

The Commission received and considered input from stakeholders with regard to Items 4 and 22. Due to that input, some changes were made in Items 4 and 22. A change was also made in Item 13.

Adoption of Rule Making

This rule making was adopted by the Commission on March 5, 2019.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **3.13(2)“g”** as follows:

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. ~~122.11~~ 1.503, the rules of evidence, the Code of Professional Responsibility, and case law.

ITEM 2. Amend paragraph **3.13(2)“i”** as follows:

i. Information gathered during an investigation during pendency of the investigation or information requested for inspection by the commission or a representative of the commission. (Iowa Code sections ~~99D.7(8)~~ 99D.7(9), 99D.19(3), 99F.4(6) and 99F.12(4))

ITEM 3. Adopt the following **new** paragraph **3.13(2)“o”**:

o. Names, social security numbers and any other personally identifiable information regarding persons who have voluntarily excluded themselves and are a part of the interactive Internet site maintained by the commission. (Iowa Code sections 99D.7(23) and 99F.4(22) as amended by 2018 Iowa Acts, House File 2349)

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 4. Rescind rule 491—5.2(99D,99F) and adopt the following **new** rule in lieu thereof:

491—5.2(99D,99F) Annual reports. Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13.

5.2(1) The audit of financial transactions and condition of licensee's operation shall include:

- a. An internal control letter;
- b. Documentation that the county board of supervisors selected the auditing firm;
- c. A balance sheet; and
- d. A profit-and-loss statement pertaining to the licensee's activities in the state, including a breakdown of expenditures and subsidies.

5.2(2) If the licensee's fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar-year basis shall be included in the report.

5.2(3) In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

5.2(4) An engagement letter for the audit between the licensee and auditing firm shall be available upon request. The engagement letter requirement does not apply to the licensed qualified sponsoring organization. Conditions of engagement for the audit shall include, at a minimum, the following requirements:

a. The auditing firm shall report any material errors, irregularities or illegal acts that come to the firm's attention during the course of an audit to the licensee's audit committee or senior management as required by the rules of professional conduct that apply to the auditing firm. The licensee shall report such material errors, irregularities or illegal acts to the commission in a timely manner following reporting to the licensee's audit committee or senior management.

b. The auditing firm shall inform the commission in writing of matters that come to the firm's attention that represent significant deficiencies in the design or operation of the internal control structure.

c. The audit supervisor or an audit staff member conducting the audit must have experience or training in the gaming industry.

d. The auditing firm agrees to respond timely to all reasonable requests of successor auditors.

e. The auditing firm agrees, if requested by the commission, to provide licensee management and the commission with recommendations designed to help the licensee make improvements in its internal control structure and operation, and other matters that are discovered during the audit.

5.2(5) Consolidated financial statements may be filed by commonly owned or operated establishments with the following conditions:

a. The consolidated financial statements shall include in the supplemental schedule, or elsewhere as determined by the licensee and auditing firm, for each licensee: balance sheets, statements of operations, statements of cash flows, schedules of operating expenses and schedules of adjusted gross revenue and taxes and fees paid to governmental agencies.

b. The auditing firm must audit and issue a report on the separate financial statements that expresses an opinion for each individual entity licensed in Iowa.

c. Any internal audit staff assisting with the audit shall report any material errors, irregularities or illegal acts that come to the staff's attention during the course of an audit to the licensee's audit committee or senior management as required by the rules of professional conduct. The licensee shall report such material errors, irregularities or illegal acts to the commission in a timely manner following reporting to the licensee's audit committee or senior management.

d. All other requirements in this rule are met and included for each entity licensed in Iowa unless an exception is granted in writing by the commission (or administrator).

5.2(6) The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; attendance; regulatory fee; total mutuel handle and taxes paid to the state, city, and county; unclaimed winnings; purses paid indicating sources;

RACING AND GAMING COMMISSION[491](cont'd)

total breakage and disbursements; and the disbursements of 1 percent of exotic wagers on three or more racing animals.

5.2(7) The annual audit report required by Iowa Code section 99F.13 shall include:

a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, and county endowment fund; and regulatory fees.

b. A report on whether material weaknesses in internal accounting control exist. A report shall be filed for each individual entity licensed in Iowa if a consolidated audit is provided.

5.2(8) Internal control records, compliance records, marketing expenses, and supplemental schedules included in the annual reports shall be kept confidential, as outlined in Iowa Code section 99F.12(4).

ITEM 5. Amend subparagraph **5.4(8)“a”(1)**, introductory paragraph, as follows:

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 regardless of payment method are agreements that qualify for submission to and approval by the commission. Contracts and business arrangements with entities licensed pursuant to rule 491—11.13(99F) to obtain gambling games and implements of gambling, as defined by rule 491—11.1(99F), are exempt from submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

ITEM 6. Amend subrule 5.5(11) as follows:

5.5(11) *Designated wagering area.* The designated wagering area is ~~a rectangular area within a minimum of five feet from the front and from either side of a stationary wagering window or self-service wagering device, not otherwise obstructed by a wall or other barrier. The facility shall either section off or clearly delineate the floor of the area and post a sign near the area, which is visible to patrons approaching the area, denotes the wagering area and specifies that the wagering area is not accessible to persons under the age of 21. The designation applies only when the wagering window or device is open to transact wagering. A floor plan identifying the area shall be filed with the administrator for review and approval.~~ an area of a racetrack, designated by a licensee and approved by the commission, in which a licensee may receive from a person wagers of money on a horse or dog in a race selected by the person making the wagers as designated by the commission. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. Exceptions to this rule must be approved in writing by the commission.

ITEM 7. Amend paragraph **6.5(1)“k”** as follows:

k. A license shall be denied if an applicant is not of good repute ~~and~~ or moral character. Any evidence concerning a licensee's current or past conduct, dealings, habits, or associations relevant to that individual's character ~~and~~ or reputation may be considered. The commission representative shall decide what weight and effect evidence shall have in the determination of whether there is substantial evidence that the individual is not of good reputation ~~and~~ or character. Applicants who hold positions of higher responsibility may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role.

ITEM 8. Amend paragraph **6.5(2)“b”** as follows:

b. Judgments. Whenever any person licensed to engage in racing suffers a final judgment entered against that person in any court of competent jurisdiction within the United States, when that judgment is based wholly, or in part, upon an indebtedness incurred by that person for supplies, equipment, or services furnished in connection with racing, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended.

ITEM 9. Amend subrule 6.6(2) as follows:

6.6(2) Any person whose license was suspended for 365 days or more may file a new application for a license upon the expiration of the period of suspension but must satisfy all of the conditions set forth in 6.6(1)“a,” “b,” and “c” above. If a person's license has not expired after the 365-day suspension, the

RACING AND GAMING COMMISSION[491](cont'd)

person must have a hearing before a board to determine if the person has satisfied all of the conditions set forth in 6.6(1) "a," "b," and "c" above prior to that individual's participating in racing or gaming.

ITEM 10. Amend paragraph **7.3(6)"b"** as follows:

b. The racing secretary is responsible for maintaining a file of ~~all NGA~~ the NGA certificate, Iowa Greyhound Park lease (or appropriate substitute) and ownership papers on greyhounds racing at the meeting. The racing secretary shall inspect all papers and documents dealing with owners and trainers, partnership agreements, appointments of authorized agents, and adoption of kennel names to be sure they are accurate, complete, and up to date. The racing secretary has the authority to demand the production of any documents or other evidence in order to be satisfied as to their validity and authenticity to ensure compliance with the rules. The racing secretary shall be responsible for the care and security of the papers while the greyhounds are located on facility property. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership or lease of a greyhound filed with the racing secretary shall be available for public inspection.

ITEM 11. Amend paragraph **7.14(3)"e"** as follows:

e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of ~~tests~~ a test suspicious or positive for prohibited substances, the ~~tests~~ test shall be reconfirmed; and the remaining portion of the sample, if available, preserved and protected for ~~two years~~ one year following close of meet.

ITEM 12. Amend rule **491—8.1(99D)**, definition of "Minus pool," as follows:

"Minus pool" means when the total amount of money to be returned to the public exceeds what is in the pool because of the deduction of a commission and because of the rule stipulation that no mutuel tickets shall be paid at less than ~~\$1.10~~ \$1.05 for each \$1.00 wagered.

ITEM 13. Amend subrule 10.4(15) as follows:

10.4(15) Horsemen's bookkeeper.

a. to c. No change.

d. Payment of purses.

(1) and (2) No change.

(3) The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, and jockey fees, upon request, within ~~48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory~~ two race days of the conclusion of the race day for all horses that were not selected for postrace drug testing.

(4) For horses that were selected for postrace drug testing, the horsemen's bookkeeper shall disburse the purse of such horses for each race and all stakes, entrance money, and jockey fees, upon request, within two race days of receipt of notification that all tests with respect to such horses have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory.

(4) ~~(5)~~ Absent a prior request, the horsemen's bookkeeper shall disburse moneys to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such ~~races~~ horses that have been selected for postrace drug testing have cleared the drug testing laboratory as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

~~(5)~~ (6) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper shall disburse the purse of such horses having been selected for postrace drug testing within 48 hours two race days of receipt of dismissal or a final nonappealable order disposing of such protest or appeal.

e. No change.

RACING AND GAMING COMMISSION[491](cont'd)

f. Purse money presumption. The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning the purse money.

ITEM 14. Amend subparagraph **10.5(1)“a”(6)** as follows:

(6) Being present to witness the administration of furosemide during the administration time and sign as the witness on the affidavit form. A licensed designee of the trainer may witness the administration of the furosemide and sign as the witness on the affidavit form; however, this designee may not be another practicing veterinarian or veterinary assistant. If the trainer or designee is not present or does not allow for the administration of furosemide to a horse to be run on furosemide, said horse will be placed on the steward's list for a minimum of five days starting the day after the violation.

ITEM 15. Amend subparagraph **10.5(1)“a”(24)** as follows:

(24) Presenting the trainer's horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered. Any horse failing to report to the paddock will be placed on the steward's list for a minimum of five days starting the day after the violation.

ITEM 16. Amend subparagraph **10.5(2)“v”(4)** as follows:

(4) Riding suspensions of ten days or less and participating in designated races. The stewards appointed for a race meeting shall immediately, prior to the commencement of that meeting, designate the stakes, futurities, futurity trials, or other races in which a jockey will be permitted to compete, notwithstanding the fact that such jockey is under suspension for ten days or less for a careless riding infraction at the time the designated race is to be run.

1. to 3. No change.

4. A day in which a jockey participated in one designated race while on suspension shall count as a suspension day. If a jockey rides in more than one designated race on a race card while on suspension, the day shall not count as a suspension day. Each designated trial race for a stake shall be considered one race. A jockey who rides in more than one designated race shall be allowed to be named to ride other races on a card, and such race card shall not count as a suspended race day.

ITEM 17. Amend paragraph **10.6(2)“n”** as follows:

~~n. Iowa-foaled horse. An Iowa-foaled horse may be entered in an Iowa-bred race without having its official jockey club registration papers stamped, but shall not compete~~ be entered in a race limited to Iowa-foaled horses unless the horse is registered with and the papers are stamped by the department of agriculture and land stewardship. An Iowa-foaled horse would be allowed to run in an open race without the stamp, but would be ineligible for Iowa-bred supplement, Iowa-bred breeders awards and Iowa-bred breeders supplement.

ITEM 18. Rescind and reserve subrules **10.6(14)** and **10.6(15)**.

ITEM 19. Amend paragraph **10.7(3)“e”** as follows:

~~e. Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of tests a test suspicious or positive for prohibited substances, the tests test shall be reconfirmed, and the remaining portion, if available, of the sample shall be preserved and protected for two years~~ one year following close of meet.

ITEM 20. Amend subrule 11.5(1) as follows:

11.5(1) Craps, roulette, twenty-one (blackjack), baccarat, big six and poker are authorized as table games. The administrator is authorized to approve multiplayer electronic devices simulating these games, subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3).

ITEM 21. Adopt the following **new** subrule 11.5(5):

11.5(5) Mechanical devices employing kickers or plates to direct coins, tokens or chips to fall over an edge into a payout hopper may be authorized as gambling games, subject to the following conditions:

- a. All devices are subject to the requirements of rule 491—11.4(99F).
- b. Devices shall accept no more than one coin, token or chip per play.

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c. Tokens or chips used in devices shall have a value defined by the facility. Each assigned value must be displayed on the device. Values are subject to approval by the administrator.

d. Merchandise, coins, tokens, chips or other legal tender may be added to the device at the discretion of the facility:

(1) Anything of value added to a device must be in accordance with the approval of the device under the requirements of rule 491—11.4(99F); and

(2) Anything of value added to a device shall be documented, and documentation shall be retained in accordance with the retention requirements of 491—subrule 5.4(14).

e. Any coins, tokens or chips collected by the facility or not returned to individuals wagering on a device shall be included as gross receipts for the calculation of wagering tax on adjusted gross receipts:

(1) When a device is removed from play, coins, tokens, chips or other legal tender that were added to the device may be used to offset gross receipts for the calculation of wagering tax on adjusted gross receipts; and

(2) Merchandise or other items of value added to a device shall not be considered in the calculation of wagering tax on adjusted gross receipts.

f. Merchandise, coins, tokens, chips or other legal tender shall not be removed from a device while it remains in operation, except as winnings to an individual from a wager, or as the result of internal mechanisms of the device for collecting revenue, approved in accordance with rule 491—11.4(99F).

g. Anything of value in the machine shall not be tampered with or adjusted while a device remains in operation, except as required to return a malfunctioning device to operation.

ITEM 22. Amend subrule 11.12(7) as follows:

11.12(7) *Linked machines.* Each machine on the link shall have the same probability of winning the progressive jackpot, adjusted for the total amount wagered. ~~The product of the odds~~ probability of winning the progressive jackpot multiplied by the maximum amount wagered shall be equal within the maximum allowable tolerance for all games on the link. For the purpose of this calculation, the maximum allowable tolerance when linked with any other game shall be the product of the probability of winning the progressive jackpot, adjusted for amount wagered, multiplied by:

a. 1 percent (0.01) for games where the probability of winning the progressive jackpot is less frequent than or equal to 1 in 100,000; or

b. 5 percent (0.05) for games where the probability of winning the progressive jackpot is more frequent than 1 in 100,000.

ITEM 23. Amend subparagraph **12.3(1)“g”(3)** as follows:

(3) The procedure and period to retain the receipt and the details of use. The period of retention must correspond with records maintained by the manufacturer of the cards in accordance with the process submitted pursuant to 491—paragraph 11.7(9)“b.”

[Filed 3/5/19, effective 5/1/19]

[Published 3/27/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/27/19.

ARC 4379C

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Adopted and Filed

Rule making related to review of rules

The Real Estate Appraiser Examining Board hereby amends Chapter 1, “Organization and Administration,” Chapter 3, “General Provisions for Examinations,” Chapter 5, “Certified Residential Real Property Appraiser,” Chapter 6, “Certified General Real Property Appraiser,” Chapter 8, “Investigations and Disciplinary Procedures,” Chapter 9, “Renewal, Expiration and Reinstatement of Certificates and Registrations, and Inactive Status,” Chapter 11, “Continuing Education,” Chapter

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

16, “Enforcement Proceedings Against Nonlicensees,” and Chapter 17, “Superintendent Supervision Standards and Procedures,” and adopts new Chapter 18, “Waivers and Variances from Rules,” Chapter 19, “Investigatory Subpoenas,” Chapter 20, “Contested Cases,” Chapter 21, “Denial of Issuance or Renewal, Suspension, or Revocation of Licensure,” Chapter 22, “Petition for Rule Making,” Chapter 23, “Declaratory Orders,” Chapter 24, “Sales and Leases of Goods and Services,” and Chapter 25, “Public Records and Fair Information Practices,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 543D.5.

State or Federal Law Implemented

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

Purpose and Summary

The purposes of these amendments are to ensure the Board’s rules adequately reflect the Board’s recent organizational relocation from the Professional Licensing and Regulation Bureau to the Division of Banking, including oversight of the Board by the Superintendent of Banking (see 2016 Iowa Acts, chapter 1124, division II (Iowa Real Estate Examining Board—Supervision), at www.legis.iowa.gov/docs/publications/iactc/86.2/CH1124.pdf), and to incorporate standard agency and licensing board chapters (e.g., waivers and variances, contested cases, public information). The Board historically relied on the Professional Licensing and Regulation Bureau’s rules for those standard chapters; however, those chapters are no longer applicable to the Board as a result of the Board’s relocation within the Division of Banking. These amendments are also part of the Board’s rolling review of rules process, designed to ensure the Board’s administrative rules have been reviewed and updated within the last five years pursuant to Iowa Code section 17A.7(2).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 16, 2019, as **ARC 4224C**. A public hearing was held on February 8, 2019, at 8:30 a.m. in the Small Conference Room, Third Floor, 200 East Grand Avenue, Des Moines, Iowa.

One public comment was received which recommended that the Board add the same verbiage as is in the Professional Licensing and Regulation Bureau’s rules stating that an application will be deemed withdrawn if it has not been accessed or modified by the applicant within the preceding six months. No changes were made as a result of the comment.

The following changes were made to this Adopted and Filed rule making that were not included in the Notice of Intended Action:

1. Additional language was added to paragraphs 25.11(1)“d” and 25.12(2)“b” following further research and analysis which determined that Iowa Code section 543D.5(5) authorizes the continued inclusion of this language that was previously located in the Professional Licensing and Regulation Bureau’s administrative rules, which rules formed a large basis of this rule making. The continued inclusion of this language will better align with and support current Board processes;

2. More accurate cross references were added in subrules 3.3(3), 5.6(7), 6.6(7), and 9.3(7), the Chapter 20 implementation sentence, and rules 193F—8.10(272C,543D), 193F—20.39(546,543D,272C), 193F—20.40(546,543D,272C), and 193F—25.11(17A,22,546);

3. Rule 193F—25.13(17A,22) was revised to remove inapplicable cross references and language that does not apply to real estate appraisers; and

4. The word “who” was changed to “whom” in paragraph 20.6(1)“1.”

Adoption of Rule Making

This rule making was adopted by the Board on March 7, 2019.

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

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 1.1(3) as follows:

1.1(3) All board action under Iowa Code chapter 543D and 193F—Chapter 17 shall be taken under the supervision of the superintendent, as provided in ~~2016 Iowa Acts, House File 2436~~ Iowa Code section 543D.23 and the implementing rules set forth herein.

ITEM 2. Amend rule 193F—1.2(543D), catchwords, as follows:

193F—1.2(543D) Administrative committees authority.

ITEM 3. Amend paragraph **1.2(5)“d”** as follows:

d. ~~Final~~ Records, filings, and requests for public information. Unless otherwise provided by rule of the board, final board action which is discretionary shall be effective upon the expiration of 20 days following issuance of the board's action if not timely reviewed by or appealed to the superintendent or upon final action by the superintendent if timely reviewed or appealed.

ITEM 4. Amend rule 193F—1.6(543D) as follows:

193F—1.6(543D) Records, filings, and requests for public information. Unless otherwise specified by the rules of the department of commerce ~~or the professional licensing and regulation division~~, the board is the principal custodian of its own agency orders, statements of law or policy issued by the board, legal documents, and other public documents on file with the board.

1.6(1) Any person may examine public records promulgated or maintained by the board at its office during regular business hours as ~~provided in 193—Chapter 13~~ specified in 193F—Chapter 25.

1.6(2) Records, documents and other information may be gathered, stored, and available in electronic format. Information, various forms, documents, and the law and rules may be reviewed or obtained anytime by the public from the board's Internet website located at www.state.ia.us/iapp idob.state.ia.us/reap.

1.6(3) No change.

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

ITEM 5. Rescind and reserve rules **193F—1.8(22)** to **193F—1.16(272C)**.

ITEM 6. Amend subrule 3.3(3) as follows:

3.3(3) Any examination candidate who challenges a decision of the board under this rule may request a contested case hearing pursuant to ~~193—7.39(546,272C)~~ rule 193F—20.39(546,543D,272C). The request for hearing shall be in writing, shall briefly describe the basis for the challenge, and shall be filed in the board's office within 30 days of the date of the board decision that is being challenged.

ITEM 7. Amend subrule 5.6(7) as follows:

5.6(7) An applicant who is denied certification based on the work product review described in this rule, or on any other ground, shall be entitled to a contested case hearing as provided in rule ~~193—7.39(546,272C)~~ 193F—20.39(546,543D,272C). Notice of denial shall specify the grounds for denial, which may include any of the work performance-related grounds for discipline against a certified appraiser.

ITEM 8. Amend subrule 6.6(7) as follows:

6.6(7) An applicant who is denied certification based on the work product review described in this rule, or on any other ground, shall be entitled to a contested case hearing as provided in rule ~~193—7.39(546,272C)~~ 193F—20.39(546,543D,272C). Notice of denial shall specify the grounds for denial, which may include any of the work performance-related grounds for discipline against a certified appraiser.

ITEM 9. Amend subrule 8.8(4) as follows:

8.8(4) *Subpoena authority.* Pursuant to Iowa Code ~~subsections~~ sections 17A.13(1) and 272C.6(3), the board is authorized in connection with a disciplinary investigation to issue subpoenas to compel witnesses to testify or persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision about whether to initiate a disciplinary proceeding. Board procedures concerning investigative subpoenas are set forth in ~~193—Chapter 6~~ 193F—Chapter 19.

ITEM 10. Amend subrule 8.9(4) as follows:

8.9(4) The disciplinary committee, subject to board approval, may propose a consent order at the time of the informal discussion. If the licensee agrees to a consent order, a statement of charges shall be filed simultaneously with the consent order, as provided in rule ~~193—7.4(17A,272C)~~ 193F—20.4(17A,272C).

ITEM 11. Amend rule 193F—8.10(272C,543D), introductory paragraph, as follows:

193F—8.10(272C,543D) Peer review committee (PRC). A peer review committee may be appointed by the board to investigate a complaint. The committee may consist of one or more certified general or certified residential real property appraisers registered to practice in Iowa. The board may appoint a single peer review consultant to perform the functions of a PRC when, in the board's opinion, appointing a committee with more members would be impractical, unnecessary or undesirable given the nature of the expertise required, the need for prompt action or the circumstances of the complaint. An individual shall be ineligible as a PRC member in accordance with the standard for disqualification found in ~~193—7.14(17A)~~ rule 193F—20.14(17A).

ITEM 12. Amend rule 193F—8.13(17A,272C,543D) as follows:

193F—8.13(17A,272C,543D) Disciplinary contested case procedures. Unless in conflict with a provision of board rules in this chapter, all of the procedures set forth in ~~193—Chapter 7~~ 193F—Chapter 20 shall apply to disciplinary contested cases initiated by the board.

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

ITEM 13. Amend rule 193F—8.17(272C,543D), introductory paragraph, as follows:

193F—8.17(272C,543D) Reinstatement. In addition to the provisions of rule ~~193—7.38(17A,272C)~~ 193F—20.38(17A,272C), the following provisions shall apply to license reinstatement proceedings:

ITEM 14. Amend subrule 9.3(7) as follows:

9.3(7) Denial of timely and sufficient application to renew. If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant stating the grounds for denial. The procedures described in rule ~~193—7.40(546,272C)~~ 193F—20.40(546,543D,272C) shall apply.

ITEM 15. Amend rule 193F—11.13(272C,543D) as follows:

193F—11.13(272C,543D) Hearings. In the event of denial, in whole or in part, of any application for approval of a continuing education program or provider, or credit for a continuing education program, or withdrawal of approval of a continuing education program or provider, the provider or appraiser may, within 30 days of the date of mailing of the notice of denial or withdrawal, request a contested case hearing before the board, as provided in rule ~~193—7.8(17A)~~ 193F—20.8(17A).

ITEM 16. Amend rule 193F—16.1(543D), introductory paragraph, as follows:

193F—16.1(543D) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not certified or registered by the board pursuant to ~~2007 Iowa Acts, Senate File 137, Iowa Code chapter 543D~~ based on the unlawful practices specified in ~~2007 Iowa Acts, Senate File 137, section 7 Iowa Code section 543D.21~~.

ITEM 17. Amend subrule 16.2(7) as follows:

16.2(7) Improperly influencing or attempting to improperly influence the development, reporting, result, or review of a real estate appraisal as provided in ~~2007 Iowa Acts, Senate File 137, section 7 Iowa Code section 543D.21~~.

ITEM 18. Amend rule 193F—16.3(543D) as follows:

193F—16.3(543D) Investigations. The board is authorized by Iowa Code ~~subsection sections~~ sections 17A.13(1) and ~~2007 Iowa Acts, Senate File 137, section 7, 543D.21~~ to conduct such investigations as are needed to determine whether grounds exist to make application to the district court pursuant to ~~2007 Iowa Acts, Senate File 137, section 7, Iowa Code section 543D.21~~ or to impose civil penalties against a person who is not certified or registered with the board. Such investigations shall conform to the procedures outlined in ~~193—Chapter 6 and 193F—Chapter 8~~ 193F—Chapters 8 and 19. The board is authorized to issue subpoenas and to compel the testimony of witnesses in connection with such investigations, pursuant to ~~2007 Iowa Acts, Senate File 137, section 7 Iowa Code section 543D.21~~. Complaint and investigatory files solely concerning persons who are not certified or registered by the board are not confidential except as provided in Iowa Code chapter 22.

ITEM 19. Amend subrule 16.4(1) as follows:

16.4(1) The notice of the board's intent to issue an order to require compliance with ~~2007 Iowa Acts, Senate File 137, section 7, Iowa Code section 543D.21~~ and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel.

ITEM 20. Amend paragraph **16.4(2)“d”** as follows:

d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with ~~2007 Iowa Acts, Senate File 137, section 7 Iowa Code section 543D.21~~.

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

ITEM 21. Amend subrule 16.5(5) as follows:

16.5(5) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in rule ~~193—7.30(17A,272C)~~ 193F—20.30(17A,272C).

ITEM 22. Amend rule 193F—16.7(543D) as follows:

193F—16.7(543D) Enforcement options. In addition or as an alternative to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, enter into a consent order, issue an informal cautionary letter, refer the matter to the attorney general, or refer the matter to the licensing entity with regulatory authority over the nonlicensee and jurisdiction to take action against the person's real estate-related license as provided in ~~2007 Iowa Acts, Senate File 137, section 7~~ Iowa Code section 543D.21.

ITEM 23. Amend ~~193F—Chapter 16~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A and ~~chapter~~ chapter 543D as ~~amended by 2007 Iowa Acts, Senate File 137.~~

ITEM 24. Amend subrule 17.2(3) as follows:

17.2(3) *Review or appeal of final, discretionary board action.*

a. Final, discretionary board action may be reviewed by or appealed to the superintendent within 20 days of the issuance of the board action. Such decisions shall be provided to the superintendent when issued to affected persons. If the final board action is not a contested case decision following hearing, ~~the~~ a written notice of appeal or request for review shall be filed with the superintendent and served upon the board within such 20-day period, and shall specify:

- (1) The name of the person initiating the appeal or requesting review;
 - (2) The board action which is being appealed or for which review is requested;
 - (3) The specific facts or law alleged to be in error in the board action, or other specific reason(s) why such review is sought;
 - (4) and (5) No change.
- b. No change.

ITEM 25. Amend subrule 17.2(4) as follows:

17.2(4) *Review or appeal of contested case decision.*

a. ~~All~~ Notwithstanding anything in these rules to the contrary, all board decisions in a contested case, ~~whether by consent or following hearing~~, are proposed decisions and shall be provided to the superintendent when issued.

b. All board decisions in a contested case resolved by consent are final decisions, shall be provided to the superintendent when issued, and are subject to the review procedures set forth in subrule 17.2(3).

~~b. c.~~ Any aggrieved party may appeal the a proposed decision to the superintendent within 20 days after issuance of the proposed decision. ~~The superintendent may initiate a review of the proposed decision on the superintendent's own motion at any time within 20 days following issuance of such decision.~~

d. When a proposed decision is or may be anticompetitive, the board (regardless of whether the proposed decision is in favor of the state) may request review of the proposed decision.

e. The superintendent may initiate a review of the proposed decision on the superintendent's own motion at any time within 20 days following issuance of such decision.

~~e. f.~~ A notice of appeal or request for review must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The party or parties initiating the appeal or requesting review;
- (2) The proposed decision or order which is being appealed or for which review is requested;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- (4) and (5) No change.

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

~~d.~~ g. A notice of superintendent's review shall identify the superintendent's concerns with sufficient detail from which the board or a party can respond.

~~e.~~ h. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The superintendent may preside over the taking of additional evidence or may remand a case to the board for further hearing.

~~f.~~ i. The superintendent shall issue a schedule for consideration of the review or appeal.

~~g.~~ j. Unless otherwise ordered, within 20 days of the notice of appeal, ~~request for review~~, or order for review, the board and each appealing party may file briefs. Within 20 days thereafter, the board or any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The superintendent may resolve the appeal or review on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

~~h.~~ k. The record on appeal or review shall be the entire record made at hearing.

~~i.~~ l. The superintendent shall issue a written decision as provided in subrule 17.1(4).

ITEM 26. Amend **193F—Chapter 17**, implementation sentence, as follows:

These rules are intended to implement ~~2016 Iowa Acts, House File 2436~~ Iowa Code chapter 543D.

ITEM 27. Adopt the following new 193F—Chapter 18:

CHAPTER 18
WAIVERS AND VARIANCES FROM RULES

193F—18.1(17A,543D) Definitions. For purposes of this chapter, “a waiver or variance” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

193F—18.2(17A,543D) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

193F—18.3(17A,543D) Applicability. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

193F—18.4(17A,543D) Criteria for waiver or variance. In response to a petition completed pursuant to rule 193F—18.6(17A,543D), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

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

193F—18.5(17A,543D) Filing of petition. A petition for waiver must be submitted in writing to the board as follows:

18.5(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

18.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

18.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's executive officer.

193F—18.6(17A,543D) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, email address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 193F—18.4(17A,543D). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the past five years.

6. Any information known to the requester regarding the board's treatment of similar cases.

7. The name, address, email address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, email address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, email address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

193F—18.7(17A,543D) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive officer, a committee of the board, or a quorum of the board.

193F—18.8(17A,543D) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided. Notice may be provided by email or similar electronic means.

193F—18.9(17A,543D) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

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

193F—18.10(17A,543D) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

18.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

18.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

18.10(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

18.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

18.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

18.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

18.10(7) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

18.10(8) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

18.10(9) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law. Service of the written notice shall be sent to the email address provided by the petitioner unless the petitioner specifically requests a mailed copy.

193F—18.11(17A) Interim rulings.

18.11(1) The executive officer shall, upon receipt of a petition that meets all applicable criteria established in this chapter, present the request to the board chairperson or vice chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

18.11(2) The board chair, or vice chair if the chair is unavailable, may rule on a petition for waiver or variance if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

18.11(3) The board chair or vice chair may call a special electronic meeting of the board when prior board precedent does not clearly resolve the request, input of the board is deemed required, a ruling is not authorized under subrule 18.11(2) and the practical result of waiting until the next regularly scheduled board meeting would be denial of the request due to timing issues.

18.11(4) Interim rulings are effective when made, but a waiver report shall be placed on the agenda at the next regularly scheduled board meeting and recorded in the minutes.

18.11(5) This rule on interim rulings does not apply if the waiver or variance was filed in a contested case.

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

193F—18.12(17A,543D) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

193F—18.13(17A,543D) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

193F—18.14(17A,543D) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

193F—18.15(17A,543D) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

193F—18.16(17A,543D) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

193F—18.17(17A,543D) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and chapter 543D.

ITEM 28. Adopt the following new 193F—Chapter 19:

CHAPTER 19
INVESTIGATORY SUBPOENAS

193F—19.1(17A,272C,543D) Investigatory subpoena authority. Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board has the authority to issue subpoenas to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with the investigation of a licensee disciplinary proceeding, or otherwise necessary for the board to determine whether to commence a contested case. When such an investigation involves licensee discipline, the board may subpoena such evidence whether or not privileged or confidential under law.

193F—19.2(17A,272C,543D) Investigatory subpoena procedures.

19.2(1) The board's executive officer or designee may, upon the written request of a board investigator or on the officer's own initiative, subpoena books, papers, records, and other real evidence

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which the officer determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a.* The nature of the complaint reasonably justifies the issuance of a subpoena;
- b.* Adequate safeguards have been established to prevent unauthorized disclosure;
- c.* An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d.* The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

19.2(2) A written request for a subpoena or the executive officer's written memorandum in support of the issuance of a subpoena shall contain the following:

- a.* The name and address of the person to whom the subpoena will be directed;
- b.* A specific description of the books, papers, records or other real evidence requested;
- c.* An explanation of the reasons that the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- d.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 19.2(1) have been satisfied.

19.2(3) Each subpoena shall contain the following:

- a.* The name and address of the person to whom the subpoena is directed;
- b.* A description of the books, papers, records or other real evidence requested;
- c.* The date, time and location for production, or inspection and copying;
- d.* The time within which a motion to quash or modify the subpoena must be filed;
- e.* The signature, address and telephone number of the executive officer or designee;
- f.* The date of issuance;
- g.* A return of service.

19.2(4) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

19.2(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

19.2(6) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 193F—20.31(17A) and 193F—20.32(17A), provided that all of the time frames are reduced by one-half.

19.2(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of intra-agency appeal. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of intra-agency appeal until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

These rules are intended to implement Iowa Code chapters 17A, 272C, and 543D.

ITEM 29. Adopt the following new 193F—Chapter 20:

CHAPTER 20
CONTESTED CASES

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193F—20.1(17A,543D) Definitions. In addition to the defined terms set forth in 193F—Chapter 2, the following additional terms shall apply in the context of this chapter, except where otherwise specifically defined by law:

“*Contested case*” means any adversary proceeding before the board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 543D; an adversary proceeding against a nonlicensee pursuant to Iowa Code section 543D.21; or any other proceeding designated a contested case by any provision of law, including but not limited to adversary proceedings involving license applicants and the reinstatement of a suspended, revoked or voluntarily surrendered license.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified by rule or in the order.

“*License*” means a license, registration, or certificate authorized by Iowa Code chapter 543D and the board’s implementing rules related thereto.

“*Party*” means the state, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent or applicant, or an intervenor.

“*Presiding officer*” means the board and, when applicable, a panel of board members or an administrative law judge assigned to render a proposed decision in a nondisciplinary contested case.

“*Probable cause*” means a reasonable ground for belief in the existence of facts which would support a specified proceeding under applicable law and rules.

“*Quorum*” means a majority of the members of the board. Action may generally be taken upon a majority vote of board members present at a meeting who are not disqualified, although discipline may only be imposed by a majority vote of the members of the board who are not disqualified.

193F—20.2(17A,543D) Scope and applicability of the Iowa Rules of Civil Procedure. Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

193F—20.3(17A,272C) Commencement of a contested case and probable cause. A contested case in a disciplinary proceeding is commenced by the filing and service of a statement of charges and notice of hearing. A contested case in a nondisciplinary proceeding is commenced by the filing and service of a notice of hearing. A contested case may only be commenced by the board upon a finding of probable cause to do so by a quorum of the board.

193F—20.4(17A,272C) Informal settlement. The board, board staff or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board and the licensee agree to a settlement of the case, a statement of charges shall be filed simultaneously with a consent order. The statement of charges and consent order may be separate documents or may be combined in one document. By electing to sign a consent order, the licensee waives all rights to a hearing and all attendant rights. The consent order shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 193F—20.30(17A,272C). Matters not involving licensee discipline which may culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 193F—20.42(543D,272C).

193F—20.5(17A) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent’s defense. The statement of charges shall be incorporated within or attached to the notice of hearing. The statement of charges and notice of hearing are public records open for public inspection under Iowa Code chapter 22.

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193F—20.6(17A,272C) Notice of hearing.

20.6(1) Contents of notice of hearing. Unless the hearing is waived, all contested cases shall commence with the service of a notice of hearing fixing the time and place for hearing. The notice, including any incorporated or attached statement of charges, shall contain those items specified in Iowa Code section 17A.12(2) and, if applicable, Iowa Code section 17A.18(3), and the following:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted;
- e. Identification of all parties, including the name, address and telephone number of the assistant attorney general designated as prosecutor for the state and the respondent's counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement after charges are filed;
- h. Identification of the board or a panel of board members as the presiding officer, or statement that the presiding officer will be an administrative law judge from the department of inspections and appeals;
- i. If applicable, notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 193F—20.10(17A,272C), that the presiding officer be an administrative law judge from the department of inspections and appeals;
- j. A statement requiring or authorizing the respondent to submit an answer of the type specified in rule 193F—20.9(17A,272C) within 20 days after service of the notice of hearing;
- k. If applicable, notification of the licensee's right to request a closed hearing in a licensee disciplinary proceeding;
- l. Information on whom to contact if, because of a disability, auxiliary aids or services are needed for a party to participate in the matter;
- m. If applicable, the date, time, and manner of conduct of a prehearing conference under rule 193F—20.21(17A,272C); and
- n. The mailing address and email address for filing with the board and notice of the option of email service as provided in subrule 20.17(6).

20.6(2) Service of notice of hearing. Service of notice of hearing on a licensee to commence a contested case which may affect the licensee's continued licensure, such as a licensee disciplinary case or challenge to the renewal of a license, shall be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the licensee or the licensee's duly authorized legal representative. Service of the notice of hearing to commence all other contested cases may additionally be made by certified mail, return receipt requested.

193F—20.7(13,272C) Legal representation.

20.7(1) Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

20.7(2) The respondent or applicant may be represented by an attorney. The attorney shall file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney shall comply with Iowa Court Rule 31.14.

193F—20.8(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

The request for a contested case proceeding shall state the name and address of the requester; identify the specific board action which is disputed; describe issues of material fact in dispute; and, where the

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requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved. If the board grants the request, the board shall issue a notice of hearing. If the board denies the request, the board shall issue a written order specifying the basis for the denial.

193F—20.9(17A,272C) Form of answer.

20.9(1) Unless otherwise provided in the notice of hearing, the answer shall:

- a.* State the name, address, and telephone number of the person filing the answer, the person on whose behalf it is filed, and the attorney representing that person, if any.
- b.* Specifically admit, deny, or otherwise answer all material allegations of the statement of charges.
- c.* State any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

Any allegation in the statement of charges not denied in the answer is considered admitted. Any affirmative defense not raised in the answer shall be deemed waived for purposes of any subsequent intra-agency appeal, judicial review and corresponding appeal(s).

20.9(2) The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the case, including explanations, remarks or statements of mitigating circumstances.

193F—20.10(17A,272C) Presiding officer.

20.10(1) The presiding officer in all licensee disciplinary contested cases shall be the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code sections 272C.6(1) and 272C.6(2). When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 20.10(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

20.10(2) In cases which do not pertain to licensee discipline, the board may act as presiding officer or may notify the parties that an administrative law judge will act as presiding officer at hearing and issue a proposed decision. The use of an administrative law judge as presiding officer is only an option in cases which do not pertain to licensee discipline because only the board may conduct licensee discipline hearings pursuant to Iowa Code section 272C.6. Any party to a nondisciplinary case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

- a.* Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c.* The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.
- d.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f.* Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.
- g.* The request was not timely filed.
- h.* The request is not consistent with a specified statute.

20.10(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision in a nondisciplinary contested case shall have a J.D. degree unless waived by the board.

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20.10(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

20.10(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 193F—20.31(17A) and 193F—20.32(17A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

20.10(6) Unless otherwise provided by law, board members, when reviewing a proposed decision of a panel of the board or an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

193F—20.11(17A) Time requirements.

20.11(1) Time shall be computed as provided in Iowa Code section 4.1(34).

20.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

193F—20.12(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193F—20.13(17A,272C) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone or other electronic means. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone or other electronic means. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

193F—20.14(17A) Disqualification.

20.14(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;

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e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

20.14(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. A person voluntarily appearing before the board or a committee of the board waives any objection to a board member or board staff both participating in the appearance and later participating as a decision maker or aid to the decision maker in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 20.28(9).

20.14(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

20.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 20.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code sections 17A.11(3) and 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

20.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

20.14(6) A motion to disqualify a board member or other person shall first be directed to the affected board member or other person for determination. If the board member or other person determines that disqualification is appropriate, the board member or other person shall withdraw from further participation in the case. If the board member or other person determines that withdrawal is not required, the presiding officer shall promptly review that determination, provided that, if the person at issue is an administrative law judge, the review shall be by the board. If the presiding officer determines that disqualification is appropriate, the board member or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 193F—20.31(17A), if applicable, and seek a stay under rule 193F—20.34(17A).

193F—20.15(17A) Consolidation—severance.

20.15(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

20.15(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

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193F—20.16(17A) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

193F—20.17(17A) Service and filing of pleadings and other papers.

20.17(1) When service is required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state, simultaneously with their filing. Except for the original notice of hearing and statement of charges, and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties. A notice of hearing and statement of charges shall be served by the board as provided in subrule 20.6(2). Once a specific administrative law judge has been assigned to a case, copies of all prehearing motions shall also be served on the administrative law judge.

20.17(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery, including through electronic transmission if reasonably calculated to reach the party or the party’s attorney, or by mailing a copy to the person’s last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

20.17(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

20.17(4) Filing—how and when made. Except where otherwise provided by law, a document is deemed filed at the time it is received by the board. Parties may file documents with the board by hand delivery or mail or by electronic transmission to the email address specified in the notice of hearing. If a document required to be filed within a prescribed period or on or before a particular date is received by the board after such period or such date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the board. The board will not provide a mailed file-stamped copy of documents filed by email or other approved electronic means.

20.17(5) Proof of mailing. Proof of mailing includes either a legible United States Postal Service nonmetered postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Real Estate Appraiser Examining Board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

20.17(6) Electronic service. Email or similar electronic means, unless precluded by a provision of law, shall be permitted to accomplish service where such electronic transmission is reasonably calculated to reach the other party or the other party’s attorney. Factors to consider in determining whether such electronic transmission is reasonably calculated to reach the other party include, but are not limited to, prior communication practices between the parties, whether consent has been given by a party or the party’s attorney, and whether the presiding officer has previously entered an order authorizing service

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by electronic transmission. Service by electronic transmission is complete upon transmission unless the board or party making service learns that the attempted service did not reach the party to be served.

193F—20.18(17A) Discovery.

20.18(1) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

20.18(2) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rule of Civil Procedure govern those specific procedures.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in a contested case proceeding.

20.18(3) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to a contested case proceeding. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceeding or impose an undue hardship. As a practical matter, the purpose of the disclosure requirements and discovery conference is served by the board's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 193F—20.21(17A,272C).

20.18(4) Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

20.18(5) Discovery shall be served on all parties to the contested case proceeding but shall not be filed with the board.

20.18(6) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

20.18(7) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193F—20.19(17A,272C) Issuance of subpoenas in a contested case.

20.19(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the executive officer or designee upon a written request that complies with this rule. In the case of a request

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for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- a.* The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;
- b.* Adequate safeguards have been established to prevent unauthorized disclosure;
- c.* An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d.* An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

20.19(2) A request for a subpoena shall include the following information, as applicable:

- a.* The name, address, email address, and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date, time, and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested;
- f.* The date, time, and location for production, or inspection and copying; and
- g.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 20.19(1) have been satisfied.

20.19(3) Each subpoena shall contain, as applicable:

- a.* The caption of the case;
- b.* The name, address, and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time, and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records, or other real evidence the person is commanded to produce;
- g.* The date, time, and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address, and telephone number of the executive officer or designee;
- j.* The date of issuance; and
- k.* A return of service.

20.19(4) The executive officer or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena shall so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

20.19(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then file a motion asking the presiding officer to issue an order compelling production.

20.19(6) Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

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20.19(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 193F—20.31(17A) and 193F—20.32(17A), provided that all of the time frames are reduced by one-half.

20.19(8) If the person contesting the subpoena is not a party to the contested case proceeding, the board's decision is final for purposes of further intra-agency appeal. If the person contesting the subpoena is a party to the contested case proceeding, the board's decision is not final for purposes of further intra-agency appeal until there is a proposed decision in the contested case.

193F—20.20(17A) Motions.

20.20(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

20.20(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

20.20(3) The presiding officer may schedule oral argument on any motion. If the board requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 193F—20.31(17A).

20.20(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least seven days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

20.20(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

20.20(6) Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within ten days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 193F—20.33(17A) and appeal pursuant to rule 193F—20.32(17A).

193F—20.21(17A,272C) Prehearing conference and disclosures.

20.21(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date. The board shall set a prehearing conference in all licensee disciplinary cases and provide notice of the date and time in the notice of hearing. Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

20.21(2) Each party shall disclose at or prior to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

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20.21(3) In addition to the requirements of subrule 20.21(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters which the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters which will expedite the hearing.

20.21(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference. Unless otherwise provided in the order setting a prehearing conference, the prehearing conference shall be conducted by an administrative law judge.

20.21(5) The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 20.26(4) no later than three business days in advance of hearing, or as ordered by the presiding officer at the prehearing conference.

193F—20.22(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

20.22(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

20.22(2) In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance and may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

20.22(3) The board's executive officer or an administrative law judge may enter an order granting an uncontested application for a continuance. Upon consultation with the board chair or chair's designee, the board's executive officer or an administrative law judge may deny an uncontested application for a continuance, or rule on a contested application for continuance.

193F—20.23(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing upon written notice filed with the board and served on all parties. Unless otherwise ordered by the board, a withdrawal shall be with prejudice.

193F—20.24(17A) Intervention.

20.24(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall

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be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

20.24(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

20.24(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

20.24(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

193F—20.25(17A,272C) Hearings. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or other evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions. Parties have the right to participate or to be represented in all hearings. Any party may be represented by an attorney at the party's expense.

20.25(1) *Examination of witnesses.* All witnesses shall be sworn or affirmed by the presiding officer or the court reporter and shall be subject to cross-examination. Board members and the administrative law judge have the right to examine witnesses at any stage of a witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

20.25(2) *Public hearing.* The hearing shall be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

20.25(3) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the board for at least five years from the date of decision.

20.25(4) *Order of proceedings.* Before testimony is presented, the record shall show the identities of any board members present, the identity of the administrative law judge, the identities of the primary parties and their representatives, and the fact that all testimony is being recorded. In contested cases initiated by the board, such as licensee discipline, hearings shall generally be conducted in the following order, subject to modification at the discretion of the board:

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state interest before the board shall make a brief opening statement which may include a summary of charges and the names of any witnesses and documents to support such charges.

c. Each respondent shall be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. The presentation of evidence on behalf of the respondent(s).

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- f.* Rebuttal evidence on behalf of the state, if any.
- g.* Rebuttal evidence on behalf of the respondent(s), if any.
- h.* Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

The order of proceedings shall be tailored to the nature of the contested case. In license reinstatement hearings, for example, the respondent will generally present evidence first because the respondent is obligated to present evidence in support of the respondent's application for reinstatement pursuant to rule 193F—20.38(17A,272C). In license denial hearings, the state will generally first establish the basis for the board's denial of licensure, but thereafter the applicant has the burden of establishing the conditions for licensure pursuant to rule 193F—20.39(546,543D,272C).

20.25(5) Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

20.25(6) Immunity. The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

20.25(7) Sequestering witnesses. The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses.

20.25(8) Witness representation. Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

20.25(9) Depositions. Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

20.25(10) Witness fees. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

193F—20.26(17A) Evidence.

20.26(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

20.26(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

20.26(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

20.26(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies should also be furnished to members of the board. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The state's exhibits shall be marked numerically, and the applicant's or respondent's exhibits shall be marked alphabetically.

20.26(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and

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the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

20.26(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

20.26(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

193F—20.27(17A) Default.

20.27(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

20.27(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

20.27(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 193F—20.32(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

20.27(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

20.27(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

20.27(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

20.27(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 193F—20.31(17A).

20.27(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

20.27(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

20.27(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 193F—20.34(17A).

193F—20.28(17A) Ex parte communication.

20.28(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of

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any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 20.14(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

20.28(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

20.28(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

20.28(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 193F—20.17(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

20.28(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

20.28(6) The executive officer or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the executive officer or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and the executive officer or other persons comply with subrule 20.28(1).

20.28(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 193F—20.22(17A).

20.28(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

20.28(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

20.28(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the superintendent for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

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193F—20.29(17A) Recording costs. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

193F—20.30(17A,272C) Final decisions, publication and client notification.

20.30(1) Final decision. When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive officer. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to the licensee's or other respondent's last-known U.S. Postal Service address or may be served as in the manner of original notices. A party's attorney may waive formal service and accept service in writing for the party. Copies shall be mailed by interoffice mail or first-class mail to the prosecutor and counsel of record.

20.30(2) Publication of decisions. Final decisions of the board, including consent agreements and consent orders, are public documents, are available to the public and may be disseminated as provided in Iowa Code chapter 22 by the board or others. Final decisions relating to licensee discipline shall be published on the board's website, may be published in the board's newsletter, and may be transmitted to the appropriate professional association(s), national association(s), other states, and news media, or otherwise disseminated. The board may, in its discretion, issue a formal press release.

20.30(3) Notification of clients. Within 15 days (or such other time period specifically ordered by the board) of the licensee's receipt of a final decision of the board, whether entered by consent or following hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee shall notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within 30 days of receipt of the board's final order, the licensee shall file with the board copies of the notices sent. Compliance with this requirement shall be a condition for an application for reinstatement.

193F—20.31(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

193F—20.32(17A) Appeals and review.

20.32(1) Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions.

a. Proposed decision. Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. All licensee disciplinary decisions must be issued by the board. A proposed disciplinary decision issued by a panel of the board must be acted upon by the full board in order to become the board's final proposed decision for purposes of 193F—subrule 17.2(4). In nondisciplinary cases, a proposed decision issued by a panel of the board or an administrative law judge becomes a final proposed decision for purposes of 193F—subrule 17.2(4) if not timely appealed by any party or reviewed by the board.

b. Appeal by party. Any adversely affected party may appeal a proposed decision rendered by a panel of the board or administrative law judge to the board within 30 days after issuance of the proposed decision. Such an appeal is required prior to seeking further intra-agency appeal as set forth in subrule 20.32(2) and 193F—subrule 17.2(4), is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

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c. Review. The board may initiate review of a proposed decision rendered by a panel of the board or administrative law judge on its own motion at any time within 30 days following the issuance of such a decision.

d. Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The parties initiating the appeal;
- (2) The proposed decision or order which is being appealed;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- (4) The relief sought;
- (5) The grounds for relief.

e. Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

f. Scheduling. The board shall issue a schedule for consideration of the appeal.

g. Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

h. Record. The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

20.32(2) *Intra-agency review or appeal to the superintendent.*

a. Proposed decisions. Notwithstanding anything in these rules to the contrary, all board decisions in a contested case following hearing are proposed decisions and shall be provided to the superintendent when issued as required by 193F—subrule 17.2(4). Decisions issued by a panel of less than a quorum of the board or by an administrative law judge shall not constitute a final proposed decision of the board for purposes of this subrule and 193F—subrule 17.2(4) until the appeal and review procedures outlined in subrule 20.32(1) are exhausted and the review process is complete.

b. Procedures for intra-agency review or appeal to the superintendent. Procedures for intra-agency review or appeal by or to the superintendent in a hearing following a contested case are outlined in 193F—subrule 17.2(4) and are incorporated by reference as if set forth herein.

c. Intra-agency appeal to superintendent. No person aggrieved by a proposed decision of the board may seek judicial review of that action without first appealing the action to the superintendent, as more fully described in this subrule and 193F—Chapter 17. Such intra-agency appeal to the superintendent is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

193F—20.33(17A) Applications for rehearing.

20.33(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

20.33(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 20.33(3), the applicant requests an opportunity to submit additional evidence.

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20.33(3) Additional evidence. A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

20.33(4) Time of filing. The application shall be filed with the board within 20 days after issuance of the final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for rehearing is deemed filed on the date it is received by the board unless the provisions of subrule 20.17(4) apply.

20.33(5) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the application on all parties.

20.33(6) Disposition. An application for rehearing shall be deemed denied unless the board grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the board.

20.33(7) Proceedings. If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

193F—20.34(17A) Stays of board actions.**20.34(1) When available.**

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. Seeking a stay from the board is required to exhaust administrative remedies before a stay may be sought from the district court.

20.34(2) When granted. In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5) "c."

20.34(3) Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

193F—20.35(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

193F—20.36(17A) Emergency adjudicative proceedings.

20.36(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing

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activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

20.36(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the board;
- (3) Certified mail to the last address on file with the board;
- (4) First-class mail to the last address on file with the board; or
- (5) Electronic service. Fax or email notification may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax or email and has provided a fax number or email address for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

20.36(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

20.36(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

193F—20.37(17A,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

20.37(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

20.37(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 20.33(6).

193F—20.38(17A,272C) Reinstatement.

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20.38(1) The term “reinstatement” as used in this rule shall include both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license. Reinstating a license to active status under this rule is a two-step process:

a. First, the board must determine whether the suspended, revoked, or surrendered license may be reinstated under the terms of the order revoking or suspending the license or accepting the surrender of the license and under the two-part test described in subrule 20.38(5).

b. Second, if the board grants the application to reinstate, the licensee must complete and submit an application to demonstrate satisfaction of all administrative preconditions for reinstatement of the license to active status, including verification of completion of all continuing education and payment of reinstatement and renewal fees.

20.38(2) Any person whose license has been revoked or suspended by the board, or who voluntarily surrendered a license in a disciplinary proceeding, may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension, or order accepting the voluntary surrender.

20.38(3) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender of a license.

20.38(4) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent’s license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. In addition, the board may grant an applicant’s request to appear informally before the board prior to the issuance of a notice of hearing on the application if the applicant requests an informal appearance in the application and agrees not to seek to disqualify on the ground of personal investigation the board members or staff before whom the applicant appears.

20.38(5) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation, suspension or voluntary surrender of the respondent’s license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with subrule 20.30(3) must also be established. The burden of proof to establish such facts shall be on the respondent. An order of reinstatement may include such conditions as the board deems reasonable under the circumstances. The board may grant the application without hearing, but may not deny the application in whole or in part without setting the matter for hearing or providing the applicant the opportunity to request a contested case hearing if aggrieved by a term of the reinstatement order.

20.38(6) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not less than a majority of the board. This order will be published as provided for in subrule 20.30(2).

193F—20.39(546,543D,272C) Hearing on license denial. If the board denies an application for an initial, reciprocal or comity license, the executive officer shall send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the board denies an application to renew an existing license, the provisions of rule 193F—20.40(546,543D,272C) shall apply.

20.39(1) An applicant who is aggrieved by the denial of an application for licensure and who desires to contest the denial must request a hearing before the board within 30 calendar days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors that the applicant contends were made by the board, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for

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hearing is timely made, the board shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant.

20.39(2) The board, in its discretion, may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as presiding officer. The applicant may request that an administrative law judge act as presiding officer and render a proposed decision pursuant to rule 193F—20.10(17A,272C). A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to rule 193F—20.32(17A).

20.39(3) License denial hearings are contested cases open to the public. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

20.39(4) The board, after a hearing on license denial, may grant or deny the application for licensure. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for licensure might be granted, if applicable.

20.39(5) The notice of license denial, request for hearing, notice of hearing, record at hearing and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, collateral organizations and other persons or entities.

20.39(6) Following intra-agency appeal to the superintendent as required by subrule 20.32(2) and 193F—subrule 17.2(4), judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

193F—20.40(546,543D,272C) Denial of application to renew license. If the board denies a timely and sufficient application to renew a license, a notice of hearing shall be issued to commence a contested case proceeding.

20.40(1) Hearings on denial of an application to renew a license shall be conducted according to the procedural rules applicable to contested cases. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 20.39(2) and 20.39(4) to 20.39(6) shall generally apply, although license denial hearings which are in the nature of disciplinary actions will be subject to all laws and rules applicable to such hearings.

20.40(2) Pursuant to Iowa Code section 17A.18(2), an existing license shall not terminate or expire if the licensee has made timely and sufficient application for renewal until the last day for seeking judicial review of the board's final order denying the application, or a later date fixed by order of the board or the reviewing court.

20.40(3) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

a. Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;

b. Signed by the licensee if submitted in paper form or certified as accurate if submitted electronically;

c. Fully completed; and

d. Accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

20.40(4) The administrative processing of an application to renew an existing license shall not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

193F—20.41(543D,272C) Recovery of hearing fees and expenses. The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has

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violated a statute or rule enforced by the board. Payment shall be made directly to the banking division of the department of commerce.

20.41(1) All hearing fees and costs assessed by the board shall be paid directly to the division of banking and shall be held in a separate fund administered by the superintendent. The superintendent shall distribute moneys held in this fund during the fiscal year in which those moneys are paid to the division of banking. Distributions from the fund shall be made upon the request of the board and in the sole discretion of the superintendent. A distribution received by the board under this chapter shall be used only for expenditures related to disciplinary hearings.

a. The superintendent shall consider the following factors in exercising discretion as to whether to distribute funds to the board:

(1) The remaining funds in the board's allocated budget appropriate for disciplinary hearings in that fiscal year;

(2) The number of disciplinary hearings the board has scheduled for the remainder of that fiscal year; the nature and seriousness of those hearings; and the public health, safety, and welfare interests implicated by those hearings;

(3) Whether the board has adopted and implemented hearing cost recovery rules.

b. The superintendent shall, within 45 days from the end of the fiscal year, distribute to the board a percentage of the remaining fees and costs that is equal to the percentage of the board's total allocated budget in relation to the divisionwide total budget governed by this chapter. The fees and costs allocated back to the board shall be considered repayment receipts as defined in Iowa Code section 8.2. The fees and costs allocated back to the board shall be applied to the costs incurred for prosecution of contested cases which could result in disciplinary action.

20.41(2) The board may assess the following costs under this rule:

a. For conducting a disciplinary hearing, an amount not to exceed \$75.

b. All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal or request for review, to the full board from a decision rendered by a panel of the board or administrative law judge or by or to the superintendent from a proposed decision of the board, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable in the circumstances.

c. All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses shall be guided by Iowa Code section 622.69. The cost for expert witnesses shall be guided by Iowa Code section 622.72. Mileage costs shall not be governed by Iowa Code section 625.2. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.

d. All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the services of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost shall include a reasonable expert witness fee. The expert witness fee shall not exceed the expert's customary hourly or daily rate, and shall include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

20.41(3) When imposed in the board's discretion, hearing fees (not exceeding \$75) shall be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule shall be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

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a. When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by a majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have until the end of the sixth month after the date the state of Iowa paid the expenditures to assess the licensee for such expenditure. In order to rely on this provision, however, the final disciplinary order must notify the licensee that fees and expenses will be assessed once known.

20.41(4) Any party may object to the fees, costs or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within ten days of any subsequent order establishing the amount of the assessment. A party's failure to timely object shall be deemed a failure to exhaust administrative remedies. Orders which impose fees, costs or expenses shall notify the licensee of the time frame in which objections must be filed in order to exhaust administrative remedies.

20.41(5) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

20.41(6) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall constitute a violation of an order of the board, shall be grounds for discipline, and shall be considered prima facie evidence of a violation of Iowa Code section 272C.3(2) "a." However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.

193F—20.42(543D,272C) Settlement after notice of hearing.

20.42(1) Settlement negotiations after the notice of hearing is served may be initiated by the licensee or other respondent, the prosecuting assistant attorney general, the board's executive officer, or the board chair or chair's designee.

20.42(2) The board chair or chair's designee shall have authority to negotiate on behalf of the board but shall not have the authority to bind the board to particular terms of settlement.

20.42(3) The respondent is not obligated to participate in settlement negotiations. The respondent's initiation of or consent to settlement negotiation constitutes a waiver of notice and opportunity to be heard during settlement negotiation pursuant to Iowa Code section 17A.17 and rule 193F—20.28(17A). Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or chair's designee, and the designated board member is not disqualified from participating in the adjudication of the contested case.

20.42(4) Unless designated to negotiate, no member of the board shall be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal settlement shall be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive officer to have ex parte communications with the board related to the terms of settlement. If the board fails to approve the consent order, it shall be of no force and effect to either party and shall not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement which the respondent is free to accept or reject.

20.42(5) If the board and respondent agree to a consent order, the consent order shall constitute the final decision of the board. By electing to resolve a contested case through consent order, the respondent waives all rights to a hearing and all attendant rights. A consent order in a licensee disciplinary case shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 193F—20.30(17A,272C).

These rules are intended to implement Iowa Code chapters 17A, 272C, 543D, and 546.

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ITEM 30. Adopt the following new 193F—Chapter 21:

CHAPTER 21

DENIAL OF ISSUANCE OR RENEWAL, SUSPENSION, OR REVOCATION OF LICENSE FOR
NONPAYMENT OF CHILD SUPPORT, STUDENT LOAN, OR STATE DEBT

193F—21.1(252J) Nonpayment of child support. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

21.1(1) The notice required by Iowa Code section 252J.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

21.1(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee or applicant.

21.1(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 252J.8 upon the licensee or applicant.

21.1(4) Licensees and applicants shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

21.1(5) All board fees for application, license renewal or license reinstatement must be paid by licensees or applicants and all continuing education requirements must be met before a license will be issued, renewed or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 252J.

21.1(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

21.1(7) The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

193F—21.2(261) Nonpayment of student loan. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

21.2(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

21.2(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensee.

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21.2(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or licensee.

21.2(4) Applicants and licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

21.2(5) All board fees required for application, license renewal or license reinstatement must be paid by applicants or licensees and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 261.

21.2(6) In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

21.2(7) The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the applicant or licensee when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

193F—21.3(272D) Nonpayment of state debt. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

21.3(1) The notice required by Iowa Code section 272D.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

21.3(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the licensee or applicant.

21.3(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 272D.8 upon the licensee or applicant.

21.3(4) Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

21.3(5) All board fees required for application, license renewal or license reinstatement must be paid by licensees or applicants and all continuing education requirements must be met before a license will be issued, renewed or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 272D.

21.3(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board

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shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

21.3(7) The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 252J and 272D and sections 261.126 and 261.127.

ITEM 31. Adopt the following new 193F—Chapter 22:

CHAPTER 22
PETITION FOR RULE MAKING

193F—22.1(17A) Petition for rule making. Any person, board or other state agency may file a petition for rule making with the board.

A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

Petition by (Name of Petitioner) for the
(adoption, amendment, or repeal) of rules
relating to (State subject matter).



PETITION FOR
RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names, addresses, and email addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 193F—22.4(17A).

22.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, email address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

22.1(2) The board may deny a petition because it does not substantially conform to the required form.

193F—22.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

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193F—22.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the executive officer of the board at the board’s offices.

193F—22.4(17A) Board consideration.

22.4(1) Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

22.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Service of the written notice shall be sent to the email address provided by the petitioner unless the petitioner specifically requests a mailed copy. Petitioner shall be deemed notified of the denial or granting of the petition on the date when the board emails or delivers the required notification to petitioner.

22.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board’s rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 32. Adopt the following new 193F—Chapter 23:

CHAPTER 23
DECLARATORY ORDERS

193F—23.1(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board’s offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

Petition by (Name of Petitioner) for
Declaratory Order on (Cite provisions
of law involved).



PETITION FOR
DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
3. The questions the petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.

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7. The names, addresses, and email addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.

8. Any request by petitioner for a meeting provided for by rule 193F—23.7(17A). The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, email address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

193F—23.2(17A) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 193F—23.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons. Notice may be provided by email or similar electronic means.

193F—23.3(17A) Intervention.

23.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

23.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

23.3(3) A petition for intervention shall be filed at the board’s office. Such a petition is deemed filed when it is received by the office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

Petition by (Name of Original Petitioner)
for Declaratory Order on (Cite provisions
of law cited in original petition).



PETITION FOR
INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor’s standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor’s interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
5. The names, addresses, and email addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, email address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

193F—23.4(17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

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193F—23.5(17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the executive officer of the board at the board's offices.

193F—23.6(17A) Service and filing of petitions and other papers.

23.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

23.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board's office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

23.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 193F—20.17(17A).

193F—23.7(17A) Board consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

193F—23.8(17A) Action on petition.

23.8(1) Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by Iowa Code section 17A.9. Within 30 days after receipt of a petition for a declaratory order, the board shall, in writing, do one of the following:

- a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;
- b. Set the matter for specified proceedings;
- c. Agree to issue a declaratory order by a specified time; or
- d. Decline to issue a declaratory order, stating the reasons for its action.

23.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 193F—20.1(17A).

193F—23.9(17A) Refusal to issue order.

23.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(5) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- a. The petition does not substantially comply with the required form.
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- c. The board does not have jurisdiction over the questions presented in the petition.
- d. The questions presented by the petition are also presented in current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.
- e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

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h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

23.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

23.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

193F—23.10(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance; the name of petitioner; the names of intervenors; the specific statutes, rules, policies, decisions, or orders involved; the particular facts upon which it is based; and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

193F—23.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be emailed promptly to the original petitioner and all intervenors unless the petitioner specifically requests a mailed copy.

193F—23.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 33. Adopt the following new 193F—Chapter 24:

CHAPTER 24
SALES AND LEASES OF GOODS AND SERVICES

193F—24.1(68B) Selling or leasing of goods or services by members of the board. The board members shall not sell or lease, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the board except as authorized by this rule, and by the consent documents filed with the Iowa ethics and campaign disclosure board pursuant to Iowa Code section 68B.4 and the corresponding provisions of rule 351—6.11(68B).

24.1(1) Conditions of consent for members. Consent shall be given by a majority of the members of the board upon a finding that the conditions required by Iowa Code section 68B.4, as described in 351—subrule 6.11(4), have been satisfied. The board may grant a blanket consent for sales and leases to classes of individuals, associations, or corporations when such blanket consent is consistent with 351—subrule 6.11(4) and the granting of single consents is impractical or impossible to determine.

24.1(2) Authorized sales and leases.

a. A member of the board may sell or lease goods or services to any individual, association, or corporation regulated by any division within the department of commerce, other than the board on which that official serves. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. The board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board.

b. A member of the board may sell or lease goods or services to any individual, association, or corporation regulated by the board if those goods or services are routinely provided to the public as part

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of that person's regular professional practice. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. In the event a complaint is filed with the board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the board in that case, as provided, for instance, in the code of administrative judicial conduct at 481—Chapter 15. The board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board. The board intends that the blanket consent be interpreted broadly to allow routine professional services offered directly to the general public and to licensees, such as continuing education instruction or peer review services. Such consent recognizes that those licensees most proficient and ethical in their professional careers may also be among those whose services are desirable to enrich the professional competence of licensees. Interpreting the blanket consent broadly accordingly removes a possible disincentive to board membership.

c. Individual application and approval are not required for the sales and leases authorized by this rule and by the consents filed with the ethics and campaign disclosure board unless there are unique facts surrounding a particular sale or lease which would cause the sale or lease to affect the seller's or lessor's duties or functions, would give the buyer or lessee an advantage in dealing with the board, or would otherwise present a conflict of interest as defined in Iowa Code section 68B.2A or common law.

24.1(3) Application for consent. Prior to selling or leasing a good or service to an individual, association, or corporation subject to the regulatory authority of the department of commerce, an official must obtain prior written consent, as provided in 351—subrule 6.11(3), unless the sale or lease is specifically allowed in subrule 24.1(2) and in the consents filed with the ethics and campaign disclosure board. The request for consent must be in writing and signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale or lease. The application should identify the parties to the sale or lease and the amount of compensation. The application should also explain why the sale or lease should be allowed. All applications must conform to the requirements of 351—subrule 6.11(3).

24.1(4) Limitation of consent. Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this rule does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules. The board's ruling on each application, whether consent is conferred or denied or conditionally granted, shall be filed with the ethics and campaign disclosure board pursuant to 351—subrule 6.11(7). An official who receives a denial or conditional consent may appeal the ruling to the ethics and campaign disclosure board as provided in 351—subrule 6.11(6).

This rule is intended to implement Iowa Code chapter 68B.

ITEM 34. Adopt the following new 193F—Chapter 25:

CHAPTER 25
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

193F—25.1(17A,22) Definitions. As used in this chapter:

“Agency” in these rules means the real estate appraiser examining board within the Iowa division of banking.

“Confidential record” in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly

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authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Custodian*” in these rules means the real estate appraiser examining board within the Iowa division of banking.

“*Personally identifiable information*” in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” in these rules means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

“*Record system*” in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

193F—25.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

193F—25.3(17A,22) Requests for access to records.

25.3(1) Location of record. A request for access to a record should be directed to the agency. The request shall be directed to the board at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, c/o executive officer of the real estate appraiser examining board. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

25.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

25.3(3) Request for access. Requests for access to open records may be made in writing, in person, by facsimile, email, or other electronic means or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, email address, and telephone number of the person requesting the information to facilitate the board’s response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

25.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 193F—25.4(17A,22) and other applicable provisions of law.

25.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

25.3(6) Copying. A reasonable number of copies of an open record may be made in the agency’s office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

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25.3(7) Fees.

a. When charged. The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

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

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged to the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

193F—25.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 193F—25.3(17A,22).

25.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

25.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

25.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address, email address, or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

25.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

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25.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

193F—25.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

25.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

25.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, email address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

25.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

25.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed or when the custodian receives a request for access to the record by a member of the public.

25.5(5) Request granted or deferred. If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

25.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period

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of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

193F—25.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the agency at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, c/o executive officer of the real estate appraiser examining board. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

193F—25.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

This rule does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release.

193F—25.8(17A,22) Disclosures without the consent of the subject.

25.8(1) Open records are routinely disclosed without the consent of the subject.

25.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 193F—25.9(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

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h. To other licensing authorities inside and outside Iowa as described in Iowa Code section 272C.6(4).

25.8(3) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying registrants or applicants subject to enforcement under Iowa Code chapter 252J or 598.

25.8(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services, centralized collection unit of the department of revenue for state debt, and college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code chapters 252J and 272D and sections 261.126 and 261.127.

193F—25.9(17A,22) Routine use. “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

25.9(1) Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

25.9(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

25.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

25.9(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

25.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

25.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

25.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in licensee disciplinary proceedings.

25.9(8) Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

25.9(9) Name and address of licensees, date of licensure, type of license, status of licensure and related information are routinely disclosed to the public upon request.

25.9(10) Name and license numbers of licensees are routinely disclosed to the public upon request.

193F—25.10(17A,22) Consensual disclosure of confidential records.

25.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 193F—25.7(17A,22).

25.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

193F—25.11(17A,22,546) Release to subject.

25.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the agency need not release the following records to the subject:

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a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5))

d. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline is required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding, except those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9).

e. As otherwise authorized by law.

25.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

193F—25.12(17A,22) Availability of records.

25.12(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

25.12(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal related information in confidential personnel records of board staff and board members. (Iowa Code section 22.7(11))

b. All information in complaint and investigation files maintained by the board for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing or those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9). Unlicensed complaint files are open to the public.

c. The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. Unlicensed hearing files are open to the public.

d. Information relating to the contents of an examination for licensure.

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

f. Information or records received from a restricted source and any other information or records made confidential by law, such as academic transcripts or substance abuse treatment information.

g. References for examination or licensure applicants. (Iowa Code section 22.7(18))

h. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 272C.6(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

i. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

j. Those portions of agency staff manuals, instructions or other statements issued which set forth the criteria or guidelines to be used by agency staff in auditing, making inspections, or in selecting or handling cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the board. (Iowa Code sections 17A.2 and 17A.3)

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k. Email addresses of licensees when solicited for the purpose of mass communication. An email address may be open to the public when given as part of a specific, individual email correspondence.

25.12(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 193F—25.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 25.4(3).

193F—25.13(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 193F—25.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information. Records are stored on paper and in electronic form. The board's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format. Data regarding licensees is stored in a data processing system that permits the comparison of personally identifiable information in one record system with personally identifiable information in another system. Some information may also be placed on the board's website or in its newsletter or shared with others to display in databases, national registries, and similar systems. The record systems maintained by the agency are:

25.13(1) Information in complaint and investigation files maintained by the board for purposes of licensee discipline. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing. Only charges and final orders are maintained electronically.

25.13(2) Information on nonlicensee investigation files maintained by the board. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7(18) or other provision of law.

25.13(3) The following information regarding licensee disciplinary proceedings:

- a.* Formal charges and notices of hearing.
- b.* Complete records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4).
- c.* Final written decisions, including informal stipulations and settlements.

25.13(4) Licensure. Records pertaining to licensure by examination may include:

- a.* Transcripts from education programs. This information is collected pursuant to Iowa Code section 543D.9.
- b.* Applications for examination. This information is collected pursuant to Iowa Code section 543D.7.
- c.* Past criminal and disciplinary record. This information is collected pursuant to Iowa Code section 543D.12.
- d.* Examination scores. This information is collected pursuant to Iowa Code section 543D.8.
- e.* Social security numbers of license applicants and licensees as required by Iowa Code section 252J.8(1).

25.13(5) In addition to the above records, records pertaining to licensure by reciprocity or comity may include:

- a.* Disciplinary actions taken by other boards. This information is collected pursuant to Iowa Code section 543D.10.
- b.* Verification of licensure by another board. This information is collected pursuant to Iowa Code section 543D.11.
- c.* Verification of experience and other licensure qualifications.

25.13(6) Renewal forms. This information is collected pursuant to Iowa Code sections 542.6, 542B.18, 543B.28, 543D.16, 544A.10, 544B.13, and 544C.3(5). Some renewal forms are only stored in data processing systems when licensees renew electronically.

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25.13(7) Continuing education records. This information is collected pursuant to Iowa Code section 272C.2.

193F—25.14(22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 193F—25.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, the records listed in rule 193F—25.13(17A,22) may contain information about individuals. Records are paper and electronic and may be stored in automated data processing systems. The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format.

25.14(1) Rule-making records. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not generally stored in an automated data processing system, although rule-making dockets may also be found on the board's website.

25.14(2) Board records. Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the office of the board, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system, although minutes and other information may be found on the board's website.

25.14(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the office of the board. Information concerning examinations and registration is available from the board office. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system, although some board publications may be found on the board's website.

25.14(4) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to paragraphs 25.12(2) "b" and "c." These records may contain information about individuals collected under the authority of Iowa Code section 543D.17.

25.14(5) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in the office of the agency. Policy manuals do not contain information about individuals.

25.14(6) Other records. All other records that are not exempted from disclosure by law.

25.14(7) Waivers and variances. Requests for waivers and variances, board proceedings and rulings on such requests, and reports prepared for the administrative rules committee and others.

25.14(8) Declaratory orders.

25.14(9) Rule-making initiatives. All boards maintain both paper and electronic records on rule-making initiatives in accordance with Executive Order Numbers 8 and 9.

25.14(10) Personnel records of board staff and board members which may be confidential pursuant to Iowa Code section 22.7(11). The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files may include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

25.14(11) General correspondence, reciprocity agreements with other states, and cooperative agreements with other agencies.

25.14(12) Administrative records. These records include documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, and printing and supply requisitions.

25.14(13) All other records that are not confidential by law.

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193F—25.15(17A,22) Data processing systems. All data processing systems used by the board permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

193F—25.16(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by a person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

193F—25.17(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

25.17(1) License and examination applicants. License and examination applicants are requested to supply a wide range of information depending on the qualifications for licensure or sitting for an examination, as provided by board statutes, rules and application forms. Failure to provide requested information may result in denial of the application. Some requested information, such as college transcripts, social security numbers, examination scores, and criminal histories, are confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information, freely available for public examination.

25.17(2) Home address. License applicants and licensees are requested to provide both home and business addresses. Both addresses are treated as open records. The board will honor the "safe at home" address issued by any state's program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person's physical location. If a license applicant or licensee has a basis to shield a home address from public disclosure, such as a domestic abuse protective order, written notification should be provided to the board office. Absent a court order, the board may not have a basis under Iowa Code chapter 22 to shield the home address from public disclosure, but the board may refrain from placing the home address on its website and may notify the applicant or licensee before the home address is released to the public to provide an opportunity for the applicant or licensee to seek injunction.

25.17(3) License renewal. Licensees are requested to supply a wide range of information in connection with license renewal, including continuing education information, criminal history and disciplinary actions, as provided by board statutes, rules and application forms, both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information, such as credit card numbers, may be confidential under state or federal law.

25.17(4) Investigations. Licensees are required to respond to board requests for information involving the investigation of disciplinary complaints against licensees. Failure to timely respond may result in disciplinary action against the licensee to whom the request is made. Information provided in

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response to such a request is confidential pursuant to Iowa Code section 272C.6(4) but may become public if introduced at a hearing which is open to the public, contained in a final order, or filed with a court of judicial review.

These rules are intended to implement Iowa Code chapters 22, 252J and 261.

[Filed 3/8/19, effective 5/1/19]

[Published 3/27/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/27/19.

ARC 4380C

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to natural gas safety standards

The Utilities Board hereby amends Chapter 10, "Intrastate Gas and Underground Gas Storage," and Chapter 19, "Service Supplied by Gas Utilities," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 476 and 479.

Purpose and Summary

Federal regulations require the Utilities Board, as an agent of the federal Pipeline Hazardous Materials Safety Administration, to update its rules every two years so that the Board is applying the most recent federal regulations during inspections of natural gas pipelines. This rule making updates the rules as required.

The updates bring the Board's safety rules for natural gas pipelines into compliance with federal regulations so that pipeline companies in Iowa are not required to comply with two sets of safety regulations. Updating the rules will not change any of the requirements for natural gas pipelines since the Board inspects based upon the most current federal regulations and pipeline companies are required to comply with those regulations.

The Board issued an order adopting amendments on February 28, 2019. This order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2018-0003.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 19, 2018, as **ARC 4173C**.

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed a comment stating it did not object to any of the proposed amendments. No other comments were filed. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on February 28, 2019.

UTILITIES DIVISION[199](cont'd)

Fiscal Impact

The adopted amendments update existing rules for natural gas safety standards which the companies are required by federal regulations to follow. No fiscal impact is expected.

Jobs Impact

After analysis and review, the Board concludes the amendments will not have a detrimental effect on employment in Iowa.

Waivers

No waiver provision was adopted because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that specifies procedures for requesting a waiver of the rules in Chapters 10 and 19.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on May 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 10.12(1) as follows:

10.12(1) All pipelines, underground storage facilities, and equipment used in connection therewith shall be designed, constructed, operated, and maintained in accordance with the following standards:

a. 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through ~~October 19, 2016~~ May 1, 2019.

b. 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," as amended through ~~October 19, 2016~~ May 1, 2019.

c. 49 CFR Part 199, "Drug and Alcohol Testing," as amended through ~~October 19, 2016~~ May 1, 2019.

d. ASME B31.8 - ~~2007~~ 2016, "Gas Transmission and Distribution Piping Systems."

e. and f. No change.

Conflicts between the standards established in paragraphs 10.12(1)"a" through "f" or between the requirements of rule 199—10.12(479) and other requirements which are shown to exist by appropriate written documentation filed with the board shall be resolved by the board.

ITEM 2. Amend subrule 19.2(5) as follows:

19.2(5) *Annual, periodic and other reports to be filed with the board.*

a. to f. No change.

g. *Reports to federal agencies.* Copies of reports submitted to the U.S. Department of Transportation pursuant to 49 CFR Part 191, Part 192, or Part 199, as amended through ~~October 19, 2016~~ May 1, 2019, shall be filed with the board. Utilities operating in other states shall provide to the board data for Iowa only.

h. to k. No change.

ITEM 3. Amend subrule 19.5(2) as follows:

19.5(2) *Standards incorporated by reference.*

UTILITIES DIVISION[199](cont'd)

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

(1) 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through ~~October 19, 2016~~ May 1, 2019.

(2) 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," as amended through ~~October 19, 2016~~ May 1, 2019.

(3) 49 CFR Part 193, "Liquefied Natural Gas Facilities: Federal Safety Standards," as amended through ~~October 19, 2016~~ May 1, 2019.

(4) 49 CFR Part 199, "Drug and Alcohol Testing," as amended through ~~October 19, 2016~~ May 1, 2019.

(5) ASME B31.8 - ~~2007~~ 2016, "Gas Transmission and Distribution Piping Systems."

(6) NFPA 59-~~2004~~ 2018, "Utility LP-Gas Plant Code."

(7) At railroad crossings, 199—42.7(476), "Engineering standards for pipelines."

b. The following publications are adopted as standards of accepted good practice for gas utilities:

(1) ANSI Z223.1/NFPA 54-~~2015~~ 2018, "National Fuel Gas Code."

(2) NFPA 501A-~~2013~~ 2017, "Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities."

ITEM 4. Amend subrule 19.8(3) as follows:

19.8(3) *Turning on gas.* Each utility upon the installation of a meter and turning on gas or the act of turning on gas alone shall take the necessary steps to assure itself that there exists no flow of gas through the meter which is a warning that the customer's piping or appliances are not safe for gas turn on (Ref: Sec. 8.2.3 and Annex D, ANSI Z223.1/NFPA 54-~~2015~~ 2018).

[Filed 2/28/19, effective 5/1/19]

[Published 3/27/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/27/19.