



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XLIII
June 16, 2021

NUMBER 26
Pages 2889 to 3090

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PREFACE

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

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

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

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

JACK EWING, Administrative Code Editor
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CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rule Making 2021

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
1	Wednesday, June 23, 2021	July 14, 2021
2	Friday, July 9, 2021	July 28, 2021
3	Friday, July 23, 2021	August 11, 2021

PLEASE NOTE:

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

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

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

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

NOTE: See also the Advisory Notice on page 3090.

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Capitol complex operations—pistols and revolvers, 100.2 IAB 6/16/21 ARC 5718C	Procurement Conference Room, A Level Hoover State Office Bldg. Des Moines, Iowa	July 6, 2021 10 to 11 a.m.
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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Federal Wholesome Meat Act regulations—adoption by reference, amendments to ch 76 IAB 6/2/21 ARC 5652C	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa Via conference call: 866.685.1580 Access code: 515 281 3950#	June 23, 2021 10 to 11 a.m.
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Licensure, amendments to chs 13, 15, 16, 18, 20, 22, 24, 27 IAB 6/2/21 ARC 5665C	Board Room 701 E. Court Ave., Suite A Des Moines, Iowa	June 23, 2021 1 p.m.
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Deaf and hard-of-hearing persons—terminology, 13.28(25)“b,” 14.2, 16.2(1), 27.3 IAB 6/2/21 ARC 5666C	Board Room 701 E. Court Ave., Suite A Des Moines, Iowa	June 23, 2021 1 p.m.
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Statements of professional recognition—behavior analysts, mental health professionals, 16.1(1), 16.9, 16.10 IAB 6/2/21 ARC 5667C	Board Room 701 E. Court Ave., Suite A Des Moines, Iowa	June 23, 2021 1 p.m.
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Terminology, amendments to chs 31, 41, 56, 120 IAB 6/2/21 ARC 5664C	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa Via videoconference: doe.zoom.us/j/95251915764?pwd=Y3ZFajcvNlVoNDQyVTJRanFaZW1YZz09	June 22, 2021 9:30 to 10 a.m.
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Regional planning partnerships—funding, governance, 46.9(1)“a,” 46.10 IAB 6/2/21 ARC 5662C	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa Via videoconference: doe.zoom.us/j/95251915764?pwd=Y3ZFajcvNlVoNDQyVTJRanFaZW1YZz09	June 22, 2021 9 to 9:30 a.m.
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Definition of dyslexia, 62.6(3)"a"
IAB 6/2/21 ARC 5663C

ICN Room, Second Floor
Grimes State Office Bldg.
Des Moines, Iowa
Via videoconference:
idoe.zoom.us/j/95251915764?pwd=Y3ZFajcvNlVoNDQyVTJRanFaZW1YZz09

June 22, 2021
8:30 to 9 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 20.2, 22.100, 23.1,
25.1(9)
IAB 6/16/21 ARC 5678C

Via video/conference call
Contact Christine Paulson
Email: christine.paulson@dnr.iowa.gov

July 19, 2021
1 to 2 p.m.

Dams; water storage permitting,
amend chs 50 to 52, 70 to 72;
adopt ch 73
IAB 6/16/21 ARC 5677C

Via video/conference call
Contact Jonathan Garton
Email: jonathan.garton@dnr.iowa.gov

July 12, 2021
2 to 3 p.m.

LABOR SERVICES DIVISION[875]

Safety rules for amusement
rides, amusement devices,
and concession booths, 61.2,
61.6(2)"j," 62.6, 62.7(3)
IAB 6/16/21 ARC 5674C

Dial: 312.626.6799
Meeting ID number: 813 6327 9319
Passcode: 590253

July 7, 2021
1:30 p.m.
(If requested)

MEDICINE BOARD[653]

Standards of practice—medical
cannabidiol, 13.15(1)
IAB 6/2/21 ARC 5668C

Via Zoom:
us02web.zoom.us/j/82513785629?pwd=NEdRd1BCMVpqR3VRUmVXMUd5QkeyZz09
Meeting ID: 825 1378 5629
Passcode: 011109
Phone: +1 312.626.6799 US (Chicago)

June 22, 2021
9 to 10 a.m.
(Enter meeting ID and passcode)

NATURAL RESOURCE COMMISSION[571]

State parks, recreation areas, and
state forest camping, 61.2 to
61.7, 61.14, 61.23(1)
IAB 6/16/21 ARC 5690C

Via video/conference call
Contact Sherry Arntzen
Email: sherry.arntzen@dnr.iowa.gov

July 6, 2021
10 a.m.

REVENUE DEPARTMENT[701]

Marketable food products for
human consumption, 230.2(1)
IAB 6/16/21 ARC 5720C

Room 430, Fourth Floor
Hoover State Office Bldg.
Des Moines, Iowa

July 8, 2021
1:30 to 2:30 p.m.

Sales tax exemption—computer
peripherals; citations,
amendments to chs 18, 230
IAB 6/2/21 ARC 5659C

Via video/conference call
Contact Tim Reilly
Email: tim.reilly@iowa.gov

June 22, 2021
2 to 3 p.m.
(If requested)

Motor fuel and undyed special
fuel, 68.2 to 68.5, 68.7(1), 68.8,
68.9, 68.13, 69.2
IAB 6/16/21 ARC 5710C

Via video/conference call
Contact Tim Reilly
Email: tim.reilly@iowa.gov

July 6, 2021
2 to 3 p.m.
(If requested)

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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ADMINISTRATIVE SERVICES DEPARTMENT

Public Notice

NOTICE OF OFFICIAL PUBLICATION RATE INCREASE FOR THE FISCAL YEAR
COMMENCING JULY 1, 2021, AND ENDING JUNE 30, 2022

In accordance with Iowa Code section 618.11, the Iowa Department of Administrative Services Director hereby publishes the lineage rate* for newspaper publications of any order, citation, or other publication required or allowed by law (also known as official publications) for the period commencing on July 1, 2021, and ending on June 30, 2022, in the following amounts:

* Lineage rate: "...each line of eight point type two inches in length, or its equivalent." (Iowa Code section 618.11)

One insertion = 52.4 cents
Each subsequent insertion = 35.3 cents

The rate becomes effective on July 1, 2021. The rate was determined by applying the formula specified in the statute. According to the federal Department of Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers increased 4.2% for the 12 months ended April 2021. The April index was the most recent index available as of May 12, 2021, the date this notice was submitted for publication.

Pursuant to Iowa Code section 618.11, the calculation and publication of the rate by the Director of the Department of Administrative Services shall be exempt from the provisions of chapters 17A and 25B.

If you have questions regarding this notice, please contact:

Annette M. Dunn, Director
Office of the Chief Information Officer
200 E. Grand Ave.
Des Moines, Iowa 50319
Telephone: 515.281.3462
Email: annette.dunn@iowa.gov

ARC 5718C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

Proposing rule making related to capitol complex operations and providing an opportunity for public comment

The Administrative Services Department hereby proposes to amend Chapter 100, "Capitol Complex Operations," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 8A.104, 17A.3 and 17A.4.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, House File 756.

Purpose and Summary

This amendment is proposed as a result of changes made to Iowa Code section 8A.322 by 2021 Iowa Acts, House File 756, division II. The change means a valid permit to carry weapons is no longer necessary as it pertains to pistols and revolvers in the Capitol Building and on the grounds surrounding the Capitol Building, including state parking lots and parking garages. The proposed amendment to subrule 100.2(2), striking the reference to a valid permit, is intended to comport with 2021 Iowa Acts, House File 756.

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 Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

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 July 6, 2021. Comments should be directed to:

Tami Wiencek
Department of Administrative Services
Hoover State Office Building
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Phone: 515.725.2017
Fax: 515.281.6140
Email: tami.wiencek@iowa.gov

Public Hearing

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

July 6, 2021
10 to 11 a.m.

Procurement Conference Room, A Level
Hoover State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

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 11—100.2(8A) as follows:

11—100.2(8A) Security.

100.2(1) No change.

100.2(2) Pistols and revolvers. No person, other than a peace officer, may openly carry a pistol or revolver in the capitol building and on the grounds surrounding the capitol building including state parking lots and parking garages. This provision does not preclude the lawful carrying, transportation, or possession of a pistol or revolver in the capitol building and on the grounds surrounding the capitol building including the state parking lots and parking garages ~~by a person who displays to capitol security personnel a valid permit to carry weapons upon request.~~

Violation of this subrule is a simple misdemeanor, pursuant to Iowa Code section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the capitol complex, or any combination thereof, of any individual who knowingly violates the subrule. In addition, any weapon found in possession of a member of the public in violation of this subrule may be confiscated. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety.

100.2(3) to 100.2(5) No change.

ARC 5678C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 20, "Scope of Title—Definitions," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," and Chapter 25, "Measurement of Emissions," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.133 and 455B.134.

Purpose and Summary

This rule making proposes for adoption several new mandatory federal air quality standards. The proposed amendments are identical to the federal regulations. They do not impose any regulations on Iowa businesses not already required by federal law. Additionally, the adoption of these proposed amendments will ensure that Iowa is consistent with federal law and not any more stringent.

More specifically, the proposed amendments adopt updated federal new source performance standards (NSPS) and air toxics standards, also known as National Emissions Standards for Hazardous Air Pollutants (NESHAP). These standards apply whether they are adopted into state regulation or not; however, by incorporating these terms into the State's rules, the Department of Natural Resources

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(Department) can continue to be a delegated authority under the Clean Air Act (CAA). This allows the Department, rather than the U.S. Environmental Protection Agency (EPA), to be the primary compliance and implementation agency in Iowa.

In more detail, this rule making proposes the following six amendments:

Item 1 amends rule 567—20.2(455B), definition of “EPA reference method,” to adopt the most current EPA methods for measuring air pollutant emissions, performance testing (sometimes called “stack testing”), and continuous monitoring. EPA’s revisions to 40 Code of Federal Regulations (CFR) Parts 51, 60, 61, and 63 to correct and update regulations for source testing of emissions were published in the Federal Register on October 7, 2020. See 85 Fed. Reg. 63394–63422 (Oct. 7, 2020) (a correction to Part 63 was subsequently published in 85 Fed. Reg. 77384 (Dec. 2, 2020)). EPA states in the final regulations that these revisions include corrections to inaccurate testing provisions, updates to outdated procedures, and approved alternative procedures that will provide flexibility to testers. EPA also states that the updates will improve the quality of data and will not impose any new substantive requirements on source owners or operators. Adopting EPA’s updates ensures that state reference testing methods match current federal reference methods and are no more stringent than the federal methods.

The amendment in **Item 2** is proposed for adoption concurrently with the amendment in Item 1. It revises the definition of “EPA reference method” in rule 567—22.100(455B) to similarly reflect updates to EPA testing and monitoring methods, which are the methods that apply to the Title V Operating Permit rules in Chapter 22.

The proposed amendments in **Items 3, 4, and 5** adopt changes to the federal NSPS and NESHAP. The CAA obligates EPA to issue standards to control air pollution. The NSPS and NESHAP set federal standards and deadlines for industrial, commercial or institutional facilities to meet uniform standards for equipment operation and air pollutant emissions.

Because the NSPS and NESHAP adopted by reference are federal regulations, affected sources are subject to the federal requirements regardless of whether the Commission adopts the standards into the State’s rules. However, the CAA allows a state or local agency to implement NSPS and NESHAP as a delegated authority. Upon state adoption of the standards, the Department becomes the delegated authority for the specific NSPS or NESHAP and is the primary implementation agency in Iowa. Two local agencies, those in Polk County and Linn County, implement these standards within their counties.

The Commission’s rules, including all compliance deadlines, are identical to the federal NSPS and NESHAP as of a specific federal publication date. With delegation authority and adoption of the federal standards into the State’s rules and the rules of Polk County and Linn County, the State and local agencies have the ability to make applicability determinations for facilities, rather than referring these decisions to EPA.

Stakeholders affected by NSPS and NESHAP typically prefer for the Department, rather than EPA, to be the primary implementation agency in Iowa. Upon adoption of the new and amended standards, the Department will work with affected facilities to provide any needed compliance assistance. Additionally, affected area sources that are small businesses are eligible for free assistance from the small business technical assistance program.

Notably, the Commission is excluding from adoption the recent changes that EPA made to the NSPS for Kraft Pulp Mills (40 CFR 60, Subpart BB) due to active litigation of the federal regulation. This is described in more specificity below. An additional proposed amendment to subrule 23.1(2) indicates the previous date for which Subpart BB was adopted by reference, which will exclude the recent federal amendments from being adopted.

Finally, **Item 6** amends subrule 25.1(9) to adopt the changes EPA made to the federal test methods for measuring emissions, as explained above for Item 1.

Risk and Technology Review

Most of EPA’s amendments proposed for adoption in subrule 23.1(4) address the risk and technology reviews required under the CAA. The CAA requires EPA to address air toxic emissions from large industrial facilities (major sources) in two phases.

The first phase is “technology-based,” where EPA develops standards for controlling the emissions of air toxics from sources in an industry group or “source category” (for example, industrial boilers).

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These maximum achievable control technology (MACT) standards are based on emissions levels that controlled and low-emitting sources in an industry are already achieving. Typically, MACT affects only a “major source” of air toxics (a source with a potential to emit at least 10 tons per year of any one hazardous air pollutant (HAP) or 25 tons per year of any combination of HAPs).

The second phase is a “risk-based” approach called residual risk. In this step, EPA must determine whether more health-protective standards are necessary. Within eight years of setting the MACT standards, the CAA requires EPA to assess the remaining health risks from each source category to determine whether the MACT standards protect public health with an ample margin of safety and protect against adverse environmental effects. On this same schedule, the CAA also requires EPA to review the standards and, if necessary, revise them to account for improvements in air pollution controls or prevention. The combined review of public health risk and air pollution control is called the “risk and technology review” (RTR).

Impact of the NESHAP Amendments

For most of the recent NESHAP RTR updates, EPA has determined that the risks from emissions from affected source categories are acceptable and that there are no new cost-effective controls available. However, the updates do include revisions to the requirements for periods of startup, shutdown, and malfunction (SSM) and require electronic reporting of performance test results and compliance reports.

In some cases, EPA made minor amendments to correct errors, clarify requirements, and provide technical amendments. EPA also provided additional flexibilities in several of the final NESHAP RTRs, such as alternative testing methods or reduced monitoring. A few of the recent and upcoming NESHAP RTRs do include more substantive requirements for pollution control and monitoring.

Table 1 below identifies the amendments to the NESHAP source categories that the Commission proposes to adopt by reference. The standards are identified by source category and are listed in order of publication date in the Federal Register. The table also indicates the subpart in 40 CFR Part 63, as well as the associated paragraph in subrule 23.1(4). Additionally, the table indicates the number of facilities that the Department estimates are currently affected by the specific standard. The Commission is including standards for adoption that currently do not affect any Iowa sources in case a new facility of that type is constructed in the future.

Table 1
NESHAP Amendments Proposed for Adoption

NESHAP: Affected Source Category (Note: “Mfg” is the abbreviation for “manufacturing”)	Date Published in Federal Register	40 CFR 63 Subpart/Subrule 23.1(4) Paragraph	Estimated Iowa Facilities Affected
Surface Coating of Metal Cans	2/25/2020	KKKK/“ck”	0
Surface Coating of Metal Coil	2/25/2020	SSSS/“cs”	0
Asphalt Processing	3/12/2020	LLLL/“dl”	0
Vegetable Oil Production	3/18/2020	GGGG/“cg”	17
Boat Mfg	3/20/2020	VVVV/“cv”	0
Reinforced Plastics	3/20/2020	WWWW/“cw”	15
HCl Acid Production	4/15/2020	NNNN/“dn”	0
Engine Test Cells	6/3/2020	PPPP/“dp”	1
Cellulose Products	7/2/2020	UUUU/“cu”	0
Automobiles and Light Duty Trucks	7/8/2020	IIII/“ci”	0
Miscellaneous Metal Parts	7/8/2020	MMMM/“cm”	31

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Plastic Parts	7/8/2020	PPPP/“cp”	12
Paper and Other Web Coatings	7/9/2020	JJJJ/“cj”	2
Rubber Tire Mfg	7/24/2020	XXXX/“cx”	1
Miscellaneous Coating Mfg	8/14/2020	HHHH/“dh”	1
Iron and Steel Foundries	9/10/2020	EEEE/“de”	4
Phosphoric Acid Mfg	11/3/2020	AA/“aa”	0

There are several recent NESHAP amendments that the Commission is proposing to exclude from adoption at this time due to active legal challenges of the federal regulations. Additional proposed revisions to subrule 23.1(4) indicate the previous dates for which the specific NESHAP were adopted by reference, which will exclude the recent federal amendments from being adopted. Table 2 below indicates the NESHAP amendments being excluded from adoption. Affected sources remain subject to these federal requirements regardless of whether the Commission adopts the standards into the State’s rules.

Table 2
NESHAP Amendments Excluded from Adoption Due to Legal Challenges

NESHAP: Affected Source Category (Note: “Mfg” is the abbreviation for “manufacturing”)	Date Published in Federal Register	40 CFR 63 Subpart/Subrule 23.1(4) paragraph and the previous adoption date	Estimated Iowa Facilities Affected by the NESHAP
Combustion Turbines	3/9/2020	YYYY/“cy” 4/20/2006	2
Municipal Solid Waste Landfills	3/26/2020	AAAA/“ca” 4/20/2006	5
Ethylene Production	7/6/2020	YY/“ay” 10/8/2014	1
Organic Liquids (Non-Gasoline) Distribution	7/7/2020	EEEE/“ce” 7/17/2008	3
Site Remediation	7/10/2020	GGGG/“dg” 11/29/2006	0
Integrated Steel Mfg	7/13/2020	FFFF/“df” 7/13/2006	0
Lime Mfg	7/24/2020	AAAAA/“da” 4/20/2006	0
Miscellaneous Organic Chemical Mfg (MON)	8/12/2020	FFFF/“cf” 7/14/2006	19
Plywood & Composites Mfg	8/13/2020	DDDD/“cd” 10/29/2007	2
Pulp Mills	11/5/2020	MM/“am” 10/11/2017	0

Fiscal Impact

After analysis and review of this rule making, these amendments will have no fiscal impact to either the State of Iowa or to regulated facilities, the general public, or county or local governments. Some of the amendments may benefit the private sector because they streamline current air quality programs.

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Affected businesses and the public benefit from up-to-date air quality requirements and increased effectiveness. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, the amendments will have an overall neutral impact on private-sector jobs. Some of the amendments may benefit the private sector because they streamline current air quality programs. For the amendments specified in Items 3, 4, and 5, the Commission has determined that there may be jobs impacts to Iowa businesses. However, the amendments are only implementing federally mandated regulations, thus any resulting impact originates at the federal level. The amendments are identical to the federal regulations and will not impose any regulations on Iowa businesses not already required by federal law. In some cases, the revised federal standards being adopted provide more flexibility and potential cost savings for affected businesses, offering a positive impact on private-sector jobs. A copy of the jobs impact statement is available from the Department upon request.

Waivers

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

Public Comment

Any interested person may submit 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 July 19, 2021. Comments should be directed to:

Christine Paulson
Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: christine.paulson@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held as follows. Persons who wish to attend the conference call should contact Christine Paulson at christine.paulson@dnr.iowa.gov. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the public hearing must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

July 19, 2021
1 to 2 p.m.

Virtual hearing/teleconference

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's

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meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **567—20.2(455B)**, definition of “EPA reference method,” as follows:

“EPA reference method” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 61, Appendix B (as amended or corrected through ~~August 30, 2016~~ October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through ~~November 14, 2018~~ December 2, 2020).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

ITEM 2. Amend rule **567—22.100(455B)**, definition of “EPA reference method,” as follows:

“EPA reference method” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 61, Appendix B (as amended or corrected through ~~August 30, 2016~~ October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through ~~November 14, 2018~~ December 2, 2020).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

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

23.1(2) New source performance standards. The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~November 14, 2018~~ October 7, 2020, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. ~~An earlier A different~~ date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. to w. No change.

x. *Kraft pulp mills.* Any of the following in a kraft pulp mill: digester system; brown stock washer system; multiple effect evaporator system; black liquor oxidation system; recovery furnace; smelt dissolving tank; lime kiln; and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of the standard of performance are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation. (Subpart BB as amended or corrected through February 27, 2014)

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

y. to cccc. No change.

ITEM 4. Amend subrule 23.1(3), introductory paragraph, as follows:

23.1(3) Emission standards for hazardous air pollutants. The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through ~~August 30, 2016~~ October 7, 2020, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is in parentheses. A different date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

ITEM 5. Amend subrule 23.1(4) as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~March 15, 2019~~ November 3, 2020, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. ~~An earlier~~ A different date for adoption by reference may be included with the subpart designation in parentheses or as indicated in this introductory paragraph. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A as amended or corrected through December 2, 2020), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in rule 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

a. to al. No change.

am. *Emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills.* (Part 63, Subpart MM as amended or corrected through October 11, 2017)

an. to ax. No change.

ay. *Emission standards for hazardous air pollutants: generic maximum achievable control technology (Generic MACT).* These standards apply to new and existing major sources of acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, polycarbonate (PC) production, carbon black production, cyanide chemicals manufacturing, ethylene production, and Spandex production. Affected processes include, but are not limited to, producers of homopolymers and copolymers of alternating oxymethylene units, acrylic fiber, modacrylic fiber synthetics composed of acrylonitrile (AN) units, hydrogen fluoride and polycarbonate. (Subpart YY as amended or corrected through October 8, 2014)

az. to bz. No change.

ca. *Emission standards for hazardous air pollutants: municipal solid waste landfills.* This standard applies to existing and new municipal solid waste (MSW) landfills. (Part 63, Subpart AAAA as amended or corrected through April 20, 2006)

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

cb. Reserved.

cc. *Emission standards for hazardous air pollutants for the manufacturing of nutritional yeast.* (Part 63, Subpart CCCC)

cd. *Emission standards for hazardous air pollutants for plywood and composite wood products (formerly plywood and particle board manufacturing).* These standards apply to new and existing major sources with equipment used to manufacture plywood and composite wood products. This equipment includes dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing process. This also includes coating operations, on-site storage and wastewater treatment. However, only certain process units (defined in the federal rule) are subject to control or work practice requirements. (Part 63, Subpart DDDD as amended or corrected through October 29, 2007)

ce. *Emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline).* These standards apply to new and existing major source organic liquids distribution (non-gasoline) operations, which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. (Part 63, Subpart EEEE, as amended or corrected through July 17, 2008)

cf. *Emission standards for hazardous air pollutants for miscellaneous organic chemical manufacturing (MON).* These standards establish emission limits and work practice standards for new and existing major sources with miscellaneous organic chemical manufacturing process units, wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment. (Part 63, Subpart FFFF, as amended or corrected through July 14, 2006)

cg. to cx. No change.

cy. *Emission standards for hazardous air pollutants for stationary combustion turbines.* These standards apply to stationary combustion turbines which are located at a major source of hazardous air pollutant emissions. Several subcategories have been defined within the stationary combustion turbine source category. Each subcategory has distinct requirements as specified in the standards. These standards do not apply to stationary combustion turbines located at an area source of hazardous air pollutant emissions. (Part 63, Subpart YYYY, as amended or corrected through April 20, 2006)

cz. No change.

da. *Emission standards for hazardous air pollutants for lime manufacturing plants.* These standards regulate hazardous air pollutant emissions from new and existing lime manufacturing plants that are major sources, are colocated with major sources, or are part of major sources. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart AAAAA, as amended or corrected through April 20, 2006)

db. to de. No change.

df. *Emission standards for hazardous air pollutants for integrated iron and steel manufacturing.* These standards apply to affected sources at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. The affected sources are each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. (Part 63, Subpart FFFFF, as amended or corrected through July 13, 2006)

dg. *Emission standards for hazardous air pollutants: site remediation.* These standards apply to new and existing major sources with certain types of site remediation activity on the source's property or on a contiguous property. These standards control hazardous air pollutant (HAP) emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (e.g., soil, groundwater, or surface water) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media.

Some site remediations already regulated by rules established under the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) are not subject to these standards, as specified in Subpart GGGGG. There are also exemptions for short-term remediation and for certain leaking underground storage tanks, as specified in Subpart GGGGG. (Part 63, Subpart GGGGG, as amended or corrected through November 29, 2006)

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

dh. to fd. No change.

ITEM 6. Amend subrule 25.1(9) as follows:

25.1(9) Methods and procedures. Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

a. Performance test (stack test). A stack test shall be conducted according to EPA reference methods as specified in 40 CFR 51, Appendix M (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 61, Appendix B (as amended or corrected through ~~August 30, 2016~~ October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through ~~November 14, 2018~~ December 2, 2020). The owner of the equipment or the owner's authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing. Each test shall consist of at least three separate test runs. Unless otherwise specified by the department, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs.

b. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 60, Appendix F (as amended or corrected through ~~November 14, 2018~~ October 7, 2020); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specifications and quality assurance procedures are conducted.

c. No change.

ARC 5677C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to dams and water storage permitting and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 50, "Scope of Division—Definitions—Forms—Rules of Practice," Chapter 51, "Water Permit or Registration—When Required," Chapter 52, "Criteria and Conditions for Authorizing Withdrawal, Diversion and Storage of Water," Chapter 70, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 71, "Flood Plain or Floodway Development—When Approval Is Required," and Chapter 72, "Criteria for Approval," and to rescind Chapter 73, "Use, Maintenance, Removal, Inspections, and Safety of Dams," and adopt a new Chapter 73, "Approval, Construction, Use, Maintenance, Removal, Inspections, and Safety of Dams," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455B.275(9), 455B.276(1) and 455B.278.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.262, 455B.264, 455B.265, 455B.267, 455B.268, 455B.270, 455B.271, 455B.275 and 455B.278.

Purpose and Summary

Currently, seven different Iowa Administrative Code chapters regulate dams in the state of Iowa. This proposed rule making strategically aims to reduce and consolidate these administrative rules to ease

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

administrative and regulatory burdens on dam owners and consultants. Simultaneously, this proposed rule making updates the rules to make them consistent with national standards and best management practices.

More specifically, this proposed rule making consolidates rules governing dam approval, construction, maintenance, and inspections. These rules are currently scattered across four Iowa Administrative Code chapters (Chapters 70, 71, 72, and 73), as well as included in one rule-referenced technical bulletin. The rules, upon adoption of this rule making, will be mostly housed together in the proposed new Chapter 73, and almost all rules regarding dam safety from seven chapters will be combined into this same new Chapter 73.

This proposed rule making also streamlines water storage permits involving the use of a dam (i.e., to establish a new pond or lake). Currently, this process requires two separate permit applications to two different programs (water supply and floodplains) and touches on four different Iowa Administrative Code chapters (Chapters 50, 51, 52, and 73). The proposed rule making consolidates this process into one chapter (proposed new Chapter 73) and will require only one application and one approval process to obtain both permits.

Strategic rule rescissions and amendments are included in this consolidation effort. For example, dam size thresholds subject to the Department of Natural Resources' (Department's) oversight are being simplified to make it easier to know when permits are required. Currently, prescriptive design standards are being relaxed. Dams designated as "high hazard," which are those likely to cause loss of life in the event of a failure, will be required to have an emergency action plan to mitigate risk. Finally, certain updates to the inflow design storm requirements are also proposed. These two changes in particular will bring Iowa's administrative rules on dams up to national standards and reflect best management practices.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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 July 13, 2021. Comments should be directed to:

Jonathan Garton
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: jonathan.garton@dnr.iowa.gov

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Public Hearing

A public hearing at which persons may present their views orally will be held by conference call as follows. Persons who wish to attend the conference call should contact Jonathan Garton at jonathan.garton@dnr.iowa.gov. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Mr. Garton prior to the hearing to facilitate an orderly hearing.

July 12, 2021
2 to 3 p.m.

Video/conference call

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **50.4(1)“a”** as follows:

a. Application for approval of a new withdrawal, diversion or storage of water unrelated to the use of an agricultural drainage well. For withdrawals, or diversions, or storage of water unrelated to the use of an agricultural drainage well, a request for a new permit as distinguished from modification or renewal of an existing permit shall be made on Form ~~16-(542-3106)~~ 542-3106. An application form must be submitted by or on behalf of the owner, lessee, easement holder or option holder of the area where the water is to be withdrawn, diverted ~~or stored~~, and used. An application must be accompanied by a map portraying the points of withdrawal or diversion ~~and storage~~, and the land on which water is to be used oriented as to section, township, and range. One application normally will be adequate for all uses on contiguous tracts of land. Tracts of land involved in the same operation separated only by roads or railroads will be deemed contiguous tracts. For water storage permits, applications will be made in conjunction with dam construction permits as required in rule 567—73.10(455B).

ITEM 2. Rescind and reserve rule **567—51.2(455B)**.

ITEM 3. Rescind and reserve rule **567—52.20(455B)**.

ITEM 4. Amend rule **567—70.2(455B,481A)**, definition of “Dam,” as follows:

“*Dam*” means ~~a barrier which impounds or stores water~~ the same as defined in rule 567—73.2(455B).

ITEM 5. Rescind the definitions of “Height of dam,” “Low head dam” and “Major dam structure” in rule **567—70.2(455B,481A)**.

ITEM 6. Amend rule 567—71.3(455B) as follows:

567—71.3(455B) Dams. Approval by the department for construction, ~~operation, or maintenance of a dam in the floodway or flood plain of any water source shall be required when the dimensions and effects of such dam exceed the thresholds established by this rule~~ repair, or modification of any dam shall be required when the dam exceeds the thresholds under rule 567—73.3(455B). Other structures across a stream may require approval under rule 567—71.12(455B). ~~EXCEPTION: Public road embankments with~~

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culverts which impound water only in temporary storage are exempt from the requirements of this rule and shall be reviewed under rules 567—71.1(455B) and 567—72.1(455B). Approval required by this rule shall be coordinated with approval for storage of water required by 567—Chapter 51. Approval by the department shall be required in the following instances:

71.3(1) Rural areas. In rural areas:

a.—Any dam designed to provide a sum of permanent and temporary storage exceeding 50 acre-feet at the top of dam elevation, or 25 acre-feet if the dam does not have an emergency spillway, and which has a height of 5 feet or more.

b.—Any dam designed to provide permanent storage in excess of 18 acre-feet and which has a height of 5 feet or more.

c.—Any dam across a stream draining more than 10 square miles.

d.—Any dam located within 1 mile of an incorporated municipality, if the dam has a height of 10 feet or more, stores 10 acre-feet or more at the top of dam elevation, and is situated such that the discharge from the dam will flow through the incorporated area.

71.3(2) Urban areas. Any dam which exceeds the thresholds in 71.3(1) “a,” “b” or “d.”

71.3(3) Low head dams. Any low head dam on a stream draining 2 or more square miles in an urban area, or 10 or more square miles in a rural area.

71.3(4) Modifications to existing dams. Modification or alteration of any dam or appurtenant structure beyond the scope of ordinary maintenance or repair, or any change in operating procedures, if the dimensions or effects of the dam exceed the applicable thresholds in this rule. Changes in the spillway height or dimensions of the dam or spillway are examples of modifications for which approval is required.

71.3(5) Mill dams. Rescinded IAB 2/20/91, effective 3/27/91.

71.3(6) Maintenance of preexisting dams. Approval shall be required to maintain a preexisting dam as described in 567—Chapter 73 only if the department determines that the dam poses a significant threat to the well-being of the public or environment and should therefore be removed or repaired and safely maintained. Preexisting dams are subject to the water, air and waste management dam safety inspection program as set forth in 567—Chapter 73.

This rule is intended to implement Iowa Code sections 455B.262, 455B.264, 455B.267, 455B.275 and 455B.277.

ITEM 7. Rescind and reserve rule **567—72.3(455B)**.

ITEM 8. Adopt the following **new** subrule 72.11(3):

72.11(3) Structures or materials across a channel. The following criteria shall apply to structures or materials such as riprap that span the channel of a stream or river and do not meet the thresholds of rule 567—73.3(455B):

a. The location and design of the structure shall not adversely affect the fisheries or recreational use of the stream.

b. The pool created by the structure shall not adversely affect drainage on lands not owned or under easements by the applicant.

c. The structure shall be hydraulically designed to submerge before bankfull stage is reached in the stream channel in order that increased or premature overbank flooding does not occur. Where this cannot be reasonably accomplished in order for the structure to fulfill its intended purpose, the applicant shall demonstrate that any increased flooding will affect only lands owned or controlled by the applicant.

d. For projects that include significant appurtenant structures or works outside the stream channel, the combined effect of the total project shall not create more than one foot of backwater during floods which exceed the flow capacity of the channel, unless the proper lands, easements, or rights-of-way are obtained.

e. The structure shall be capable of withstanding the effects of normal and flood flows across its crest and against the abutments with erosion protection added as required to prevent failure of the structure during flood events.

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ITEM 9. Rescind 567—Chapter 73 and adopt the following **new** chapter in lieu thereof:

CHAPTER 73
APPROVAL, CONSTRUCTION, USE, MAINTENANCE, REMOVAL, INSPECTIONS, AND
SAFETY OF DAMS

DIVISION I
SCOPE AND DEFINITIONS

567—73.1(455B) Scope and applicability. The department regulates the storage of water and the construction and maintenance of dams. Any person who desires to construct, repair, modify, abandon, or remove a dam has a responsibility to determine whether approval is required from the department prior to undertaking any such work.

567—73.2(455B) Definitions.

“Abandonment” means to render a dam nonimpounding by dewatering and filling the reservoir created by that dam with solid materials and by diverting the natural drainage around the site.

“Acre-foot” means a volume of water that would cover one acre of land one foot deep, equal to 43,560 cubic feet of water.

“Adverse consequences” means negative impacts that may occur upstream, downstream, or at locations remote from the dam. The primary concerns are loss of human life, economic loss including but not limited to property damage, public damages, disruption of public utilities, and environmental impact.

“Appurtenant structures” means structures such as spillways, either in the dam or separate therefrom; the reservoir and its rim; low-level outlet works; and water conduits such as tunnels, pipelines, or penstocks, occurring through either the dam or its abutments.

“Auxiliary spillway” means any secondary spillway that is designed to be operated infrequently.

“Confinement feeding operation” means the same as defined in rule 567—65.1(459,459B).

“Dam” means a barrier that impounds or stores water.

“Dam owner” means any person who owns, controls, operates, maintains, or manages a dam.

“Hazard potential” means a classification based on the possible incremental adverse consequences that result from the release of water or stored contents due to a failure or misoperation of the dam or appurtenances. The hazard potential classification of a dam does not reflect in any way on the current condition of the dam and its appurtenant structures (e.g., safety, structural integrity, or flood routing capacity).

“Height of dam” means the vertical distance from the top of the dam to the natural bed of the stream or water source measured at the downstream toe of the dam or to the lowest elevation of the outside limit of the dam if it is not across a water source.

“Incremental consequence” means the difference, under the same conditions (e.g., flood, earthquake, or other event), between the consequences that are likely to occur from the failure or misoperation of the dam and appurtenances as compared to the consequences that are likely to occur without such failure or misoperation.

“Probable” means more likely than not to occur; reasonably expected; realistic.

“Probable maximum flood” means as defined in rule 567—70.2(455B,481A).

“Public damages” means as defined in rule 567—70.2(455B,481A).

“Q100,” “Q50,” “Q25,” “Q15,” “Q10,” et cetera, means the same as defined in rule 567—70.2(455B,481A).

567—73.3(455B) Regulated dams.

73.3(1) Thresholds. Dams meeting any of the following thresholds shall be regulated by the department:

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- a. A dam with a height of at least 25 feet and a storage of 15 acre-feet or more at the top of the dam elevation; or
- b. A dam with a storage of 50 acre-feet or more at the top of the dam elevation and a height of at least 6 feet; or
- c. A dam that is assigned a hazard potential of high hazard.

73.3(2) Exceptions. Road embankments or driveways with culverts are exempt unless such structure serves, either primarily or secondarily, a purpose commonly associated with dams, such as the temporary storage of water for flood control.

73.3(3) New construction. Before construction begins, approval is required for construction of any dam meeting the thresholds of a regulated dam. The proposed dam must meet the criteria outlined in this chapter.

73.3(4) Existing dams.

a. Approval is required for:

(1) Modification, repair, alteration, breach, abandonment, or removal of any existing dam or appurtenant structure beyond the scope of ordinary maintenance if the height of the dam or storage of the dam exceeds the applicable thresholds in this rule.

(2) Any change in operating procedures if the height of the dam or storage of the dam exceeds the applicable thresholds in this rule.

b. Spillway reconstruction, changes in normal water level, and modification of the dam embankment or spillway are examples of modifications that require approval. The dam must meet the criteria outlined in this chapter. Dams found to be unsafe according to rule 567—73.33(455B) shall be repaired or removed.

73.3(5) Required upgrades. Improvements may be required for existing dams in order to reduce the risk of a dam failure.

a. Existing dams assigned a high hazard potential or significant hazard potential that have been inspected or analyzed and found not to meet the criteria in this chapter will be required to meet the requirements outlined in this chapter for their appropriate hazard potential.

b. Existing dams assigned a low hazard potential that have been inspected or analyzed and found to have a significant hazard potential or high hazard potential shall be required to be upgraded to meet the requirements outlined in this chapter for the appropriate hazard potential.

567—73.4(455B) Assignment of hazard potential. All existing and proposed dams reviewed by the department shall be assigned a hazard potential. Anticipated future land and impoundment use shall be considered in the determination of hazard potential. The hazard potential shall be determined using the following criteria:

73.4(1) Low hazard. A dam shall be classified as “low hazard” if failure of the dam would result in no probable loss of human life, low economic losses, and low public damages.

73.4(2) Significant hazard. A dam shall be classified as “significant hazard” if failure of the dam would result in no probable loss of human life but may damage residential structures or industrial, commercial, or public buildings; may negatively impact important public utilities or moderately traveled roads or railroads; or may result in significant economic losses or significant public damages.

73.4(3) High hazard. A dam shall be classified as “high hazard” if located in an area where failure would result in probable loss of human life.

73.4(4) Consideration of changes affecting hazard potential. In locating the site of a dam and in obtaining easements and rights-of-way, the applicant shall consider the impacts to the hazard potential of a dam from anticipated changes in land use downstream or adjacent to the impoundment, the operation of the dam, and the potential liability of the dam owner.

73.4(5) Changes in hazard potential. Any future changes in downstream land use, development, impoundment use, or critical hydraulic structures shall require a reevaluation of the hazard potential of the dam. If the hazard potential of the dam changes, the dam shall be required to meet all applicable criteria for that hazard potential. This may require additional increases in spillway capacity for the dam.

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The owner and any other persons responsible for the construction and operation of the dam shall assume all risks for future costs to upgrade a dam in the event there is a change in hazard potential.

567—73.5 to 73.9 Reserved.

DIVISION II
APPROVAL PROCESS

567—73.10(455B) Review and approval process for dam construction, modification, abandonment, or removal.

73.10(1) *Application process.* Application materials are provided by the department. The application shall be submitted by or on behalf of the person or persons who will be the future dam owner or owners. The application shall be signed by the applicant or a duly authorized agent. Completed applications along with supporting information shall be submitted to the department through an online application system or mailed to Iowa Department of Natural Resources, Attn: Joint Application, 502 East 9th Street, Des Moines, Iowa 50319. For dam repairs, abandonment, or removal, the department may waive the requirements of the application process outlined in this rule if the requirements are unnecessary for the application approval or if the dam has been designated as unsafe and immediate temporary emergency stabilization repairs are required to prevent failure of the dam. Permanent repairs or modifications will require review and approval.

73.10(2) *Preliminary application packet.* The preliminary application packet includes the joint application form and requires submittal of preliminary design data prepared by or under supervision of a professional engineer licensed in the state of Iowa. The preliminary design data packet shall contain a report summarizing the preliminary design, hydrologic data and reservoir routing, a hazard potential analysis, preliminary design drawings, the soils and geotechnical engineering analysis, and a list of the engineering references used as the basis for design and construction.

73.10(3) *Project review.* The department shall review a preliminary application packet and provide feedback or concurrence on the initial design and assumptions. After concurrence with the preliminary application packet and upon reception of the final submittal as required by subrule 73.10(4), the department will review the final submittal and issue a decision based on if the project meets criteria for approval outlined in this chapter.

73.10(4) *Final submittal.* After the department's review of and concurrence with the preliminary submittal, the engineering plans and other engineering information shall be certified by a professional engineer licensed in the state of Iowa and submitted with the following information:

- a. One complete set of certified construction plans;
- b. One complete set of construction specifications;
- c. An operating plan, if required;
- d. Easements, if required;
- e. For high hazard dams, an emergency action plan; and
- f. An engineering design report documenting all aspects of the design of the dam and how the design of the dam meets the criteria outlined in this chapter. The engineering design report shall include the following: hazard potential analysis; hydrology and hydraulic calculations; embankment design and foundation analysis; and structural calculations, where applicable.

73.10(5) *Public notice.* Public notice shall be issued by the department to inform persons who may experience adverse consequences by the permitted project. Adverse consequences may occur through maintenance of the dam and appurtenant structures, spillway discharges, temporary ponding of floodwater behind the dam, or failure of the dam. It is the applicant's responsibility to submit sufficient information with the preliminary application packet and on request to enable the department to accurately identify the owners, occupants, and addresses of affected lands.

73.10(6) *Project approval or disapproval.*

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a. Approval. Issuance of a dam construction permit shall constitute approval of a project. The permit may include one or more special conditions when reasonably necessary to implement relevant criteria.

b. Disapproval. A letter to the applicant denying the application shall constitute disapproval of a project.

c. Notice of decision. Copies of the decision shall be mailed or electronically transmitted to the applicant and any person who commented.

73.10(7) Appeal of decision. Any person aggrieved by a decision issued under these rules may file a notice of appeal as governed by 567—Chapter 7.

73.10(8) General conditions. Department approvals of a project shall be subject to the following conditions:

a. Change in ownership. The dam owner and any successor in interest to the real estate on which the project or activity is located shall be responsible for notifying the department of change in ownership.

b. Maintenance. The dam owner has a responsibility to maintain the dam and appurtenant structures in a safe condition. Maintenance shall include keeping earthen portions of the dam well vegetated, keeping trees and brush off the dam, preventing and repairing erosion, keeping the spillway free of obstructions, repairing deteriorated structural elements, and performing required maintenance on mechanical appurtenances such as gates.

c. Responsibility. No legal or financial responsibility arising from the construction or maintenance of the approved works shall attach to the state of Iowa or the department due to the issuance of an approval or administrative waiver.

d. Lands. The applicant shall be responsible for obtaining such government licenses, permits, and approvals, and lands, easements, and rights-of-way which are required for the construction, operation, and maintenance of the authorized work.

e. Change in plans. No material change from the plans and specifications approved by the department shall be made unless authorized in writing by the department.

f. Revocation of permit. A department permit may be revoked if construction is not completed within the period of time specified in the department permit.

g. Performance bond. A performance bond may be required when necessary to secure the construction, operation, and maintenance of approved projects and activities in a manner that does not create a hazard to the public's health, welfare, and safety. The amount and conditions of the bond shall be specified as special conditions in the department permit.

h. Construction inspection. For high hazard and significant hazard dams, construction shall be inspected by or under the supervision of a professional licensed engineer in the state of Iowa. The engineer shall prepare and certify as-built plans after completion and a report documenting that the dam was constructed in general conformance with the approved plans (or approved changes) and outlining unusual circumstances encountered during construction. The water storage permit shall not be issued until the department accepts the as-built plans and report.

i. Postconstruction department inspections. A department approval which authorizes construction or modification, operation, and maintenance of a dam for which ongoing inspections are required by these rules shall include a condition stating that the department shall have access to the dam site for such inspections.

j. Owner inspections. For high hazard and significant hazard dams, the owner is responsible for annual inspections and submission of written inspection reports to the department as required in subrule 73.30(4).

567—73.11(455B) Water storage permits.

73.11(1) A water storage permit shall be required for all regulated dams in order to legally impound water. No water shall be impounded by a dam or reservoir prior to issuance of a water storage permit.

73.11(2) Application for a dam construction permit shall constitute application for a water storage permit if the appropriate fee (as stated in 567—subrule 50.4(2)) is received with the application.

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73.11(3) A water storage permit shall be issued upon a finding by the department that the dam and reservoir are safe to impound water within the conditions prescribed in the dam construction permit and the project meets the following conditions:

a. The proposed storage is for a specified beneficial use such as human or livestock water supply, flood control, water quality, recreation, aesthetic value, erosion control, or low-flow augmentation.

b. The impounding structure can be operated in a manner which will not adversely affect any applicable protected flow in the impounded stream. Protected flows are listed in 567—Chapter 52.

c. For high hazard and significant hazard dams, the water storage permit will not be issued until as-built plans and a construction report have been submitted documenting that the dam has been constructed in general conformance with the approved plans and conditions of the dam construction permit and until the department has conducted an inspection of the dam.

73.11(4) A water storage permit may be modified, canceled, or suspended pursuant to Iowa Code section 455B.271. Conditions of cancellation or suspension of water storage permits shall include draining the lake with any available low-level drain and may include dewatering with other methods or breaching of the dam.

567—73.12 to 73.14 Reserved.

DIVISION III
CRITERIA FOR APPROVAL

567—73.15(455B) General criteria.

73.15(1) Required findings. The department shall approve the construction, repair, modification, abandonment, or removal of a dam only after finding that the project is designed in accordance with accepted engineering practice and methods, and in a manner consistent with the applicable department criteria in this rule.

73.15(2) Waiver. A request for a waiver to this chapter shall be submitted in writing pursuant to 561—Chapter 10. The contents of a petition for waiver shall include information pursuant to rule 561—10.9(17A,455A).

567—73.16(455B) Lands, easements, and rights-of-way. An application for approval of a dam project shall include information showing the nature and extent of lands, easements, and rights-of-way that the applicant has acquired or proposes to acquire to satisfy the following criteria:

73.16(1) Ownership or perpetual easements shall be obtained for the area to be occupied by the dam embankment, spillways, and appurtenant structures, and the permanent or maximum normal pool.

73.16(2) Ownership or easements shall be obtained for temporary flooding of areas that would be inundated by the flood pool up to the top of dam elevation and for spillway discharge areas.

73.16(3) Easements covering areas affected by temporary flooding or spillway discharges shall include provisions prohibiting the erection and usage of structures for human habitation or commercial purposes without prior approval by the department.

73.16(4) As a condition of granting approval of a dam rated less than high hazard, the applicant may be required to acquire control over lands downstream from the dam as necessary to prevent downstream development which would affect the hazard classification of the dam.

567—73.17(455B) Emergency action plans for high hazard dams.

73.17(1) Emergency action plan required. All high hazard rated dams shall be required to have an approved emergency action plan on file with the department. The plan shall include the following:

a. A statement of purpose;

b. A project description;

c. An emergency response process;

d. An emergency notification plan with flowchart;

e. Responsibilities of all parties;

f. A list of emergency preparedness and plan maintenance activities; and

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g. Inundation maps or another acceptable description of the inundated area.

73.17(2) Emergency action plan maintenance. The owner of the dam shall keep the emergency action plan up to date. Contact information shall be verified in the plan at least once a year, and an exercise shall be performed at least every five years. The owner of the dam shall keep an up-to-date copy of the emergency action plan on file with the department and with the local county emergency manager.

567—73.18(455B) Encroachment on a confinement feeding operation structure. A dam shall not be constructed or modified so that the ordinary high water of the lake, pond, or reservoir created by the dam is closer than the following distances from a confinement feeding operation structure unless a secondary containment barrier according to 567—subrule 65.15(17) is in place. Measurement shall be from the closest point of the confinement feeding operation structure to the water edge of the lake, pond, or reservoir for a pool level at the elevation of the crest of the auxiliary spillway or at the top of dam elevation if the dam does not have an auxiliary spillway.

73.18(1) The minimum separation between a water source other than a major water source and a confinement feeding operation structure is 500 feet.

73.18(2) The minimum separation between a major water source and a confinement feeding operation structure is 1,000 feet or such distance that the structure is not located on land that would be inundated by Q100, whichever is greater.

567—73.19(455B) Hydrologic and hydraulic criteria.

73.19(1) Hydrology and hydraulic calculations. Hydrology and hydraulic calculations shall be submitted in the design report documenting the methods and analysis followed in modeling software selection, inflow design hydrograph determination, and reservoir routing. The hydrology and hydraulics section of the design report shall include design references, inflow hydrograph, reservoir stage storage, and stage discharge curves and clearly identify peak inflows, peak discharges, and reservoir elevations for the design floods.

73.19(2) Design floods. The specified freeboard design floods in the table below shall be passed without overtopping of the dam or the dam shall be designed to withstand such overflow. The specified spillway design flood in the table below shall be passed by the principal spillway without need for operation of an auxiliary spillway unless the auxiliary spillway is designed such that erosion is not expected during operation.

Hazard Potential	Freeboard Design Flood	Spillway Design Flood
Low Hazard	Q100	Q10
Significant Hazard	Q1000	Q50
High Hazard	Probable Maximum Flood	Q100

73.19(3) Precipitation amounts. The National Oceanic and Atmospheric Administration's NOAA Atlas 14, Precipitation-Frequency Atlas of the United States, Volume 8, Version 2.0, dated 2013, shall be used for the Q10–Q1000 frequency storm events. NOAA Hydrometeorological Report No. 51, Probable Maximum Precipitation Estimates, United States, East of the 105th Meridian, dated 1978, shall be used for the probable maximum precipitation.

73.19(4) Spatial and temporal rainfall distributions and storm durations. The design report shall document the sources and methodologies for inflow hydrograph development. Distributions and durations that produce the highest impoundment water level shall be used for design.

73.19(5) Spillway discharge capacity. The spillway discharge capacity shall be sufficient to evacuate at least 80 percent of the volume of water temporarily stored during the principal spillway design flood within ten days. If this cannot be accomplished, the auxiliary spillway and freeboard design flood routings shall be made beginning with the impoundment level at the ten-day drawdown elevation.

73.19(6) Incremental consequence analysis. An inflow design flood based on an incremental consequence analysis may be developed and submitted to the department for review as an alternative to

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the design floods stated in subrule 73.19(2). The design flood selected using incremental consequence analysis is the flood above which there is a negligible increase in downstream water surface elevation, velocity, and consequences due to failure of the dam when compared to the same flood without failure. If the department concurs with the analysis, the freeboard design storm may be reduced. The minimum design flood for a high hazard dam shall be Q500. The minimum design flood for low hazard and significant hazard dams shall be Q100.

567—73.20(455B) Spillway design requirements.

73.20(1) Spillways shall be designed to operate safely for the life of the structure and at the discharges and pressures that would be experienced under all flow conditions, including the freeboard design flood.

73.20(2) Spillways shall be provided with a means of piping and seepage control (e.g., drainage diaphragms), antivortex devices, trash racks, or other inlet debris control measures, and stable outlets capable of handling design exit flow velocities.

73.20(3) When a conduit is proposed to be used in a high hazard or significant hazard dam, detailed hydraulic, hydrologic, and structural computations supporting selection of the size and type of pipe to be used shall be provided by the applicant.

73.20(4) Detailed drawings and specifications relating to the installation of the pipe shall include, but not be limited to: construction measures that adequately address critical load bedding, backfill, compaction, joints, and seepage precautions related to installation of the pipe.

73.20(5) Structural computations and drawings shall be submitted for all proposed concrete structures. Drawing details, as necessary, shall be provided showing reinforcement, cutoffs, underdrains/filters, waterstops, construction joints, control joints, and any other details necessary to construct.

73.20(6) If an auxiliary spillway is proposed, it shall be analyzed, designed, and constructed adequately to establish and maintain stability during the passage of design flows without blockage or breaching. Open-channel auxiliary spillways shall have a minimum depth of 2 feet and minimum width of 10 feet and be designed with appropriate curvature and slopes to prevent excessive erosion.

73.20(7) A gated low-level outlet shall be provided for high hazard and significant hazard dams. The gated low-level outlet shall be capable of draining at least 50 percent of the permanent storage behind the dam within ten days. The pipe conduit shall be designed so that negative pressures will not occur at any point.

567—73.21(455B) Embankment design requirements.

73.21(1) The applicant shall document the engineering standards and design references used for dam embankment design. Drawing details, as necessary, shall be provided showing embankment slopes, required additional fill for anticipated settlement, top width, foundation preparation, core trench or cutoff wall, fill materials and methodology, internal seepage controls, and embankment erosion protection.

73.21(2) A geotechnical report shall be submitted for high hazard and significant hazard dams documenting the evaluation of slope stability requirements, anticipated vertical settlement and horizontal elongation, seepage and underseepage potential, whether cathodic protection is needed for metal pipes, and proper construction practices for the soil types and conditions encountered. A stability evaluation shall include end-of-construction, steady-state seepage and sudden-drawdown conditions.

567—73.22(455B) Operating plan. A written operating plan shall be prepared for any dam with gates or other movable structures that must operate or be operated during times of flood or to provide a minimum downstream release rate. Development of the operating plan is considered part of the design process. An operating plan shall include, at a minimum, the following items:

73.22(1) Responsibility. The operating plan shall outline and identify the necessary personnel who will be present to operate the equipment or, in the case of automatic equipment, to monitor it and ensure it is functioning properly.

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73.22(2) *Operating circumstances.* The circumstances under which operation must occur shall be clearly defined, and a means shall be provided to ensure that operating personnel are present when necessary.

73.22(3) *Method of operation.* The means and methods by which operation is to be conducted shall be clearly defined and shall include, at a minimum, the following items: rates and sequences for opening or closure of gates, target water levels, and target flow rates.

73.22(4) *Flood capacity.* The operating plan shall allow for safe passage of all floods up to and including the freeboard design flood. Flood discharges through the dam greater than the design peak flood inflows into the impoundment shall not be permitted.

73.22(5) *Low flow.* The operating plan shall address low flow situations and shall specify a minimum release rate if required by the department and how the minimum release will be provided and maintained.

73.22(6) *Equipment.* Consideration shall be given to and allowance made for the possible failure of or malfunctioning of the equipment.

73.22(7) *Discharge measurement.* A means shall be provided to determine the discharge through the control structures, especially where operation is to maintain a minimum downstream flow. Stage discharge tables, streamflow gages or other means of obtaining discharge readings shall be provided. The settings of control structures shall be easily read.

567—73.23(455B) Removal and abandonment of dams. Removal is the draining of the impoundment and removal of all or a significant portion of the embankment. A dam may be abandoned by rendering a dam nonimpounding by dewatering and filling the reservoir with solid materials and by diverting the natural drainage around the site.

73.23(1) *Removal requirements.* A dam removal project shall meet all of the following requirements:

a. The dam removal plan shall clearly show removal limits and will demonstrate how the proposed construction will render the dam height and storage below thresholds in rule 567—73.3(455B);

b. An impoundment dewatering plan shall be submitted that documents how the water will be released in a controlled manner and not cause upstream erosion or pose a flooding risk downstream;

c. A dam breach plan shall be submitted that demonstrates how the breach process will not pose an increased risk compared to the existing structure; and

d. A sediment disposition plan shall be submitted that provides for stabilization, release, or removal of stored sediment and shall demonstrate no significant adverse consequences on fish and wildlife habitat downstream from the proposed construction.

73.23(2) *Abandonment requirements.* An abandonment plan shall be submitted documenting the final site stabilization, evidence that the structure will no longer impound water or waterborne materials that would be released in the event of a dam failure, and evidence that the structure will not store water above the thresholds outlined in this chapter.

567—73.24 to 73.29 Reserved.

DIVISION IV
DAM OWNERSHIP, INSPECTIONS, AND ENFORCEMENT

567—73.30(455B) Dam owner responsibilities.

73.30(1) *Operation and maintenance required.* The intent to permanently cease or cause to cease all acts of construction, operation, and maintenance of a dam is prohibited. If any person wishes to be relieved of the responsibilities inherent in the ownership or control of a dam structure, those responsibilities shall be undertaken by another person through sale, transfer, or other means or the dam shall be removed.

73.30(2) *Dam maintenance.* The dam owner shall be required to maintain the dam and appurtenant structures in a safe condition. Maintenance shall include, but not be limited to, keeping earthen portions of the dam well vegetated, keeping trees and brush off the dam, preventing and repairing erosion, keeping spillways and drains free of obstructions, repairing structural deterioration, and performing

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required maintenance on mechanical appurtenances such as gates. The dam owner shall perform regular inspections to identify potential maintenance problems.

73.30(3) Dam repairs. The dam owner shall arrange for performance of engineering investigations when needed to evaluate potential safety problems. The dam owner shall perform any required repairs. When the department determines the need for follow-up inspections, the dam owner may be required to have a qualified person make inspections and prepare written inspection reports at specified intervals.

73.30(4) Maintenance inspections by dam owner. The dam owner of a high hazard or significant hazard structure shall be responsible for annual inspections and submission of written inspection reports. Annual inspection reports are due to the department on or before December 1. Inspection reports shall include:

- a. Maintenance work done since the previous annual report;
- b. Observed deficiencies on the dam or appurtenant structures;
- c. Remedial measures necessary and the method and schedule the dam owner proposes to correct the deficiencies found; and
- d. Changes in land use downstream of the dam.

567—73.31(455B) Dam safety inspection program.

73.31(1) Scope of dam safety inspection program. Dams subject to inspection under these rules are regulated dams as defined in this chapter. The scope of department staff field inspections normally is limited to visually observable features of dams and their appurtenant structures.

73.31(2) Purpose of dam safety inspection program. The general purposes of inspections are as follows: to evaluate the construction, operation, and maintenance of dams; to identify observable deficiencies in dams or appurtenant structures; and to identify other floodplain structures or uses which may affect the hazard potential of a dam or use of an associated impoundment. Inspection reports shall be used by the department in determining whether a proposed dam project complies with applicable criteria and to determine whether any of the following conditions exist:

- a. A permit violation;
- b. A violation of law which requires that a permit be obtained; or
- c. A condition which constitutes a public nuisance by causing unacceptable risk of injury to the public health, safety or welfare.

73.31(3) Inspections of significant hazard and high hazard dam structures.

a. *Inspection prior to construction.* A field inspection may be made by the department to determine the hazard potential of the dam and verify the location and plan information upon receipt of an application for approval of construction or modification of a dam.

b. *Inspection during construction.* Construction or modification of a dam structure shall be inspected by an engineer licensed in the state of Iowa or by a trained inspector under the supervision of the engineer. After completion of construction or modification of a dam structure, the engineer shall prepare and submit a construction report, as-built plans, and a statement that in the engineer's professional opinion the work was conducted in general conformance with the approved plans and specifications.

c. *Acceptance inspections.* When construction of a dam or modifications thereto is completed, and as-built plans and a construction report have been submitted, the department shall make a field inspection to determine whether visually observable features of the dam and appurtenant structures are consistent with the approved plans and the conditions of the dam construction permit. The department shall thereafter issue the water storage permit or a letter stating that additional work is required for acceptance of construction. Closure of the low-level outlet gate shall not begin until the department has issued the water storage permit.

d. *Periodic inspections after acceptance.* High hazard structures shall be inspected at least once every two years by the department. Significant hazard structures shall be inspected at least once every five years by the department. Structures poorly maintained or those that require repairs identified by the department shall be inspected more frequently until required maintenance and repairs are completed. The department shall notify the dam owner or agent before each inspection. Each inspection shall assess

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the condition of the dam and appurtenant structures and the adequacy of operation and maintenance practices. The inspection may include reevaluation of the ability of the dam and appurtenant structures to adequately withstand the hydraulic loadings and pass the appropriate design floods.

73.31(4) Inspections of low hazard dams.

a. Preliminary site evaluation. The department may evaluate the site of a proposed dam from maps and aerial photographs in lieu of a field inspection.

b. Inspection during construction. The applicant shall be responsible for providing supervision of construction by a person experienced in the type of construction involved.

c. Inspection of dams with operating plans. Low hazard dams with operating plans shall be inspected by the department at least once every five years. Any problems noted shall be reported to the dam owner in writing.

d. General inspections of low hazard dams. Low hazard dams may be periodically inspected by the department to determine their condition. Any serious problems noted shall be reported to the dam owner in writing.

73.31(5) Special inspections and investigations. Special inspections and investigations shall be made by department personnel in the following instances:

a. Upon notice or evidence of unauthorized construction;

b. Upon notice or evidence that a dam has failed or is in a condition where failure appears likely, and public damages would result from such failure; or

c. Upon notice or evidence that the hazard classification of a dam may no longer be valid due to changes in downstream conditions.

73.31(6) Inspections by others. At the discretion of the department, an inspection report submitted by a qualified individual may be accepted in lieu of an inspection and report by the department.

73.31(7) Inspection reports. The department shall prepare a report of each inspection and provide a copy to the dam owner. The report shall state the deficiencies observed during the inspection. If appropriate, the report shall detail the actions required to address the noted deficiencies.

567—73.32(455B) Raising or lowering of impoundment levels.

73.32(1) When approval is required. A separate approval is required to temporarily or permanently raise or lower the normal level of water impounded by a regulated dam unless the raising and lowering has been authorized as part of an approved operating plan. Such approval shall be in the form of a letter authorizing the lowering or raising and may be conditioned upon various requirements.

73.32(2) Information required for approval. The applicant shall submit the following information:

a. The date when the raising or lowering will be initiated, the level to which the impoundment will be raised or lowered and, if the raising or lowering is temporary, the anticipated date when the normal water level will be restored; and

b. Evidence that the discharge rate during lowering will not exceed the capacity of the stream channel below the dam.

73.32(3) Criteria for approval. The department's review of the raising or lowering of the impoundment includes determining the effects on flooding or flood control for any proposed works and adjacent lands and property, on the wise use and protection of water resources, on the quality of water, on fish, wildlife, and recreational facilities or uses, and on all other public rights and requirements.

73.32(4) Conditions. Conditions of approving the temporary or permanent raising or lowering of water levels may include:

a. Giving prior notice to the director of the local county conservation board or local enforcement officer for the department;

b. Publicizing the lowering locally in order to notify downstream users, persons who have boats or docks on the impoundment and other persons whose use of the impoundment might be affected; and

c. Maintaining a minimum release rate as determined by the department during refilling.

567—73.33(455B) Unsafe dams.

73.33(1) Procedures for designation of a dam as unsafe.

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a. Department report. If after inspection or other investigation the department determines that a dam is unsafe, a report shall be prepared. Copies of the report shall be provided to the dam owner and any other person whom the report identifies as responsible for the unsafe condition of the dam. The report shall identify the problems which cause the dam to be unsafe and recommend action to remedy the unsafe condition.

b. Opportunity for comment. The department shall provide the dam owner or other responsible person with a reasonable opportunity to comment on the department report considering the degree and imminence of hazard identified in the department report.

73.33(2) Criteria for designating a dam as unsafe. Designation of a dam as unsafe shall be based on one or more of the following findings:

a. The dam has serious deficiencies in its design, construction, use, maintenance, or physical condition which would contribute to failure or otherwise increase flood damages;

b. A high hazard or significant hazard dam has inadequate spillway capacity for the size and hazard potential of the dam.

73.33(3) Department action concerning an unsafe dam. After completion of the procedures for designating an unsafe dam, the department shall issue an initial decision which may order remedial work depending on the degree and imminence of hazard caused by the unsafe condition. Remedial work may include draining of the impoundment or removal of any structure determined to constitute a public nuisance. Procedures for appealing an initial decision are the procedures in 567—Chapter 7. If the initial decision requires emergency remedial work to abate an imminent danger of failure which would cause significant public damages, the director of the department may request the assistance of the attorney general to seek an appropriate judicial order compelling performance of emergency remedial work.

These rules are intended to implement Iowa Code chapter 455B, division III, part 4.

ARC 5676C**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action****Proposing rule making related to mercury-added switch recovery from end-of-life vehicles and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 215, “Mercury-Added Switch Recovery from End-of-Life Vehicles,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455B.806.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.801 to 455B.809.

Purpose and Summary

This proposed rule making rescinds and reserves Chapter 215. The Mercury-Free Recycling Act, passed in 2006, required auto manufacturers to implement and fund a system to recover mercury switches from scrap vehicles before they were crushed or shredded for recycling. Mercury switches were used in convenience lighting (hood and trunk lights) in vehicles as recently as 2002. The Mercury-Free Recycling Act included a sunset date of July 1, 2020, based on the expectation that the vast majority of vehicles containing the switches would be scrapped by then. The sunset deadline was not extended by the Legislature. As such, the Commission no longer has the authority to enforce this program. Accordingly, the rules must be rescinded.

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Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit 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 July 7, 2021. Comments should be directed to:

Theresa Stiner
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: theresa.stiner@dnr.iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind and reserve **567—Chapter 215**.

ARC 5706C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to home- and community-based services eligibility and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

The purpose of these proposed amendments to the Home- and Community-Based Services (HCBS) Habilitation program is to adopt the Level of Care Utilization System (LOCUS) for adults ages 19 and older and Child and Adolescent Level of Care Utilization System (CALOCUS) for youth ages 16 to 18 for the purposes of the needs-based eligibility determination, person-centered service planning, and HCBS tier authorization. These amendments also add provisions related to intensive residential habilitation services as defined in rule 441—25.1(331), adopt training criteria for direct service staff providing HCBS services, and clarify the scope of services included in Home-Based Habilitation (HBH).

Fiscal Impact

Assumptions are based on the change in the HBH service eligibility criteria of individuals accessing services under each of the tiers for HBH. The SFY22 State share estimate assumes the COVID-19-related increase in the Federal Medical Assistance Percentage (FMAP) will remain in effect through December 2021. The estimate does not include the potential 10 percent FMAP increase for HCBS waiver services authorized through the American Rescue Plan Act since decisions on this FMAP increase are still pending. This rule making will change the assessment tool for this population from the current interRAI to the LOCUS/CALOCUS assessment tool. The contractor costs associated with completing the assessments are comparable between these tools, so no additional administrative impact is anticipated. Use of the new assessment tool is expected to shift utilization across the HBH reimbursement tiers. Estimates were derived from Optumas using historical data from Iowa Total Care and Amerigroup on utilization and costs for different tiers of service. Funding will need to come from the existing Medical Assistance appropriation. Providers will likely see increased Medicaid payments due to the redistribution of members by reimbursement tier.

Jobs Impact

The impact on jobs is unknown at this time but is anticipated to be minimal.

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).

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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 July 6, 2021. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@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. Adopt the following **new** definition of “Intensive residential service homes” in subrule **77.25(1)**:

“*Intensive residential service homes*” or “*intensive residential services*” means intensive, community-based services provided 24 hours per day, 7 days per week, 365 days per year to individuals with a severe and persistent mental illness who have functional impairments and may also have multi-occurring conditions. Providers of intensive residential service homes are enrolled with Medicaid as providers of HCBS habilitation or HCBS intellectual disability waiver supported community living and meet additional criteria specified in 441—subrule 25.6(8).

ITEM 2. Amend subrule 77.25(8) as follows:

77.25(8) Home-based habilitation.

a. The following agencies may provide home-based habilitation services:

~~a.~~ (1) An agency that is certified by the department to provide supported community living services under:

~~(1)~~ 1. The home- and community-based services intellectual disability waiver pursuant to rule 441—77.37(249A); or

~~(2)~~ 2. The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

~~b.~~ (2) An agency that is accredited under 441—Chapter 24 to provide supported community living services.

~~c.~~ (3) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as a community housing or supported living service provider.

~~d.~~ (4) An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

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e. (5) An agency that is accredited by the Council on Accreditation of Services for Families and Children.

f. (6) An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

b. Direct support staff providing home-based habilitation services shall meet the following minimum qualifications in addition to the other requirements outlined in this rule:

(1) A person providing direct support shall be at least 18 years old and have a high school diploma or its equivalent.

(2) A person providing direct support shall not be an immediate family member of the member receiving services.

(3) A person providing direct support to members receiving intensive residential habilitation services shall complete 48 hours of training within the first year of employment in mental health and multi-occurring conditions pursuant to 441—subrule 25.6(8).

(4) A person providing direct support to members receiving home-based habilitation services shall complete a minimum of 24 hours of training within the first year of employment in mental health and multi-occurring conditions, including but not limited to the following topics:

1. Mental health diagnoses, symptomology, and treatment;

2. Intervention strategies that may include applied behavioral analysis, motivational interviewing, or other evidence-based practices;

3. Crisis management, intervention, and de-escalation;

4. Psychiatric medications, common medications, and potential side effects;

5. Member-specific medication protocols, supervision of self-administration of medication, and documentation;

6. Substance use disorders and treatment;

7. Other diagnoses or conditions present in the population served; and

8. Individual-person-centered service plan, crisis plan, and behavioral support plan implementation.

(5) A person providing direct support to members receiving home-based habilitation services shall complete a minimum of 12 hours of training annually on the topics listed in subparagraph 77.25(8) “b”(4), or other topics related to serving individuals with severe and persistent mental illness.

c. The department shall approve living units designed to serve up to four persons except as necessary to prevent an overconcentration of supported community living units in a geographic area.

d. The department shall approve a living unit designed to serve five persons if both of the following conditions are met:

(1) Approval will not result in an overconcentration of supported community living units in a geographic area; and

(2) The county in which the living unit is located provides to the bureau of long-term care verification in writing that the approval is needed to address one or more of the following issues:

1. The quantity of services currently available in the county is insufficient to meet the need; or

2. The quantity of affordable rental housing in the county is insufficient to meet the need; or

3. Approval will result in a reduction in the size or quantity of larger congregate settings.

ITEM 3. Adopt the following **new** definitions of “Child and Adolescent Level of Care Utilization System,” “Intensive residential service homes,” “Level of Care Utilization System” and “Severe and persistent mental illness” in subrule **78.27(1)**:

“*Child and Adolescent Level of Care Utilization System*” or “*CALOCUS*” means the comprehensive functional assessment tool utilized to determine eligibility for the habilitation program and service authorization for the home-based habilitation service for individuals ages 16 to 18.

“*Intensive residential service homes*” or “*intensive residential services*” means intensive, community-based services provided 24 hours per day, 7 days per week, 365 days per year to individuals with a severe and persistent mental illness who have functional impairments and may also have multi-occurring conditions. Providers of intensive residential service homes are enrolled with Medicaid

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as providers of HCBS habilitation or HCBS intellectual disability waiver supported community living and meet additional criteria specified in 441—subrule 25.6(8).

“*Level of Care Utilization System*” or “*LOCUS*” means the comprehensive functional assessment tool utilized to determine eligibility for the habilitation program and service authorization for the home-based habilitation service for individuals ages 19 and older.

“*Severe and persistent mental illness*” means the same as defined in rule 441—25.1(331).

ITEM 4. Amend subrule 78.27(2) as follows:

78.27(2) Member eligibility. To be eligible to receive home- and community-based habilitation services, a member shall meet the following criteria:

a. Age. The member is at least 16 years of age or older.

b. LOCUS/CALOCUS actual disposition. The member has a LOCUS/CALOCUS actual disposition of level one recovery maintenance and health management or higher on the most current LOCUS/CALOCUS assessment completed within the past 30 days.

~~*c.*~~ *c. Risk factors.* The member has at least one of the following risk factors:

(1) The member has undergone or is currently undergoing psychiatric treatment more intensive than outpatient care (e.g., crisis response services, subacute mental health services, emergency services, alternative home care, partial hospitalization, or inpatient hospitalization) more than once in the member’s life; or

(2) The member is currently receiving habilitation or integrated health home services; or

~~(2)~~ (3) The member has a history of ~~psychiatric illness~~ severe and persistent mental illness resulting in at least one episode of continuous, professional supportive care other than hospitalization (e.g., counseling, therapy, assertive community treatment, medication management); or

(4) The member has a history of severe and persistent mental illness resulting in involvement in the criminal justice system (e.g., prior incarceration, parole, probation, criminal charges, jail diversion program or mental health court); or

(5) Traditional mental health services available in the member’s community have not been able to meet the member’s needs.

~~*b. d.*~~ *d. Need for assistance.* The member has a need for assistance or is likely to need assistance related to functional impairment arising out of a mental health diagnosis typically demonstrated by meeting at least two of the following criteria on a continuing or intermittent basis for at least ~~two years~~ 12 months:

(1) The member is unemployed, is employed in a sheltered setting, or has markedly limited skills and a poor work history, and the member is currently receiving employment services or the member has a need for employment services to obtain or maintain employment.

(2) The member requires financial assistance ~~for out-of-hospital maintenance and is to reside independently in the community or may be homeless or at risk of homelessness if unable to procure this assistance without help.~~

(3) The member shows ~~severe~~ significant inability to establish or maintain a personal social support system.

(4) The member requires help in basic living skills such as self-care, money management, housekeeping, cooking, and medication management.

(5) The member exhibits ~~inappropriate~~ social behavior that ~~results in a demand for intervention~~ puts the member’s safety or others’ safety at risk, which results in the need for service intervention which may include crisis management or protective oversight.

~~*e. e.*~~ *e. Income.* The countable income used in determining the member’s Medicaid eligibility does not exceed 150 percent of the federal poverty level.

~~*d. f.*~~ *f. Needs assessment.* The ~~interRAI—Child and Youth Mental Health (ChYMH) for youth aged 16 to 18 or the interRAI—Community Mental Health (CMH) for those aged 19 and older~~ LOCUS or CALOCUS tool has been completed, and based on information submitted on the information submission tool and other supporting documentation as relevant, the IME medical services unit has determined that the member is in need of home- and community-based habilitation services. The

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~~interRAI—Child and Youth Mental Health (ChYMH) and the interRAI—Community Mental Health (CMH)~~ LOCUS/CALOCUS information submission tools are available on request from the IME medical services unit. Copies of the information submission tool for an individual are available to that individual from the individual's case manager, integrated health home care coordinator, or managed care organization. The designated case manager or integrated health home care coordinator shall:

(1) Arrange for the completion of the ~~interRAI~~ LOCUS or CALOCUS, before services begin and annually thereafter, and more frequently if significant observable changes occur in the member's situation, condition or circumstances.

(2) Use the information submission tool and other supporting documentation as relevant to develop a comprehensive service plan as specified in subrule 78.27(4), and ~~441—paragraph 90.4(1) "b"~~ before services begin and annually thereafter, and when there is a significant observable change in the member's situation, condition, or circumstances.

e. g. Plan for service. The department or the member's managed care organization has approved the member's comprehensive service plan for home- and community-based habilitation services. Home- and community-based habilitation services included in a comprehensive service plan or treatment plan that has been validated ~~through ISIS by the IME or the member's managed care organization~~ shall be considered approved by the department. Home- and community-based habilitation services provided before approval of a member's eligibility for the program cannot be reimbursed.

(1) The member's comprehensive service plan shall be completed annually according to the requirements of subrule 78.27(4), and ~~441—paragraph 90.4(1) "b."~~ A service plan may change ~~at any time due to a significant change in the member's needs~~ when requested by the member or the member's interdisciplinary team when there is a significant observable change in the member's situation, condition, or circumstances.

(2) For members receiving home-based habilitation, the service plan shall include the member's LOCUS/CALOCUS actual disposition, the LOCUS/CALOCUS composite score, and each individual domain score for each of the six LOCUS/CALOCUS domains.

~~(2)~~ (3) The member's habilitation services shall not exceed the maximum number of units established for each service in ~~441—subrule 79.1(2)~~.

~~(3)~~ (4) The cost of the habilitation services shall not exceed unit expense maximums established in ~~441—subrule 79.1(2)~~.

ITEM 5. Amend subrule 78.27(7) as follows:

78.27(7) Home-based habilitation. "Home-based habilitation" means individually tailored supports that assist with the acquisition, retention, or improvement of skills related to living, working, and recreating in the community.

a. Scope. Home-based habilitation services are individualized supportive services provided in the member's home and community that assist the member to reside in the most integrated setting appropriate to the member's needs. Services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. The specific support needs for each member shall be determined necessary by the interdisciplinary team and shall be identified in the member's comprehensive service plan. Covered supports include:

- (1) Adaptive skill development;
- (2) Assistance with activities ~~of daily living~~ to address daily living needs;
- (3) Assistance with symptom management and participation in mental health treatment;
- (4) Assistance with accessing physical and mental health care treatment, communication, and implementation of health care recommendations and treatment;
- (5) Assistance with accessing and participating in substance use disorder treatment and services;
- (6) Assistance with medication administration and medication management;
- (7) Assistance with understanding communication whether verbal or written;
- ~~(3)~~ (8) Community inclusion and active participation in the community;
- (4) ~~(9)~~ Transportation;

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~~(5)~~ (10) Adult educational supports, which may include assistance and support with enrolling in educational opportunities and participation in education and training;

~~(6)~~ (11) Social and leisure skill development;

~~(7)~~ (12) Personal care; and

~~(8)~~ (13) Protective oversight and supervision.

b. Setting requirements. Home-based habilitation services shall occur in the member's home and community.

(1) A member may live in the member's own home, within the home of the member's family or legal representative, or in another community living arrangement that meets the criteria in 441—subrule 77.25(5).

(2) A member living with the member's family or legal representative is not subject to the criteria in 441—paragraphs 77.25(8) "c" and "d."

(3) A member may not reside in a licensed medical or health care facility or in a setting that is required to be licensed as a medical or health care facility.

c. Home-based habilitation level of service criteria. Home-based habilitation services shall be available to members based on the member's most current LOCUS/CALOCUS actual disposition score, according to the following criteria:

(1) Intensive IV residential habilitation services. Intensive IV services are provided 24 hours per day. To be eligible for intensive IV services, a member must meet the following criteria:

1. The member has a LOCUS/CALOCUS actual disposition of level six medically managed residential services, and

2. The member meets the criteria in 441—subparagraph 25.6(8) "c"(3).

(2) Intensive III services are provided 17 to 24 hours per day. To be eligible for intensive III services, the member must have a LOCUS/CALOCUS actual disposition of level five medically monitored residential services.

(3) Intensive II services are provided 13 to 16.75 hours per day. To be eligible for intensive II services, the member must have a LOCUS/CALOCUS actual disposition of level four medically monitored non-residential services.

(4) Intensive I services are provided 9 to 12.75 hours per day. To be eligible for intensive I services, the member must have a LOCUS/CALOCUS actual disposition of level three high intensity community-based services.

(5) Medium need services are provided 4.25 to 8.75 hours per day as needed. To be eligible for medium need services, the member must have a LOCUS/CALOCUS actual disposition of level two low intensity community-based services.

(6) Recovery transitional services are provided 2.25 to 4 hours per day as needed. To be eligible for recovery transitional services, the member must have a LOCUS/CALOCUS actual disposition of level one recovery maintenance and health management.

(7) High recovery services are provided 0.25 to 2 hours per day as needed. To be eligible for high recovery services, the member must have a LOCUS/CALOCUS actual disposition of level zero.

d. Additional criteria for receiving home-based habilitation services for transition-age youth 16 to 17.5 years of age.

(1) Members residing in the family home may receive home-based habilitation services as needed, subject to the criteria set forth in this rule.

(2) Members residing outside the family home may only receive home-based habilitation services in residential settings with 16 or fewer beds licensed by the department of inspections and appeals.

(3) The proposed living environment must meet HCBS setting requirements in accordance with 441—subrule 77.25(5).

e. Additional criteria for receiving home-based habilitation services for transition-age youth 17.5 to 18 years of age.

(1) Members residing in the family home may receive home-based habilitation services as needed, subject to the criteria set forth in this rule.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) Members residing outside of the family home may receive daily home-based habilitation in a provider-owned or controlled setting when the following criteria are met:

1. The proposed living environment must meet HCBS setting requirements in accordance with 441—subrule 77.25(5).

2. All providers of the service setting being requested must meet the following additional safety and service requirements for serving youth under the age of 18:

- Individuals 17.5 to 18 years of age shall receive 24-hour site supervision and support.
- Individuals under the age of 18 may not reside in settings with individuals over the age of 21.
- The comprehensive service plan shall specifically identify educational services and supports for individuals who have not obtained a high school diploma or equivalent.
- For individuals who have obtained a high school diploma or equivalent, the comprehensive service plan shall include supported employment, additional training, or educational supports.

3. The member's parent or guardian has consented to home-based habilitation services.

4. The member is able to pay room and board costs (funding sources may include, but are not limited to, supplemental security income, child support, adoptions subsidy, or private funds).

5. A licensed setting, such as those approved to provide residential-based supported community living, is not available.

b.f. Exclusions. Home-based habilitation payment shall not be made for the following:

(1) to (6) No change.

ARC 5708C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to prescription drug monitoring and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

Section 5042 of the SUPPORT for Patients and Communities Act, codified in 42 U.S.C. 1396w-3a, requires covered providers who are permitted to prescribe controlled substances and who participate in Medicaid to query qualified prescription drug monitoring programs (PDMPs) before prescribing controlled substances to most Medicaid beneficiaries, beginning October 1, 2021. This proposed rule making adds requirements consistent with the federal and state requirements for Medicaid-participating providers. Iowa Medicaid providers must also comply with requirements under Iowa Code section 124.551A and their respective licensing boards in regard to utilizing the PDMP.

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 July 6, 2021. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@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 action is proposed:

Adopt the following **new** rule 441—79.17(249A):

441—79.17(249A) Requirements for prescribing controlled substances.

79.17(1) *Review of Iowa prescription monitoring program database.* A prescribing practitioner, as defined in Iowa Code section 124.550, shall review patient information in the Iowa prescription monitoring program (PMP) database prior to issuing a prescription for a controlled substance as defined in 42 U.S.C. 1396w–3a, inclusive of Schedules II, III and IV, unless the patient is receiving inpatient hospice care or long-term residential facility care. Review shall be conducted in accordance with all requirements under the prescribing practitioner’s specific professional licensing authority.

79.17(2) *Documentation.* The prescribing practitioner shall include documentation in the patient file to demonstrate compliance with subrule 79.17(1). Subject to the requirements under Iowa Code chapter 124, subchapter VI, if the prescribing practitioner is not able to conduct a review of the PMP database despite a good-faith effort, the prescribing practitioner must document in the patient file such good-faith effort, including the reasons why the prescribing practitioner was not able to conduct the review. The prescribing practitioner shall submit such documentation to the Iowa Medicaid program upon request.

This rule is intended to implement Iowa Code chapters 124 and 249A.

ARC 5709C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to child and spousal support and parenting time and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 99, “Support Establishment and Adjustment Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 252B.7A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 252B.7A.

Purpose and Summary

This proposed rule making is necessitated by recent changes to 45 CFR Section 302.56 for guidelines for setting child support awards and to 45 CFR Section 303.4 for establishment of support obligations. To conform to these federal regulations, this rule making updates the Child Support Recovery Unit’s current rules for determining income to consider the parent’s specific circumstances when evidence of income is limited. The federal Family Support Act of 1988 required each state to maintain uniform child support guidelines and criteria and to review the guidelines and criteria at least once every four years. The Iowa General Assembly entrusted the Iowa Supreme Court with this responsibility in Iowa Code section 598.21B. These proposed amendments update Chapter 99 to conform to upcoming changes to the Iowa Supreme Court guidelines. This rule making adds the term “parenting time” in reference to the rights awarded a parent to time with the parent’s child. The term “parenting time” is becoming the more preferred terminology, as compared to the term “visitation,” and there has been recent proposed legislation to replace the term throughout the Iowa Code.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

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 July 6, 2021. Comments should be directed to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@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 rule 441—99.1(234,252B,252H) as follows:

441—99.1(234,252B,252H) Income considered. The child support recovery unit shall consider all regularly recurring income of both legal parents to determine the amount of the support award in accordance with the child support guidelines prescribed by the Iowa Supreme Court. Spousal support shall be considered as specified in the Iowa Supreme Court guidelines, and prior obligation spousal support actually paid or received shall be calculated in the same manner as the deductions for support in subrule 99.2(4). These rules on child support guidelines shall not apply if the child support recovery unit is determining the support amount by a cost-of-living alteration as provided in Iowa Code chapter 252H, subchapter IV.

99.1(1) to 99.1(3) No change.

99.1(4) *Use of occupational wage rate information or median income for parents on the CSRU caseload.* ~~Occupational CSRU shall use wage rate information or median income for parents on the CSRU caseload shall be used to determine a parent’s income when the parent has failed to return a completed financial statement when requested, and when complete and accurate income information from other readily available sources cannot be secured. If a parent’s most recent residential address is in Iowa, CSRU shall use Iowa workforce development regional data to determine income. If a parent’s most recent residential address is in another state, the District of Columbia, or Puerto Rico, CSRU shall use wage data from the place of the parent’s most recent residence to determine income. For all other cases, CSRU shall use Iowa statewide occupational wage rate or median income for parents on the CSRU caseload to determine income.~~

a. Occupation known. ~~When CSRU can reasonably ascertain the current or last-known occupation of a parent can be determined through a documented source including, but not limited to, Iowa workforce development or the National Directory of New Hires, CSRU shall use occupational wage rate information shall be used to determine income. When the last-known occupation of a parent cannot be determined through a documented source, information may be gathered from the other parent and occupational wage rate information applied.~~ Wage rate information shall be converted to a monthly amount in accordance with subrule 99.3(1).

b. Occupation unknown. ~~When CSRU cannot reasonably ascertain the current or last-known occupation of a parent is unknown, CSRU shall estimate~~ determine the income of a parent using

HUMAN SERVICES DEPARTMENT[441](cont'd)

the median income amount for parents on the CSRU caseload, based upon the parent's most recent residential address.

99.1(5) and 99.1(6) No change.

ITEM 2. Amend rule 441—99.2(234,252B) as follows:

441—99.2(234,252B) Allowable deductions. The deductions specified in the ~~supreme court~~ Iowa Supreme Court child support guidelines shall be allowed when determining the amount of income subject to application of the guidelines. The parent claiming the deduction shall provide the documentation necessary for computing allowable deductions. Allowable deductions are:

99.2(1) to 99.2(3) No change.

99.2(4) Actual payments of child ~~and spousal~~ support pursuant to a prior court or administrative order. The date of the original court or administrative order, rather than the date of any modifications, shall establish a prior order under this subrule. Support paid under an order established subsequent to the order being modified shall not be deducted. All support payments shall be verified before being allowed as a deduction. The child support recovery unit shall calculate deductions for support as follows:

a. to d. No change.

99.2(5) ~~Actual medical support paid pursuant to a court order or administrative order in another order~~ Health insurance premium costs for other children, ~~not in the pending matter, as specified in the Iowa Supreme Court guidelines.~~ All medical support payments Health insurance premium costs shall be verified before being allowed as a deduction ~~and shall be calculated in the same manner as the deductions for support in subrule 99.2(4).~~

99.2(6) Actual child care expenses ~~during the custodial parent's employment, less the applicable federal income tax credit~~ as specified in the Iowa Supreme Court guidelines. The child support recovery unit shall determine the amount of the child care deduction as follows:

a. Actual child care expenses ~~related to the custodial parent's employment~~ shall be verified by a copy of the custodial parent's federal or state income tax return or by a signed statement from the person or agency providing the child care.

b. No change.

c. In determining the deduction allowed to the custodial parent for child care expenses ~~due to employment,~~ the following procedures shall be used:

(1) and (2) No change.

d. No change.

99.2(7) Qualified additional dependent deduction (QADD). The qualified additional dependent deduction is the amount specified in the ~~supreme court~~ Iowa Supreme Court guidelines as a deduction for any child for whom parental responsibility has been legally established as defined by the child support guidelines. However, this deduction may not be used for a child for whom the parent may be eligible to take a deduction under subrule 99.2(4).

a. and b. No change.

99.2(8) Cash medical support, either ordered in the pending matter or for other children, not in the pending matter, as specified in the Iowa Supreme Court guidelines. All cash medical support payments for other children, not in the pending matter, shall be verified before being allowed as a deduction and shall be calculated in the same manner as the deductions for support in subrule 99.2(4).

ITEM 3. Amend subrule 99.4(5) as follows:

99.4(5) ~~Extraordinary visitation adjustment~~ Adjustment for extraordinary visitation or parenting time. ~~The CSRU shall calculate an extraordinary visitation adjustment is a or parenting time credit as specified in the supreme court~~ Iowa Supreme Court guidelines. The credit shall not reduce the child support below the amount required by the ~~supreme court~~ Iowa Supreme Court guidelines.

The extraordinary visitation adjustment or parenting time credit shall be given if all of the following apply:

a. There is an existing order for the noncustodial parent that meets the criteria for extraordinary visitation or parenting time in excess of 127 overnights per year on an annual basis for the child for

HUMAN SERVICES DEPARTMENT[441](cont'd)

whom support is sought. The order granting visitation or parenting time can be a different order than the child support order. If a controlling order is determined pursuant to Iowa Code chapter 252K and that controlling support order does not meet the criteria for extraordinary visitation or parenting time, there is another order that meets the criteria.

- b. The noncustodial parent has provided CSRU with a file-stamped or certified copy of the order.
- c. The court has not ordered equally shared physical care.

ITEM 4. Amend subrule 99.69(4) as follows:

99.69(4) The request is based entirely on issues such as custody, ~~or~~ visitation, or parenting time rights, which are not directly related to child support.

ITEM 5. Amend paragraph **99.85(1)“d”** as follows:

d. The unit may also use ~~the most recent~~ occupational wage rate information ~~published by the department of workforce development~~ or the median income for parents on the unit caseload to ~~estimate~~ determine the net-earned gross income of a parent when a parent has failed to return a completed financial statement when requested and complete and accurate information is not readily available from other sources.

ITEM 6. Amend subrule 99.91(1) as follows:

99.91(1) *Nonsupport issues.* The request is based entirely on issues such as custody, ~~or~~ visitation, or parenting time rights.

ITEM 7. Amend paragraph **99.109(2)“b”** as follows:

b. If an order exists that contains language regarding legal custody, physical care, visitation, or other parenting time for the child, the unit shall deny the suspension request.

ARC 5707C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to foster home insurance fund and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 158, “Foster Home Insurance Fund,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 237.13.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237.13 as amended by 2021 Iowa Acts, House File 891, section 54.

Purpose and Summary

The Foster Home Insurance Fund (Fund) was established to provide liability coverage to licensed foster parents who have a child placed in their home. Pursuant to Iowa Code section 237.13, the Fund is created within the Office of the Treasurer of State to be administered by the Department of Human Services. The Fund consists of all moneys appropriated by the General Assembly for deposit into the Fund. Iowa Code section 237.13 was updated in the 2020 Legislative Session to state that the Department shall use moneys in the Fund to reimburse foster parents for the cost of purchasing foster care liability insurance and to perform the administrative functions necessary to carry out the Iowa Code section.

The initial plan was for the Department to offer financial assistance for licensed foster parents to purchase or offset liability insurance. Following extensive research, it was determined that this was

HUMAN SERVICES DEPARTMENT[441](cont'd)

not an existing coverage offered by insurance companies. Therefore, the Department worked with the Legislature to update Iowa Code section 237.13 during the 2021 Legislative Session to add language to the Iowa Code to reflect that moneys in the Fund shall be used to provide home and property coverage for foster parents to cover damages resulting from the actions of a child residing in a foster home. In addition, language was added to the Iowa Code to allow the Department to establish limitations of liability for individual claims as deemed reasonable by the Department.

The Department has contracted with a private organization to perform the administrative functions required of the Fund and sign up all licensed foster parents to ensure that there is coverage in the event foster parents need to submit a claim.

Fiscal Impact

The annual amount budgeted for the Foster Home Insurance Fund is \$675,000. Changes to the annual limit and an increased deductible could reduce costs, so it is possible the full amount will not be utilized.

Jobs Impact

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

Waivers

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

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 July 6, 2021. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@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:

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Renumber rules **441—158.1(237)** to **441—158.5(237)** as **441—158.3(237)** to **441—158.7(237)**.

ITEM 2. Adopt the following new rule 441—158.1(237):

441—158.1(237) Applicability. This chapter specifically relates to the foster home insurance fund established by Iowa Code section 237.13. A foster home insurance fund shall be developed by the department. The fund shall provide reimbursement for any property damages caused by the acts of a foster child residing in a foster home. The department may contract with another state agency or private organization to perform the administrative functions necessary to carry out this rule.

ITEM 3. Adopt the following new rule 441—158.2(237):

441—158.2(237) Definitions.

“*Department*” means the Iowa department of human services.

“*Foster family home*” or “*licensed foster home*” means an individual, as defined in Iowa Code section 237.1(7), who is licensed to provide child foster care.

“*Personal property*” means any movable thing of value which is owned, rented, or leased by a person and not recognized as real property.

“*Real property*” means anything owned, leased, or rented which is permanently affixed to, or built upon, a piece of land. Real property is best characterized as property that does not move or that is attached to the land.

“*Third-party property*” means property belonging to any person or entity other than the foster family or foster child.

ITEM 4. Amend renumbered subrule 158.3(1) as follows:

158.3(1) Eligible foster family claims. The foster home insurance fund shall pay the following within the limits defined in Iowa Code section 237.13, ~~subsections 3 and 4~~ 237.13(2):

a. Valid and approved claims of ~~family foster care children, their parents, guardians or guardians ad litem~~ a licensed foster family home.

b. Compensation to licensed foster families for personal or real property damage, ~~at replacement cost, or for bodily injury,~~ as a result of the activities of the family foster care child. Coverage also extends to third-party property damages caused by actions of the foster child.

c. ~~Reasonable and necessary legal fees incurred by licensed foster families in defense of civil claims filed pursuant to Iowa Code section 237.13, subsection 7, paragraph “d,” and any judgments awarded as a result of these claims. The reasonableness and necessity of legal fees shall be determined by the department or its contract agent.~~ Non-property-based liability, bodily injury, sexual abuse or molestation, auto liability, and professional liability are not covered.

ITEM 5. Amend renumbered rule 441—158.4(237) as follows:

441—158.4(237) Payment limits. The fund is not liable for the first \$100 ~~for all claims arising out of one or more occurrences during a fiscal year related to a single foster home~~ \$150 per claim deductible per family. Each claim shall be limited to one incident/occurrence. The fund is not liable for damages in excess of ~~\$300,000~~ \$5,000 for all claims arising out of one or more occurrences during a fiscal year related to a single home. Claims for losses related to bedbugs or other insect infestations will have an annual sublimit set by the department.

ITEM 6. Amend renumbered rule 441—158.5(237) as follows:

441—158.5(237) Claim procedures. Claims against the fund shall be filed with the department’s contractor. ~~If the department does not have a contractor, claims shall be filed on Form 470-2470, Foster Home Insurance Fund Claim.~~ Claims shall be filed on Form 470-5659, Foster Home Property Fund Notice of Loss Form. The decision to approve or deny the claim shall be made ~~by the department or its contractor~~ and the notice mailed or given to the claimant within 180 days of the date the claim is received.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 7. Amend renumbered rule 441—158.6(237) as follows:

441—158.6(237) Time frames for filing claims.

~~158.6(1) Claims by children who were under the age of 18 at the time of the occurrence shall be submitted within two years six months of the date of the occurrence or after the child's eighteenth birthday, but before the child's nineteenth birthday.~~

~~158.6(2) Claims by persons who were aged 18 or older at the time of the occurrence shall be submitted within two years of the occurrence.~~

~~158.6(3) Claims by foster parents pursuant to paragraph 158.1(1)“c” for legal fees or court-ordered judgments shall be submitted within two years of the date of the judgment.~~

ITEM 8. Amend **441—Chapter 158**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 237.13 as amended by ~~2011 Iowa Acts, Senate File 482, division II~~ 2021 Iowa Acts, House File 891.

ARC 5703C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

**Proposing rule making related to food processing plant inspections
and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 30, “Food and Consumer Safety,” and Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 137F.2(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 137F.2(1).

Purpose and Summary

The proposed amendments revise the definition of “food processing plant” to exclude premises or operations that are exclusively engaged in the production of Siluriformes, including catfish, and are inspected by the United States Department of Agriculture under a Federal Grant of Inspection from the list of premises that are not considered to be a food processing plant under the definition. The proposed amendments also update the reference to the adopted parts of the Code of Federal Regulations. Subrule 31.2(9) currently adopts the 2019 Code of Federal Regulations, and this rule making proposes to adopt the same sections of the 2021 Code of Federal Regulations. No substantive changes were made to the pertinent parts of the 2021 Code of Federal Regulations.

Prior to submission of this Notice, the Department distributed for comment a draft of these proposed amendments to industry associations, local contracting health departments and food safety educators.

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.

INSPECTIONS AND APPEALS DEPARTMENT[481](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 481—Chapter 6.

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 July 6, 2021. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.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 **481—30.2(10A,137C,137D,137F)**, definition of “Food processing plant,” as follows:

“*Food processing plant*” means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. “Food processing plant” does not include any of the following:

1. to 5. No change.

6. Premises or operations that are exclusively engaged in the preparation or processing of Siluriformes, including catfish, and are regulated and inspected by the United States Department of Agriculture under a federal grant of inspection.

ITEM 2. Amend subrule 31.2(9), introductory paragraph, as follows:

31.2(9) *Adoption of Code of Federal Regulations.* The following parts of the Code of Federal Regulations (April 1, ~~2019~~ 2021) are adopted:

ARC 5701C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

**Proposing rule making related to wild-harvested mushrooms
and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 30, “Food and Consumer Safety,” and Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 137F.2(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 137F.2(1).

Purpose and Summary

The proposed amendments modify exceptions to the Food Code issued by the U.S. Food and Drug Administration (FDA) that relate to wild-harvested mushrooms. The proposed amendments add definitions for “certified wild-harvested mushroom identification expert” and “cultivated mushroom” and revise the definition of “wild-harvested mushroom.” The proposed amendments also revise exceptions to the Food Code that relate to wild-harvested mushrooms to provide greater diversity of the wild-harvested mushroom species permitted to be sold and to update the certification course requirements to provide reciprocity to certifications obtained in other states.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

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 July 6, 2021. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.iowa.gov

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **481—30.2(10A,137C,137D,137F)**, definition of “Wild-harvested mushroom,” as follows:

“*Wild-harvested mushroom*” means a fresh mushroom that has been ~~picked in the wild~~ found or foraged in the natural environment and has not been processed (e.g., dried or frozen). “Wild-harvested mushroom” does not include cultivated mushrooms or mushrooms that have been packaged in an approved food processing plant.

ITEM 2. Adopt the following **new** definitions of “Certified wild-harvested mushroom identification expert” and “Cultivated mushroom” in rule **481—30.2(10A,137C,137D,137F)**:

“*Certified wild-harvested mushroom identification expert*” means an individual who has within the last three years successfully completed a wild-harvested mushroom identification training program provided by an accredited college, university, or state mycological society. The training program must include a component of actual identification of physical specimens or simulations of mushroom species. A document must be issued by an accredited college, accredited university, or state mycological society certifying the individual’s successful completion of the wild-harvested mushroom identification training program and specifying the species of wild mushrooms the individual is qualified to identify.

“*Cultivated mushroom*” means a mushroom grown through a process in which the grower inoculates a substrate (logs, beds, straw, etc.) with a known strain or species of mushroom spawn in a dedicated space, whether outdoors or indoors, that is under the control of the grower, for the purpose of fruiting mushrooms.

ITEM 3. Rescind subrule 31.1(4) and adopt the following **new** subrule in lieu thereof:

31.1(4) *Wild-harvested mushrooms.* Section 3-201.16, paragraph (A), is amended by adding the following:

“A food establishment or farmers market time/temperature control for safety food licensee may sell or serve wild-harvested mushrooms provided:

“a. All wild-harvested mushrooms sold or served are varieties classified as one of the following:

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Common name	Scientific name
Morel	<i>Morchella</i> spp. (<i>M. americana</i> , <i>M. angusticeps</i> , <i>M. punctipes</i>)
Oyster	<i>Pleurotus citrinopileatus</i> , <i>Pleurotus ostreatus</i> , <i>Pleurotus populinus</i> , or <i>Pleurotus pulmonarius</i>
Chicken of the woods	<i>Laetiporus</i> (<i>L. cincinnatus</i> , <i>L. sulphureus</i>)
Hen of the woods	<i>Grifola frondosa</i>
Chanterelles	<i>Cantharellus cibarius</i> group
Bear's head tooth, Lion's mane	<i>Hericium</i> spp (<i>H. erinaceus</i> , <i>H. americanum</i>)
Pheasant backs	<i>Polyporus squamosus</i>
Black trumpet	<i>Craterellus cornucopoides</i>

“b. All wild-harvested mushrooms sold or served in a food establishment must be obtained from sources where each mushroom is individually inspected and found to be safe by a certified wild-harvested mushroom identification expert.

“c. All wild-harvested mushroom species sold or served in a food establishment must have a written buyer specification. The buyer shall retain the written buyer specification for 90 days from the date of sale or service. The written buyer specification must include all of the following information:

- “1. Identification of each mushroom species by the scientific and common name;
- “2. Date of purchase;
- “3. Quantity by weight of each species received;
- “4. A statement indicating that each mushroom was identified in its fresh state and was not mixed or in contact with other mushroom species;
- “5. The name, address, and telephone number of the certified wild-harvested mushroom identification expert; and
- “6. A copy of the certified wild-harvested mushroom identification expert's certificate of successful completion of the program, including the date of completion.

“d. A consumer advisory shall inform consumers by brochures, deli case, menu advisories, label statements, table tents, placards, or other effective written means that ‘wild-harvested mushrooms should be thoroughly cooked and may cause allergic reactions or other effects.’

“e. This section does not apply to cultivated mushrooms or mushrooms that have been packaged in an approved food processing plant.”

ARC 5702C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action****Proposing rule making related to lavatories at food establishments and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 137F.2(1).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 137F.2(1).

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Purpose and Summary

The proposed amendments revise the exceptions to the Food Code by rescinding the requirement that separate toilet facilities for men and women be provided in establishments which seat 50 or more people or in establishments which serve beer or alcoholic beverages.

Prior to submission of this Notice, the Department distributed for comment a draft of these proposed amendments to industry associations, local contracting health departments and food safety educators.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

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 July 6, 2021. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.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. Rescind subrule **31.1(11)**.
- ITEM 2. Renumber subrules **31.1(12)** to **31.1(18)** as **31.1(11)** to **31.1(17)**.

ARC 5674C**LABOR SERVICES DIVISION[875]****Notice of Intended Action****Proposing rule making related to amusement rides, amusement devices, and concession booths and providing an opportunity for public comment**

The Labor Commissioner hereby proposes to amend Chapter 61, “Administration of Iowa Code Chapter 88A,” and Chapter 62, “Safety Rules for Amusement Rides, Amusement Devices, and Concession Booths,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 88A.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 88A as amended by 2021 Iowa Acts, House File 558.

Purpose and Summary

This proposed rule making is intended to conform the Iowa Administrative Code with 2021 Iowa Acts, House File 558. The proposed amendments would reduce the minimum age for amusement ride staff to 16 years of age, add new topics for required amusement ride staff training, eliminate the distinction between amusement ride assistants and attendants, and make conforming edits.

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 Commissioner for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1.

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 Commissioner no later than 4:30 p.m. on July 7, 2021. Comments should be directed to:

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

Public Hearing

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

LABOR SERVICES DIVISION[875](cont'd)

July 7, 2021
1:30 p.m.

Dial: 312.626.6799
Meeting ID number: 813 6327 9319
Passcode: 590253

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 Commissioner and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Rescind the definition of "Assistant" in rule **875—61.2(88A)**.

ITEM 2. Adopt the following **new** definition of "Special operation" in rule **875—61.2(88A)**:
"Special operation" means an unusual condition, interruption in operation, injury, emergency, or evacuation.

ITEM 3. Amend paragraph **61.6(2)"j"** as follows:

j. Failure of an operator to provide an adequate number of properly trained and qualified ~~assistants~~ ~~and attendants~~; or

ITEM 4. Amend rule 875—62.6(88A), introductory paragraph, as follows:

875—62.6(88A) Operations. Operations shall conform to ANSI B77.1 and ANSI B77.1A-2012 and ASTM F770-15, F1957-99(2011), F2007-12, F2137-15, F2374-10, F2375-09, F2376-13, F2460-11, and F2959-14, as applicable. ASTM F2374-10 shall apply to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10. The commissioner will enforce the minimum age requirements set forth below rather than any minimum age requirement set forth in a code adopted by reference in this rule.

ITEM 5. Amend subrule 62.6(1) as follows:

62.6(1) Attendants ~~and assistants~~. The operator shall provide a sufficient number of competent, trained workers, who shall be recognizable by their uniforms. Covered equipment shall have continuous, direct supervision while in use by a patron.

a. Each attendant of a concession booth, except a shooting gallery or dart game, shall be at least 14 years of age. All other attendants shall be at least ~~18~~ 16 years of age.

~~*b.* Each assistant shall be at least 16 years of age.~~

~~*e. b.* Each attendant and assistant shall be trained according to ANSI B77.1 and ANSI B77.1A-2012 and ASTM F770-15, F2007-12, F2460-11, and F2959-14, as applicable. In addition, training must cover procedures for normal operations and special operations specific to each ride the attendant will control, specific duties for each assigned position for each ride the attendant will control, and the operator's general procedures for normal operations and special operations.~~ Training documentation shall be available to the commissioner.

~~*d. c.* An attendant shall have control of the covered equipment when it is in operation. When the covered equipment is shut down, provision shall be made to prevent unauthorized operation.~~

LABOR SERVICES DIVISION[875](cont'd)

~~e.—Under normal operations, the duties of an assistant shall be limited to securing or removing seat restraints; checking height compliance; and loading and unloading patrons. In case of emergency, an assistant who has received appropriate training may terminate operations.~~

ITEM 6. Amend subrule 62.7(3) as follows:

62.7(3) *Emergency procedure.* When lightning, high wind, tornado warning, severe storm warning, fire, violence, riot or civil disturbance creates a direct threat to patrons, the operators, assistants, and attendants shall cease operation of covered equipment and evacuate all patrons. Operation shall not resume until conditions have returned to a normal, safe operating environment.

ARC 5689C

LAW ENFORCEMENT ACADEMY[501]

Notice of Intended Action

Proposing rule making related to academy council, terminology, and waivers and providing an opportunity for public comment

The Law Enforcement Academy hereby proposes to amend Chapter 1, “Organization and Administration,” Chapter 3, “Certification of Law Enforcement Officers,” Chapter 13, “Telecommunicator Training Standards,” and Chapter 16, “Waivers,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 80B.11 and 80B.11C.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389; 2020 Iowa Acts, House File 2585; and 2020 Iowa Acts, Senate File 2373.

Purpose and Summary

The Iowa Law Enforcement Academy has completed a review of 2020 Iowa Acts, House File 2389; 2020 Iowa Acts, House File 2585; and 2020 Iowa Acts, Senate File 2373. The proposed amendments address the changes made to the statutory code. The proposed amendments to Chapter 1 update how the Academy processes petitions for rule making from the public. The proposed amendments to Chapters 3 and 13 update terminology. The proposed amendments to Chapter 16 update the reporting requirements when the Academy grants a waiver to a rule.

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 Iowa Law Enforcement Academy Council for a waiver of the discretionary provisions, if any, pursuant to rule 501—Chapter 16.

LAW ENFORCEMENT ACADEMY[501](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 Academy no later than 4:30 p.m. on July 6, 2021. Comments should be directed to:

Russell Rigdon
Iowa Law Enforcement Academy
Building 4640
P.O. Box 130
Johnston, Iowa 50131
Email: russell.rigdon@iowa.gov

Public Hearing

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend subrule 1.11(4) as follows:

1.11(4) Academy council consideration. Upon request by petitioner in the petition, the academy director must schedule a brief and informal meeting between the petitioner and the academy council, a member of the academy council, or a member of the staff of the academy to discuss the petition. The academy council or a member of the academy staff may request the petitioner to submit additional information or argument concerning the petition. Comments may also be solicited from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the academy council by any person.

Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the academy council ~~must, in writing,~~ shall deny the petition in writing on the merits and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that it has instituted rule-making proceedings on the subject of the petition. The academy council shall submit the petition and the disposition of the petition to the administrative rules review committee. The petitioner shall be deemed notified of the denial or grant of the petition on the date when the academy council mails or delivers the required notification to the petitioner.

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 academy council’s rejection of the petition.

ITEM 2. Amend paragraph **3.5(7)“a”** as follows:

a. Deaf and hard-of-hearing culture.

ITEM 3. Amend **501—Chapter 13** as follows:

LAW ENFORCEMENT ACADEMY[501](cont'd)

501—13.1(80B) Telecommunicator Public safety telecommunicator training board. There is established a public safety telecommunicator training board under the authority of Iowa Code section 7E.3(3) which shall be an advisory board to the director as to matters arising under this chapter and the provisions of Iowa Code sections ~~80B.11(9)~~ 80B.11 and 80B.11C. This board shall consist of a minimum of one representative of and named by each of those organizations and departments listed in Iowa Code section 80B.11C, and such other persons appointed at the discretion of the director. Members of the board shall not be considered to be state employees for the purpose of the board and shall serve without compensation. The board will meet at the call of the director, and may establish such internal procedures as it may deem appropriate, subject to the approval of the director. A chairperson and such other officers of the board to be determined by the board shall be selected by majority vote of the board. The board may establish bylaws for its operation.

501—13.2(80B) Telecommunicator Public safety telecommunicator training.

13.2(1) Basic training. All persons employed primarily as public safety telecommunicators after July 1, 1998, shall successfully complete an approved basic training course within one year of employment. For purposes of this chapter, a public safety telecommunicator is defined as a person who ~~receives~~ serves as a first responder by receiving requests for, or ~~dispatches~~ dispatching requests to, emergency response agencies which include, but are not limited to, law enforcement, fire, rescue, and emergency medical services agencies.

13.2(2) In-service training requirements for former public safety telecommunicators who return to a public safety telecommunicator position. Any individual who leaves and then returns to an Iowa public safety telecommunicator position must receive, within one year of the individual's rehiring date, in-service training as follows:

Period Outside Iowa <u>Public Safety Telecommunications</u>	Training Required
6 months to 12 months	8 hours
More than 12 months to 36 months	20 hours
More than 36 months	40 hours

501—13.3(80B) Basic training.

13.3(1) Approved basic training course. Approved basic training course means a 40-hour course of instruction which has been approved in advance by the Iowa law enforcement academy through the public safety telecommunicator training board, which includes at a minimum the following topics:

- ~~1.~~ a. Introduction to public safety services and the role of the public safety telecommunicator.
- ~~2.~~ b. Human relations and communications skills.
- ~~3.~~ c. 911 systems, communications equipment, terminology.
- ~~4.~~ d. Understanding and taking different types of calls.
- ~~5.~~ e. Basic dispatch/broadcast techniques.
- ~~6.~~ f. Dispatching and managing the response to a call for service.
- ~~7.~~ g. Multiple tasking and prioritization.
- ~~8.~~ h. Liability and legal issues.
- ~~9.~~ i. Resource awareness.
- ~~10.~~ j. Stress management and motivation.

13.3(2) No change.

13.3(3) Agency administrator responsibility. It shall be the responsibility of agency administrators to ensure that all public safety telecommunicators under ~~their~~ agency administrators' direction receive the training required by these rules.

13.3(4) No change.

501—13.4(80B) Minimum in-service training requirements.

LAW ENFORCEMENT ACADEMY[501](cont'd)

13.4(1) *In-service training for newly hired public safety telecommunicators.* During each full fiscal year of employment following completion of the required basic training as set forth in subrule 13.3(1), public safety telecommunicators shall complete a minimum of eight hours of in-service training.

13.4(2) *In-service training for incumbents.* During each fiscal year ~~beginning July 1, 1998,~~ currently employed public safety telecommunicators are required to complete a minimum of eight hours of in-service training.

13.4(3) *Required in-service course content.* To qualify as in-service training, the course content must consist of a topic or topics as listed in subrule 13.3(1) or other subject matter approved by the public safety telecommunicator training board.

13.4(4) *Agency responsibility.* Agency administrators shall ensure that all public safety telecommunicators under their direction receive the minimum hours of in-service training required by these rules and that current and accurate in-service training records are regularly kept and maintained. The agency administrator shall make these records available for inspection upon request by the director of the Iowa law enforcement academy or the director's designee.

13.4(5) *In-service training records.* In-service training records shall include the following data:

a. to e. No change.

f. The scores, if any, achieved by the public safety telecommunicator to show proficiency in, or understanding of, the subject matter.

501—13.5(80B) Instructors for basic training courses.

13.5(1) *Experience.* Instructors must have a minimum of two years of public safety telecommunicator experience. This requirement may be modified by the public safety telecommunicator's agency administrator with public safety telecommunicator training board approval in exceptional cases reflecting outstanding education or experience.

13.5(2) No change.

13.5(3) *Training.* Instructors must have successfully completed an instructor training course consisting of a minimum of 40 hours of instruction or have provided a minimum of 80 hours of public safety telecommunicator instruction within the past two years and can verify same.

13.5(4) No change.

501—13.6(80B) Telecommunicator Public safety telecommunicator status forms furnished to academy. Within ten days of any of the following occurrences, the academy will be notified by the use of prescribed forms:

1. and 2. No change.

3. Training received by public safety telecommunicators not provided at or by personnel of the Iowa law enforcement academy.

These rules are intended to implement Iowa Code sections ~~80B.11(9)~~ 80B.11 and 80B.11C.

ITEM 4. Amend rule **501—16.1(17A,80B)**, definition of "Waiver," as follows:

"*Waiver*" ~~or "variance"~~ means action by the Iowa law enforcement academy council which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term "waiver" shall include both a "waiver" and a "variance."~~

ITEM 5. Amend rule 501—16.10(17A,80B) as follows:

501—16.10(17A,80B) 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~~ sections 17A.3 and 17A.9A. 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 that the council is authorized or required to keep confidential. The council may accordingly redact confidential information from petitions or orders prior to public inspection.

LAW ENFORCEMENT ACADEMY[501](cont'd)

ITEM 6. Amend rule 501—16.11(17A,80B) as follows:

501—16.11(17A,80B) Summary reports Submission of waiver information. In compliance with Iowa Code section 17A.9A, ~~semiannually~~ within 60 days of granting or denying a waiver, the council shall ~~prepare a summary report identifying~~ make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the council's actions on waiver requests. If practicable, the ~~report~~ submission shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ARC 5690C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rule making related to state parks, recreation areas, and state forest camping and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 61, "State Parks, Recreation Areas, and State Forest Camping," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455A.5(6).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 461A.3 and 461A.48.

Purpose and Summary

The proposed amendments address different aspects of the operations of the Department of Natural Resources (Department) by clarifying existing rules, rescinding outdated rules, modernizing Department systems, and streamlining camping procedures. More specifically, this proposed rule making:

- Amends the following definitions: "cabin" to better reflect the different sizes of cabins that are available; "camping" to include hammocks; "recreation area" to correct a misspelling and reference to a chapter; and "state park" to include Honey Creek Resort State Park.
- Rescinds the following definitions that are no longer used in the chapter: "call center," "persons with disabilities parking permit," "reservation window," and "state park managed by a management company."
- Rescinds the centralized reservation rule and adopts a new rule establishing that the Department operates a centralized reservation system for camping, rental facilities, and other special privileges in state parks, recreation areas, and state forests. Policies and procedures for the reservation system are available to the public upon request.
- Rescinds the paragraph regarding camping coupons because camping coupons have been discontinued.
- Amends the paragraph regarding camping units on campsites to include a hammock as a second small unit allowed on the site in addition to the basic unit.
- Amends the checkout time for campsites to be 3 p.m. for both reservable and nonreservable campsites.

NATURAL RESOURCE COMMISSION[571](cont'd)

- Amends a rule by extending the Friday and Saturday night stay requirement for camping through October 31, and amends the Fourth of July holiday three-night minimum stay requirement for campsites to only apply when the Fourth of July occurs on a Monday.
- Rescinds the requirement that campsites marked with the international symbol of accessibility be used only by vehicles displaying a persons with disabilities parking permit in order to allow the Department to make accessibility information available through the campsite reservation system, which is consistent with federal accessibility guidance.
- Proposes a new paragraph that requires campers to use straps that are at least one inch wide to secure hammocks to trees in a campground and prohibits the use of bolts, nails, spikes, and other fastening attachments that can damage trees.
- Proposes a new paragraph that allows the Department Director or Director's designee to permit camping in areas outside designated campgrounds for certain special events.
- Rescinds the existing minimum stay requirements for cabins and yurts for organizational purposes and proposes new minimum stay requirements including:
 - A minimum three-night stay is required for the national Memorial Day holiday weekend, the national Fourth of July holiday weekend when the Fourth of July is on a Monday, and the national Labor Day holiday weekend.
 - The Department may require a minimum one-week stay for cabins with bathroom and kitchen facilities during the time period beginning with the Friday of the national Memorial Day holiday weekend and ending with the Thursday after the national Labor Day holiday.
- Rescinds and reserves the paragraph regarding occupancy numbers for cabins as the numbers are determined on a case-by-case basis following building and fire codes. Occupancy numbers are posted on the Department and centralized reservation system websites.
- Amends the damage deposit rule to require payment based on the identified deadline, which is found on the centralized reservation system website.
- Amends the procedures and policies for wet and dry vessel storage rental assignment and use.
- Amends the motorized vehicle restrictions with updated procedures for persons with a physical disability or mobility impairment to acquire a permit to use a motorized vehicle in certain areas in state parks, recreation areas, and preserves.
- Rescinds the subrule on restrictions on picnic sites to allow the Department to make accessibility information available through other mechanisms consistent with federal accessibility guidance, including availability online.
- Rescinds the rule for the Restore the Outdoors Program because the program no longer exists.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit 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 July 6, 2021. Comments should be directed to:

NATURAL RESOURCE COMMISSION[571](cont'd)

Sherry Arntzen
 Iowa Department of Natural Resources
 Wallace State Office Building
 502 East Ninth Street
 Des Moines, Iowa 50319
 Phone: 515.346.7036
 Email: sherry.arntzen@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held by conference call as follows. Persons who wish to attend the conference call should contact Sherry Arntzen at sherry.arntzen@dnr.iowa.gov. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the public hearing must submit a request to Sherry Arntzen prior to the hearing to facilitate an orderly hearing.

July 6, 2021
 10 to 11 a.m.

Video/conference call

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule **571—61.2(461A)**, definitions of “Cabin,” “Camping,” “Recreation areas” and “State park,” as follows:

“*Cabin*” means a ~~small, one-story dwelling of simple construction which is available for rental on a daily or weekly basis.~~ Cabins may or may not contain restroom and kitchen facilities.

“*Camping*” means ~~the erecting of a tent, hammock, or shelter of natural or synthetic material; or placing a sleeping bag or other bedding material on the ground; or parking a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.~~

“*Recreation areas*” means the following areas that have been designated by action of the commission:

Area	County
Badger Creek Recreation Area	Madison
Brushy Creek Recreation Area	Webster
Claire <u>Clair</u> Wilson Park	Dickinson
Emerson Bay and Lighthouse	Dickinson
Fairport Recreation Area	Muscatine
Lower Gar Access	Dickinson

NATURAL RESOURCE COMMISSION[571](cont'd)

Area	County
Marble Beach	Dickinson
Mines of Spain Recreation Area	Dubuque
Pleasant Creek Recreation Area	Linn
Templar Park	Dickinson
Volga River Recreation Area	Fayette
Wilson Island Recreation Area	Pottawattamie

These areas are managed for multiple uses, including public hunting, and are governed by rules established in this chapter as well as in 571—Chapters ~~52~~ 51 and 105.

“*State park*” means the following areas managed by the state and designated by action of the commission:

Area	County
A. A. Call	Kossuth
Backbone	Delaware
Banner Lakes at Summerset	Warren
Beed’s Lake	Franklin
Bellevue	Jackson
Big Creek	Polk
Black Hawk	Sac
Cedar Rock	Buchanan
Clear Lake	Cerro Gordo
Dolliver Memorial	Webster
Elinor Bedell	Dickinson
Elk Rock	Marion
Fort Atkinson	Winneshiek
Fort Defiance	Emmet
Geode	Henry and Des Moines
George Wyth	Black Hawk
Green Valley	Union
Gull Point	Dickinson
Honey Creek	Appanoose
<u>Honey Creek Resort</u>	<u>Appanoose</u>
Lacey-Keosauqua	Van Buren
Lake Ahquabi	Warren
Lake Anita	Cass
Lake Darling	Washington
Lake Keomah	Mahaska
Lake Macbride	Johnson
Lake Manawa	Pottawattamie
Lake of Three Fires	Taylor
Lake Wapello	Davis
Ledges	Boone
Lewis and Clark	Monona
Maquoketa Caves	Jackson
McIntosh Woods	Cerro Gordo

NATURAL RESOURCE COMMISSION[571](cont'd)

Area	County
Mini-Wakan	Dickinson
Nine Eagles	Decatur
Okamanpedan	Emmet
Palisades-Kepler	Linn
Pikes Peak	Clayton
Pikes Point	Dickinson
Pilot Knob	Winnebago
Pine Lake	Hardin
Prairie Rose	Shelby
Preparation Canyon	Monona
Red Haw	Lucas
Rice Lake	Winnebago
Rock Creek	Jasper
Shimek Forest Campground	Lee
Springbrook	Guthrie
Stephens Forest Campground	Lucas
Stone	Plymouth and Woodbury
Trapper's Bay	Dickinson
Twin Lakes	Calhoun
Union Grove	Tama
Viking Lake	Montgomery
Walnut Woods	Polk
Wapsipinicon	Jones
Waubonsie	Fremont
Wildcat Den	Muscatine
Yellow River Forest Campground	Allamakee

Use and management of these areas are governed by Iowa Code chapter 461A and by other restrictions prescribed on area signs pursuant to Iowa Code section 461A.44.

ITEM 2. Rescind the definitions of “Call center,” “Persons with disabilities parking permit” and “State park managed by a management company” in rule **571—61.2(461A)**.

ITEM 3. Rescind rule 571—61.3(461A) and adopt the following new rule in lieu thereof:

571—61.3(461A) Centralized reservation system. The centralized reservation system of the department accepts and processes reservations for camping, rental facilities, and other special privileges in state parks, recreation areas, and state forests. The system is accessible through the department’s website. The operating policies and procedures for the centralized reservation system are available upon request.

This rule is intended to implement Iowa Code section 461A.3.

ITEM 4. Rescind paragraph **61.4(3)“d.”**

ITEM 5. Amend paragraphs **61.4(5)“c,” “h”** and **“k”** as follows:

c. Camping is restricted to one basic unit per site except that a small tent or hammock may be placed on a site with the basic unit. The area occupied by the small tent shall be no more than 8 eight feet by 10 ten feet, and the tent shall hold no more than four people.

h. Campers occupying nonreservable campsites shall vacate the campground or register for the night prior to 4 3 p.m. daily. Registration can be for more than 1 night at a time but not for more than

NATURAL RESOURCE COMMISSION[571](cont'd)

14 consecutive nights for nonreservable campsites. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of 3 nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

k. Minimum stay requirements for camping reservations. From May 1 to ~~September 30~~ October 31, a two-night minimum stay is required for weekends. The two nights shall be designated as Friday and Saturday nights. However, if ~~September 30~~ October 31 is a Friday, the Friday and Saturday night stay shall not apply. If ~~September 30~~ October 31 is a Saturday, the Friday and Saturday night stay shall apply. The following additional exceptions apply:

(1) A Friday, Saturday, and Sunday night stay is required for the national Memorial Day holiday and national Labor Day holiday weekends.

~~(2) A Thursday, Friday, and Saturday night stay is required for the Fourth of July holiday if the Fourth of July occurs on a Thursday, Friday or Saturday.~~

~~(3)~~ (2) A Friday, Saturday, and Sunday night stay is required for the Fourth of July holiday if when the Fourth of July occurs on a Monday.

ITEM 6. Rescind and reserve paragraph **61.4(5)“m.”**

ITEM 7. Adopt the following **new** paragraphs **61.4(5)“o”** and **“p”**:

o. Campers shall use only straps to secure hammocks to trees in campsites. Straps must be a minimum of one inch wide. The use of bolts, nails, spikes, or any other fastening attachment to a tree is prohibited.

p. Special events. The department director or director’s authorized representative may authorize camping in areas outside designated campgrounds for certain special events as defined in rule 571—44.2(321G,321I,461A,462A,481A). Requests shall be reviewed on a case-by-case basis and permitted under the provisions of 571—Chapter 44.

ITEM 8. Rescind paragraph **61.5(3)“b”** and adopt the following **new** paragraph in lieu thereof:

b. Rental stay requirements for cabins and yurts.

(1) Except as provided in subparagraphs 61.5(3)“b”(2) and 61.5(3)“b”(3), cabins and yurts may be reserved for a minimum of two nights throughout the entire season.

(2) Cabins and yurts must be reserved for a minimum of three nights (Friday, Saturday, and Sunday nights) for the national Memorial Day holiday weekend, the Fourth of July holiday weekend when the Fourth of July occurs on a Monday, and the national Labor Day holiday weekend.

(3) The department may require cabins with restroom and kitchen facilities to be reserved for a minimum stay of one week (Friday p.m. to Friday a.m.) during the time period beginning with the Friday of the national Memorial Day holiday weekend and ending with the Thursday after the national Labor Day holiday.

(4) All unreserved cabins, yurts and group camps may be rented for a minimum of two nights on a walk-in first-come, first-served basis. No walk-in rentals will be permitted after 6 p.m.

(5) Reservations or walk-in rentals for more than a two-week stay will not be accepted for any facility.

ITEM 9. Amend paragraph **61.5(3)“c”** as follows:

c. Persons renting cabins, yurts or group camp facilities must check in at or after 4 p.m. on ~~Saturday~~ the first day of the rental period. Check-out time is 11 a.m. or earlier on ~~Saturday~~ the last day of the rental period.

ITEM 10. Rescind and reserve paragraphs **61.5(3)“d”** and **“f.”**

ITEM 11. Amend paragraph **61.5(4)“a”** as follows:

a. ~~Upon arrival for the rental facility period, renters~~ Renters shall pay in full a damage deposit in an amount equal to the weekend daily rental fee for the facility or \$50, whichever is greater, by the established deadline for the facility. If a gathering with keg beer takes place in a lodge or open shelter with kitchenette, the damage deposit shall be waived in lieu of a keg damage deposit as specified in

NATURAL RESOURCE COMMISSION[571](cont'd)

571—subrule 63.5(3) if the keg damage deposit is greater than the lodge or open shelter with kitchenette damage deposit.

ITEM 12. Rescind rule 571—61.6(461A) and adopt the following **new** rule in lieu thereof:

571—61.6(461A) Wet and dry storage for vessels. The department may provide limited temporary vessel storage for individuals who own vessels that are actively used on waters in state parks and recreation areas.

61.6(1) Vessel storage fees.

a. Vessel storage rental fees shall be set by the department pursuant to 561—Chapter 16.
b. A person who fails to pay a vessel storage fee by the established payment due date shall forfeit the slip assignment.

61.6(2) Storage slip assignment.

a. Slip assignments shall be made on a first-come, first-served basis. Park staff may establish a waiting list upon receiving more requests for storage slips than the number of slips available. The waiting list shall be maintained in chronological order of the requests received.
b. Slip assignments shall be valid for one year with the option to renew annually.
c. In the event a person on a waiting list refuses a specific slip assignment, the person's name will be removed from the waiting list.

61.6(3) Storage slip requirements and conditions.

a. Each storage slip is limited to no more than one vessel at any given time.
b. All vessels in a storage slip must have a current boat registration.
c. Slip assignments must be in the same name of the person to whom the vessel that will occupy the slip is registered.
d. Dry storage slips shall be maintained in a clean and orderly manner. Failure to maintain the slip in a satisfactory condition will result in forfeiture of the slip assignment and any storage fees paid.
e. Slip assignments are not transferrable.

This rule is intended to implement Iowa Code section 461A.3.

ITEM 13. Amend subparagraphs **61.7(8)“b”(1), (2) and (4)** as follows:

(1) Permits.

1. Each person with a physical disability or mobility impairment must have a permit issued by the ~~director~~ park or recreation area staff in order to use a motorized vehicle in specific areas within state parks, recreation areas, and preserves. Such permits will be issued without charge and shall be valid for two years from the date of issuance. One ~~nonhandicapped~~ companion may accompany the permit holder on the same vehicle if that vehicle is designed for more than one rider; otherwise the companion must walk.

~~2.—Existing permits. Those persons possessing a valid permit for use of a motorized vehicle on game management areas as provided in 571—51.7(461A) may use a motorized vehicle to gain access to specific areas for recreational opportunities and facilities within state parks, recreation areas and preserves.~~

(2) Approved areas. ~~On each visit, the permit holder must contact the park staff in charge of the specific area in which the permit holder wishes to use a motorized vehicle.~~ The park or recreation area staff ~~must~~ shall designate on a park or recreation area map the area(s) where the permit holder will be allowed to use a motorized vehicle. This restriction is intended to protect the permit holder from hazards ~~or~~ and to protect other users or certain natural resources consistent with relevant state and federal law. ~~The map is to be signed and dated on each visit by the park staff in charge of the area.~~ Approval for use of a motorized vehicle on state preserves also requires consultation with a member of the preserves staff in Des Moines.

(4) Prohibited acts and restrictions.

1. No change.
2. The speed limit for an approved ~~motor~~ motorized vehicle off-road will be no more than ~~5 mph~~ 3 miles per hour. The permit of a person who is found exceeding the speed limit will be revoked.

NATURAL RESOURCE COMMISSION[571](cont'd)

3. The permit of any person who is found causing damage to cultural and natural features or abusing the privilege of riding off-road within the park will be revoked, and restitution for damages or other remedies available under the law may be sought.

ITEM 14. Rescind and reserve subrule **61.7(12)**.

ITEM 15. Rescind and reserve rule **571—61.14(461A)**.

ITEM 16. Amend subrule 61.23(1) as follows:

61.23(1) Restrictions of campsite or campground use in established state forest campgrounds shall be the same as those cited in paragraphs 61.4(5) "a" through "c," "e" through "k," "m," and "n." "n" through "p."

ARC 5704C

PHARMACY BOARD[657]

Notice of Intended Action

Proposing rule making related to terminology used in relation to deaf or hard-of-hearing persons and providing an opportunity for public comment

The Board of Pharmacy hereby proposes to amend Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2585.

Purpose and Summary

This proposed amendment provides conforming language relating to the terminology used in relation to deaf and hard-of-hearing persons.

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 657—Chapter 34.

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 July 6, 2021. Comments should be directed to:

PHARMACY BOARD[657](cont'd)

Sue Mears
Board of Pharmacy
400 S.W. 8th Street, Suite E
Des Moines, Iowa 50309
Email: sue.mears@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 subrule 6.14(4) as follows:

6.14(4) Oral counseling not practicable. If in the pharmacist’s professional judgment oral counseling is not practicable, the pharmacist may select and use alternative forms of patient information which shall include information for the patient or patient’s caregiver to contact the pharmacist for further consultation. The manner in which the patient or caregiver contacts the pharmacist shall not cause the patient to incur any expense. “Not practicable” refers to patient variables including, but not limited to, the absence of the patient or patient’s caregiver, the patient’s or caregiver’s hearing ~~impairment~~ disorder, or a language barrier. “Not practicable” does not include pharmacy variables such as inadequate staffing, technology failure, or high prescription volume. A combination of oral counseling and alternative forms of counseling is encouraged.

ARC 5705C

PHARMACY BOARD[657]

Notice of Intended Action

Proposing rule making related to temporary designation of controlled substances and providing an opportunity for public comment

The Board of Pharmacy hereby proposes to amend Chapter 10, “Controlled Substances,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 124.201.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 124.201.

Purpose and Summary

The proposed amendments temporarily amend the Iowa Code to add 15 substances to Schedule I (bromphine, a synthetic opioid, and 14 fentanyl-related substances) and specifically exclude one substance

PHARMACY BOARD[657](cont'd)

from Schedule II (samidorphan, an opioid receptor antagonist) of the Iowa Controlled Substances Act, conforming with scheduling action taken by the federal Drug Enforcement Administration.

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 657—Chapter 34.

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 July 6, 2021. Comments should be directed to:

Sue Mears
Board of Pharmacy
400 S.W. 8th Street, Suite E
Des Moines, Iowa 50309
Email: sue.mears@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:

Rescind rule 657—10.39(124) and adopt the following **new** rule in lieu thereof:

657—10.39(124) Temporary designation of controlled substances.

10.39(1) Amend Iowa Code section 124.204(2) by adding the following new paragraphs:

bt. N-phenyl-N-(1-(2-phenylpropyl)piperidin-4-yl)propionamide. Other name: beta-methyl fentanyl.

bu. N-(1-phenethylpiperidin-4-yl)-N,3-diphenylpropanamide. Other names: beta-phenyl fentanyl, 3-phenylpropanoyl fentanyl.

bv. N-(1-(2-fluorophenethyl)piperidin-4-yl)-N-(2-fluorophenyl)propionamide. Other name: 2'-Fluoro ortho-fluorofentanyl, 2'-fluoro 2-fluorofentanyl.

PHARMACY BOARD[657](cont'd)

- bw.* N-(1-(4-methylphenethyl)piperidin-4-yl)-N-phenylacetamide. Other name: 4'-Methyl acetyl fentanyl.
- bx.* N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide. Other names: ortho-Fluorobutyryl fentanyl, 2-fluorobutyryl fentanyl.
- by.* N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide. Other names: ortho-Methyl acetylfentanyl, 2-methyl acetylfentanyl.
- bz.* 2-methoxy-N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide. Other names: ortho-Methyl methoxyacetyl fentanyl, 2-methyl methoxyacetyl fentanyl.
- ca.* N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)propionamide. Other names: para-Methylfentanyl, 4-methylfentanyl.
- cb.* N-(1-phenethylpiperidin-4-yl)-N-phenylbenzamide. Other names: Phenyl fentanyl, benzoyl fentanyl.
- cc.* N-(1-phenethylpiperidin-4-yl)-N-phenylthiophene-2-carboxamide. Other names: Thiofuranyl fentanyl, 2-thiofuranyl fentanyl, thiophene fentanyl.
- cd.* Ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate. Other name: fentanyl carbamate.
- ce.* N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)acrylamide. Other name: ortho-Fluoroacryl fentanyl.
- cf.* N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide. Other name: ortho-Fluoroisobutyryl fentanyl.
- cg.* N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide. Other name: para-Fluoro furanyl fentanyl.

10.39(2) Amend Iowa Code section 124.204(9) by adding the following new paragraph:

y. 1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2H-benzo[d]imidazole-2-one. Other names: bromphine, 1-[1-[1-(4-bromophenyl)ethyl]-4-piperidinyl]-1,3-dihydro-2H-benzimidazole-2-one.

10.39(3) Amend Iowa Code section 124.206(2) "a" by rescinding and replacing the introductory text as follows:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextroprhan, nalbuphine, naldemedine, nalmeffene, naloxegol, naloxone, 6beta-naltrexol, naltrexone, and samidorphan, and their respective salts, but including the following:

ARC 5694C

REGENTS BOARD[681]

Notice of Intended Action

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

The Board of Regents hereby proposes to amend Chapter 1, "Admission Rules Common to the Three State Universities," and rescind Chapter 2, "Supplemental Specific Rules for Each Institution," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 262.9(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 262.9(3).

Purpose and Summary

The proposed amendments to Chapter 1 remove outdated information related to the regent admission index (RAI), remove "regional" terminology, update residency rules regarding domicile, and clarify that

REGENTS BOARD[681](cont'd)

application fees for admission are subject to Board approval. In addition, Chapter 2 is proposed to be rescinded.

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 July 6, 2021. Comments should be directed to:

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322
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 1.1(2) as follows:

1.1(2) Admission criteria.

a. — ~~Effective for students who seek admission in fall 2009 and thereafter through spring 2020.~~

~~(1) — A primary regent admission index (RAI) will be calculated for each freshman applicant using the formula below when the high school has provided a class rank. For purposes of calculating the primary RAI, the ACT composite score has a top value of 36 (SAT scores will be converted to ACT composite equivalents), high school rank is expressed as a percentile with 99 percent as the top value, high school GPA is expressed on a four point scale, and number of high school courses completed in the core subject areas is expressed in terms of years or fractions of years of study.~~

REGENTS BOARD[681](cont'd)

$$\text{RAI} = \frac{(2 \times \text{ACT composite score})}{1} + \frac{(1 \times \text{high school rank expressed as a percentile})}{1} + \frac{(20 \times \text{high school grade point average})}{1} + \frac{(5 \times \text{number of high school courses completed in the core subject areas})}{1}$$

(2) ~~An alternative RAI will be calculated for each freshman applicant using the equation identified in paragraph 1.1(2) "b" when the high school has not provided a class rank.~~

~~b. a.~~ Effective for students who seek admission in summer 2020 and thereafter. An RAI will be calculated for each freshman applicant using the equation below. For purposes of calculating the RAI, the ACT composite score has a top value of 36 (SAT scores will be converted to ACT composite equivalents), high school GPA is expressed on a four-point scale, and number of high school courses completed in the core subject areas is expressed in terms of years or fractions of years of study.

$$\text{RAI} = \frac{(3 \times \text{ACT composite score})}{1} + \frac{(30 \times \text{high school grade point average})}{1} + \frac{(5 \times \text{number of high school courses completed in the core subject areas})}{1}$$

~~e. b.~~ Freshman applicants from Iowa high schools who have an RAI of at least 245 and who meet the minimum requirements of the regent universities will qualify for automatic admission to any of the three regent universities. Freshman applicants who have an RAI below 245 may also be admitted to a specific regent university; however, each regent university will review these applications on an individual basis, and admission decisions will be specific to each institution.

ITEM 2. Amend subrule 1.2(1), introductory paragraph, as follows:

1.2(1) Transfer applicants with a minimum of 24 semester hours of graded credit from ~~regionally~~ accredited colleges or universities, who have achieved for all college work previously attempted the grade point required by each university for specific programs, will be admitted. Higher academic standards may be required of students who are not residents of Iowa.

ITEM 3. Amend subrule 1.2(4) as follows:

1.2(4) Transfer applicants from colleges and universities not ~~regionally~~ accredited will be considered for admission on an individual basis taking into account all available academic information.

ITEM 4. Amend rule 681—1.3(262) as follows:

681—1.3(262) Transfer credit practices. The regent universities endorse the Joint Statement on Transfer and Award of Academic Credit approved in 1978 by the American Council on Education (ACE), the American Association of Collegiate Registrars and Admissions Officers (AACRAO), and the Council on Postsecondary Accreditation (COPA). The current issue of Transfer Credit Practices of Selected Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), and publications of the Council on Postsecondary Accreditation (COPA) are examples of references used by the universities in determining transfer credit. The acceptance and use of transfer credit is subject to limitations in accordance with the educational policies operative at each university.

1.3(1) *Students from ~~regionally~~ accredited colleges and universities.* Credit earned at ~~regionally~~ accredited colleges and universities is acceptable for transfer except that credit in courses determined by the receiving university to be of a remedial, vocational, or technical nature, or credit in courses or programs in which the institution granting the credit is not directly involved, may not be accepted, or may be accepted to a limited extent.

Of the coursework earned at a two-year college, students may apply up to one-half but no more than 65 hours of the credits required for a bachelor's degree toward that degree at a regent university. This policy becomes effective September 29, 1993.

1.3(2) *Students from colleges and universities which have candidate status.* Credit earned at colleges and universities which have become candidates for accreditation by a ~~regional~~ an association

REGENTS BOARD[681](cont'd)

is acceptable for transfer in a manner similar to that from ~~regionally~~ accredited colleges and universities if the credit is applicable to the bachelor's degree at the receiving university.

Credit earned at the junior and senior classification from an accredited two-year college which has received approval by ~~a regional~~ an accrediting association for change to a four-year college may be accepted by a regent university.

1.3(3) *Students from colleges and universities not ~~regionally~~ accredited.* When students are admitted from colleges and universities not ~~regionally~~ accredited, they may validate portions or all of their transfer credit by satisfactory academic study in residence, or by examination. Each university will specify the amount of the transfer credit and the terms of the validation process at the time of admission.

~~In determining the acceptability of transfer credit from private colleges in Iowa which do not have regional accreditation, the regent committee on educational relations, upon request from the institutions, evaluates the nature and standards of the academic program, faculty, student records, library, and laboratories.~~

In determining the acceptability of transfer credit from colleges in states other than Iowa which are not ~~regionally~~ accredited, acceptance practices indicated in the current issue of Transfer Credit Practices of Selected Educational Institutions will be used as a guide. For institutions not listed in the publication, guidance is requested from the designated reporting institution of the appropriate state.

1.3(4) No change.

This rule is intended to implement Iowa Code section 262.9(3).

ITEM 5. Amend paragraph **1.4(2)“a”** as follows:

a. The following general guidelines are used in determining the resident classification of a student for admission, tuition, and fee purposes:

(1) A financially dependent student whose parents move from Iowa after the student is enrolled remains a resident provided the student maintains continuous enrollment. A financially dependent student whose parents move from Iowa during the senior year of high school will be considered a resident provided the student has not established domicile in another state.

(2) In deciding why a person is in the state of Iowa, the person's domicile will be considered. A person's domicile is presumed to be that of the parent(s) or legal guardian unless the person is independent and establishes a separate domicile. A person who comes to Iowa from another state and enrolls in any institution of postsecondary education for a full program or substantially a full program shall be presumed to have come to Iowa primarily for educational reasons rather than to establish a domicile in Iowa.

(3) A student who was a former resident of Iowa may continue to be considered a resident provided absence from the state was for a period of less than 12 months and provided domicile is reestablished. If the absence from the state is for a period exceeding 12 months, a ~~student~~ former resident may be considered a resident if evidence can be presented showing that the student has long-term ties to Iowa and reestablishes an Iowa domicile.

A person or the dependent of a person whose domicile is permanently established in Iowa, who has been classified as a resident for admission, tuition, and fee purposes, may continue to be classified as a resident so long as domicile is maintained, even though circumstances may require extended absence of the person from the state. It is required that a person who claims Iowa domicile while living in another state or country will provide proof of the continual Iowa domicile. ~~as evidence that the person:~~

- ~~1. Has not acquired a domicile in another state,~~
- ~~2. Has maintained a continuous voting record in Iowa, and~~
- ~~3. Has filed regular Iowa resident income tax returns during absence from the state.~~

(4) A student who moves to Iowa may be eligible for resident classification at the next registration following 12 consecutive months in the state provided the student is not enrolled as more than a half-time student (6 credits for an undergraduate or professional student, 5 credits for a graduate student) in any academic year term at any postsecondary institution, is not enrolled for more than 4 credits in a summer or winter term at any postsecondary institution for any classification, and provides sufficient evidence of the establishment of an Iowa domicile.

REGENTS BOARD[681](cont'd)

(5) A student who has been a continuous student and whose parents move to Iowa may become a resident at the beginning of the next term provided the student is dependent upon the parents for a majority of financial assistance.

(6) A person who has been certified as a refugee or granted asylum by the appropriate agency of the United States who enrolls as a student at a university governed by the Iowa state board of regents may be accorded immediate resident status for admission, tuition, and fee purposes when the person:

1. Comes directly to the state of Iowa from a refugee facility or port of debarkation, or
2. Comes to the state of Iowa within a reasonable time and has not established domicile in another state.

Any refugee or individual granted asylum not meeting these standards will be presumed to be a nonresident for admission, tuition, and fee purposes and thus subject to the usual method of proof of establishment of Iowa residency.

(7) An alien who has immigrant status establishes Iowa residency in the same manner as a United States citizen.

(8) At the regent institutions, American Indians who have origins in any of the original people of North America and who maintain a cultural identification through tribal affiliation or community recognition with one or more of the tribes or nations connected historically with the present state of Iowa, including the Iowa, Kickapoo, Menominee, Miami, Missouri, Ojibwa (Chippewa), Omaha, Oneida (Narragansett), Otoe (Otto), Ottawa (Odawa), Potawatomi, Sac and Fox (Sauk, Meskwaki), Sioux, and Winnebago (HoCak, Ho Chunk), will be assessed Iowa resident tuition and fees.

(9) Individuals who have received a homeless youth determination may be classified as residents for tuition and fee purposes.

ITEM 6. Rescind subrule **1.4(3)**.

ITEM 7. Rescind and reserve rule **681—1.5(262)**.

ITEM 8. Amend subrule 1.6(2) as follows:

1.6(2) Policy on college-bound program.

a. The regent institutions will cooperate with other state and local agencies, including the department of education, the college aid commission, and educational institutions in implementing the college-bound program to provide Iowa minority students with information and experiences relating to opportunities offered at the regents' universities.

b. The universities will develop programs for elementary, middle and secondary school students and their families in the following areas:

- (1) Encouragement to consider attending a postsecondary institution;
- (2) Enrichment and academic preparation;
- (3) Information about how to apply for admission.

c. College-bound program vouchers will be awarded to students on the basis of the participation of the student and the student's family in the college-bound program. One voucher will be awarded for participation in each college-bound program sponsored by a university.

(1) Each university will maintain records concerning those students who participate in the college-bound program, according to its established policies and procedures. The records will include information on those students who have received college-bound program vouchers which are described in Iowa Code section 262.92(2). The University of Iowa will maintain a central record on all students who have received college-bound program vouchers on behalf of all regent institutions and will make appropriate information available to the college aid commission.

(2) College-bound program vouchers may be used by students enrolled at a regent institution or at a private college or university in Iowa.

(3) A student holding vouchers and enrolling at a regent institution will receive priority in the award of funds under the Iowa minority academic grants for economic success (IMAGES) program. Awards under the IMAGES program are made on the basis of financial need. A student may be eligible for an additional award from the institution in which the student is enrolled.

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(4) A student holding vouchers and enrolling at a private college or university in Iowa will receive priority in the award of funds under the Iowa minority academic grants for economic success program as provided by the rules of the college aid commission.

(5) The presidents, or their designees, will administer and coordinate the college-bound program at the universities. As part of the coordination, they will establish liaison with the appropriate state and local agencies, serve as the university contact and promote collaborative efforts among the regent universities and other appropriate agencies and institutions. Annual reports to the board of regents shall be prepared by each regent university. The reports shall contain relevant information as to the accomplishments of the program in the past year and a plan of action with goals and objectives for the forthcoming year. Reports shall be submitted to the board of regents on ~~October~~ December 1 of each year.

ITEM 9. Rescind rule 681—1.7(262) and adopt the following new rule in lieu thereof:

681—1.7(262) Application fees. Mandatory application fees for admission to the University of Iowa, Iowa State University and the University of Northern Iowa shall be approved by the board of regents and shall be based on reasonable costs anticipated to be incurred by the institution in processing the application, unless otherwise approved by the board of regents.

ITEM 10. Rescind and reserve **681—Chapter 2**.

ARC 5695C

REGENTS BOARD[681]

Notice of Intended Action

**Proposing rule making related to compensation and probation
and providing an opportunity for public comment**

The Board of Regents hereby proposes to amend Chapter 3, “Regents Human Resources Management—Merit System Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 262.9(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 262.9(3).

Purpose and Summary

The proposed amendments to Chapter 3 update language for clarification and add an emergency pay practice.

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).

REGENTS BOARD[681](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on July 6, 2021. Comments should be directed to:

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322
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. Adopt the following **new** definition of “Premium pay” in rule **681—3.14(8A)**:
“Premium pay” means a sum of money paid for specific work in addition to the salary or hourly rate.

ITEM 2. Amend rule **681—3.14(8A)**, definition of “Probationary period,” as follows:
“Probationary period” is a six-month period to determine an employee’s fitness for the position. A probationary period is required for an original appointment, ~~reinstatement,~~ or reemployment to a classification not previously held, promotion, voluntary demotion out of series or lateral transfer out of classification. Employees hired on term appointments, as defined by rule 681—3.85(8A), are also subject to a probationary period.

ITEM 3. Amend rule 681—3.39(8A) as follows:

681—3.39(8A) Administration of the pay plan. Within the provisions of these rules, the pay plan will be uniformly administered by the resident directors under the direction of the merit system director for all classifications in the system. Except as otherwise provided in these rules and in the pay plan, all employees will be paid between the minimum and maximum of the pay grade to which the employee’s classification is assigned and such pay will constitute the total cash remuneration the employee receives for the employee’s work in that position. Any employee who is approved for participation in a phased retirement program as provided for by state law and regent policy shall have the salary provided under these rules adjusted as specified by such law and regent policy. In instances where more than one rule for pay is applicable, the resident director may apply the rule that is most appropriate for the situation.

3.39(1) Entrance salaries. The entrance salary for an employee in any position under this system will be the minimum salary of the pay grade to which that classification is assigned or in accordance with the approved pay plan, except as provided for the following:

a. *Appointment based on a scarcity of qualified applicants.* At the request of an institution and on the basis of economic or employment conditions which make it difficult or impossible to recruit at the

REGENTS BOARD[681](cont'd)

minimum rate of the pay grade to which a classification of position is assigned, a resident director, subject to approval by the merit system director, may authorize for a designated period of time recruitment for that classification at a rate higher than the minimum. Where such a higher entrance rate is authorized all employees in the same classification and in the same geographical area, who are earning less than the higher entrance rate, will be increased to that higher rate.

b. Appointment based on exceptional qualifications. Employees whose qualifications substantially exceed the minimum required for the classification or who possess outstanding experience relative to the demands of the position may, at the request of an employing department and upon approval by the resident director, be appointed at a rate higher than the minimum, provided that the pay of all other employees in the same classification ~~as defined in 3.104(4)“e”~~ with similar qualifications working under the same conditions as defined in 3.104(4)“h” at the same institution are raised to that higher rate. These appointments along with any salary adjustments required of other employees other than the appointee must be reported to the merit system director.

Increases authorized and granted to other employees as the result of appointments based on the scarcity of qualified applicants, 3.39(1)“a,” or appointments based on exceptional qualifications, 3.39(1)“b,” will establish new merit review dates for affected employees. In the event that a substantial inequity is created due to a change to a merit review date, the resident director may determine that no change should be made to the merit review date or that an alternate merit review date should be established.

c. Appointments based on prior service at the institution. Employees who were employed by an appointing institution in a nonmerit system position and who performed duties of the same character and responsibility as the merit classification to which they are being appointed may be paid at a rate higher than the minimum reflecting prior service in a comparable position. Such appointments must be approved by the resident director and reported to the merit system director.

3.39(2) and 3.39(3) No change.

3.39(4) Pay on demotion. Upon recommendation by the department head, and with the prior approval of the resident director, the pay of an employee who is demoted will be set at any rate within the new pay grade that does not exceed the rate at which the employee was paid in the position from which the employee was demoted except as provided in 3.39(1)“b.” Minimum increase eligibility period will not change.

If the salary of an employee who is demoted as the result of the reclassification of the employee's position exceeds the maximum salary of the pay range to which the new classification is assigned, at the discretion of the employing department and with the approval of the resident director, the salary may be “red-circled” for a period not to exceed one year. The resident director may request an extension be approved by the merit system director due to extraordinary special circumstances for a designated period of time.

If an employee accepts voluntary demotion in lieu of layoff, the salary shall be retained providing funding is available. In no event will the salary exceed the maximum of the new pay grade.

3.39(5) Pay on reinstatement, reemployment or return from leave.

a. An employee who is reinstated will be paid at a rate no greater than what the employee was last paid, plus any across-the-board increases that would have occurred during the time of nonemployment, and between the minimum and maximum of the pay grade. An employee who is returned to a merit system position from a professional position, will be paid in accordance with subrule 3.39(4), pay on demotion. The date of reinstatement will be the merit review date.

b. An employee who is reemployed to the previously occupied class will be paid at a rate no greater than what the employee was last paid, plus any across-the-board increases that would have occurred during the time of nonemployment, and between the minimum and maximum of the pay grade. When a merit increase has been granted to an employee in a position taken through voluntary demotion in lieu of layoff and the merit increase results in a higher rate of pay than last paid to the employee prior to the voluntary demotion in lieu of layoff, the employee may be reemployed to the previously occupied class with the higher rate of pay. Reemployment to the previously occupied class from a position taken as a voluntary demotion in lieu of layoff will not be considered a promotion. The merit review date will

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not change as a result of the voluntary demotion in lieu of layoff, nor as a result of reemployment to the previously occupied class from a position taken as a voluntary demotion in lieu of layoff.

c. An employee who is reappointed to the previously occupied position or a position in the same class on conclusion of a leave without pay will be paid in accordance with the provisions concerning pay on reemployment as provided above.

3.39(6) to 3.39(9) No change.

3.39(10) *Pay for exceptional performance.* An employee may be given pay for exceptional performance, not to exceed 5 10 percent of an employee's current annual salary, at the written request of the employee's department head with appropriate administrative approval and the prior approval of the resident director. The request will describe the nature of the exceptional job performance for which additional pay is requested, indicate the amount proposed, and specify the source of funds. The award may be based on sustained superior performance or an exceptional achievement or contribution during the period since the employee's last performance review. To qualify for an exceptional performance award, an employee must have a cumulative performance evaluation exceeding standards and have no individual rating below satisfactory. Payment will be made as a lump sum award and will not change the employee's established salary rate. An employee will be eligible to receive multiple rewards per fiscal year but not to cumulatively exceed 5 10 percent of the employee's current annual salary.

3.39(11) to 3.39(14) No change.

3.39(15) *Discretionary pay increases for permanent employees.* Permanent employees paid within the designated pay grade may be eligible for a discretionary increase to their present base pay as a result of a market analysis, equity analysis, employment offer or other employment situation. In no circumstance will the adjustment result in pay above the maximum of the pay grade. A resident director shall present the rationale for a discretionary pay increase to the merit system director for approval ~~by the merit system director.~~

3.39(16) *Payment of a shift differential.* All employees will be paid a shift differential for any shift of which four or more hours occur between 6 p.m. and midnight and a shift differential for any shift of which four or more hours occur between midnight and 6 a.m. The amount of the shift differential paid shall be determined by the merit system director and may vary between or within institutions based on geographical or market differences.

3.39(17) to 3.39(19) No change.

3.39(20) *Emergency payments.* When a state of emergency has been declared to exist at an institution, an employee may be given emergency pay at the written request of the employee's department head with appropriate administrative approval and the prior approval of the merit system director and executive director. The request will describe the nature of the state of emergency, the services provided by the employee in support of the management of or response to the state of emergency, the amount proposed, and the source of funds. Payment will be made as a lump sum award and will not change the employee's established salary rate.

This rule is intended to implement Iowa Code section 8A.413.

ITEM 4. Amend rule 681—3.85(8A) as follows:

681—3.85(8A) Term appointment. When it is known that a particular job, project, grant or contract will require the services of an employee for a limited duration or where funding must be renewed periodically, a term appointment may be made. The initial appointment will not be made for more than one year. Renewals beyond one year may be approved by the resident director on the basis of funding availability or institutional limits on term appointments.

Employees on a term appointment are subject to a probationary period. An employee on term appointment subsequently hired as a regular employee in the same classification is not required to complete an additional probationary period.

Such appointments will not confer to the individual any right of position, transfer, demotion, promotion, or recall, but incumbents shall be eligible for vacation and sick leave, except that a term

REGENTS BOARD[681](cont'd)

appointment made for less than 780 hours will be considered a temporary appointment under rule 681—3.82(8A) without conferring rights or eligibility for vacation or sick leave.

This rule is intended to implement Iowa Code section 8A.413(9).

ARC 5696C

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 Regents Board hereby proposes to rescind Chapter 4, “Traffic and Parking at Universities,” Iowa Administrative Code, and to adopt a new Chapter 4 with the same title.

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

This rule making proposes to rescind Chapter 4 and create a new Chapter 4 for traffic and parking that consolidates the three separate institutional rules into a single rule and clarifies that citation schedules are subject to Board approval.

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 July 6, 2021. Comments should be directed to:

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322
Phone: 515.281.6456
Email: aimee.claeys@iowaregents.edu

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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 action is proposed:

Rescind 681—Chapter 4 and adopt the following new chapter in lieu thereof:

CHAPTER 4
TRAFFIC AND PARKING AT UNIVERSITIES

681—4.1(262) Purpose. The purpose of these rules is to provide for the policing, control and regulation of traffic and of parking vehicles on the campuses of the state University of Iowa, Iowa State University and the University of Northern Iowa.

681—4.2(262) Definitions. For the purpose of these rules, the following definitions shall apply unless the context clearly requires otherwise, and all other words shall have meaning according to their common usage.

“*Appointed authority*” means the person or entity designated by the president of a university to perform any function or duty required or permitted hereunder.

“*Bicycle*” means any vehicle having two or three wheels and fully operable pedals that is a traditional bicycle designed solely to be pedaled by the rider. An electric/battery-powered bicycle designed not only to be pedaled by the rider but also propelled by an electric motor of less than 750 watts (one horsepower) may be treated as a bicycle and may be parked at bicycle racks.

“*Campus*” means all property under the control of a university.

“*Employee*” means any person regularly employed by a university who is not a student.

“*Guest*” means any person other than a person living at the designated residence hall.

“*Handrail*” means any railing intended to provide physical support to a pedestrian.

“*Immobilization*” of a bicycle consists of restricting the bicycle’s use by detaining it at the point of infraction with a university locking device.

“*Impoundment*” of a bicycle consists of removing the owner’s locking device, transporting the bicycle to a university facility, and detaining it with a university locking device.

“*In-line skates*” means any frame or shoe with a single row of wheels that is used for gliding or skating. In-line skates are also known as roller blades.

“*Motorcycle*” or “*moped*” or “*motorized bicycle*” means any vehicle that is self-propelled, has fewer than four wheels in contact with the ground, and is not a bicycle or an electric bicycle. For purposes of these rules, a moped or motorized bicycle is considered a motorcycle.

“*Motor vehicle*” means any vehicle that is self-propelled and has four or more wheels in contact with the ground.

“*Roller skates*” means any frame or shoe with a pair of small wheels near the heel and near the toe that is used for gliding or skating.

“*Skateboard*” means any board or platform with attached wheels used for individual transportation. For purposes of these rules, a nonmotorized scooter (a board with a handle) is considered a skateboard.

REGENTS BOARD[681](cont'd)

“*Street furniture*” is any structure or accessory in a university pedestrian area or slow zone designed for the benefit of pedestrians. This includes, but is not limited to, benches, tables, lampposts, and trash receptacles.

“*Student*” means any person registered with the university for academic credit who is not employed by the university on a full-time salaried or equivalent basis.

“*University*,” unless specifically indicated herein, means the state University of Iowa, Iowa State University or the University of Northern Iowa.

“*Vehicle*” means any wheeled or treaded device used or designed for use as a means of transportation or conveyance of persons or property.

“*Visitor*” means any person who owns, operates or parks a vehicle on the university campus who is not a student or an employee.

681—4.3(262) General traffic.

4.3(1) The appointed authority shall establish rules governing traffic violations and the safe operation of all vehicles, including motor vehicles, motorcycles, skateboards, in-line skates, roller skates and bicycles, on institutional roads and property as the director deems necessary. Such traffic rules shall be available for inspection during business hours at the office of the appointed authority and the board of regents. Traffic violations may also be charged and prosecuted as violations of Iowa Code chapter 321 and section 262.68. All state of Iowa motor vehicle laws are in effect on campus.

4.3(2) The appointed authority shall erect speed limit signs in conformity with maps of the institutional roads and property of the university designating such speed limits as adopted by the board of regents. The maps will be available for inspection during business hours at the office of the appointed authority and the board of regents.

4.3(3) The appointed authority is delegated authority to make temporary changes in traffic patterns, including establishment of one-way roads and road closures, where necessary because of construction or special events being held on campus.

4.3(4) The appointed authority is delegated authority to erect traffic control signs and devices, and to designate pedestrian crosswalks and bicycle lanes, as well as no bicycling and no skateboard, in-line skating and roller skating areas; bicycle dismount zones and pedestrian-only areas. All vehicle operators must obey all signs directing traffic flow on campus.

4.3(5) Pedestrians shall be given the right-of-way at all crosswalks or when in compliance with existing traffic controls.

4.3(6) Driving of vehicles, motor vehicles, and motorcycles on university property other than roads is prohibited, unless specific areas have been designated for such use by the appointed authority or special permission has been granted by the appointed authority for emergency conditions.

4.3(7) Driving of vehicles, motor vehicles, and motorcycles on parts of institutional roads marked as bicycle lanes or on designated bicycle paths is prohibited.

4.3(8) The appointed authority is delegated authority to have the university public safety department investigate accidents which occur on university property.

4.3(9) Every person riding a bicycle on a street or highway on campus is granted all the privileges and is subject to all the regulations applicable to a driver of any motor vehicle on that street or highway and to the special regulations of this subrule.

a. A bicycle rider on campus must:

(1) Obey the instructions of official traffic control devices, signs and signals applicable to motor vehicles, unless otherwise directed by a peace officer or other authorized traffic director;

(2) Obey the direction of any sign whenever authorized signs are erected indicating that no right, left or U-turn is permitted;

(3) Obey the regulations applicable to pedestrians when the bicycle rider dismounts from the bicycle;

(4) Yield the right-of-way to all vehicles approaching on a street whenever a rider is on a separate bicycle path that intersects the street;

(5) Not use campus sidewalks except those specifically designated as bicycle paths;

REGENTS BOARD[681](cont'd)

- (6) Yield the right-of-way to any pedestrian in a designated crosswalk;
- (7) Not ride on lawns.

b. This subrule does not apply to peace officers of the university's department of public safety while they are acting within the scope of their regularly assigned duties.

4.3(10) Roller skates, roller blades and skateboards are permitted on campus sidewalks. Roller skates, roller blades and skateboards are not permitted on or in university structures or buildings; on stairways, sub-walks, elevated sidewalks, access ramps, steps, retaining walls, handrails or other architectural elements; on or in planting, grass or seeded areas; or where otherwise prohibited by sign, peace officer or other authorized traffic director. Any person on roller skates, roller blades or a skateboard must yield the right-of-way to any wheelchair or other mobility assistance device for the disabled, pedestrian or bicycle.

681—4.4(262) Registration. Motor vehicles and motorcycles shall be registered as follows:

4.4(1) Students. Any student who operates, maintains or owns a motor vehicle or motorcycle on university property is responsible for the proper registration of the vehicle and the display of the university registration identification thereon. Every motor vehicle and motorcycle which is operated or maintained by a student on campus must be registered with the university, and a registration identification must be displayed on the vehicle in the manner prescribed by the appointed authority. A student must register the vehicle within 48 hours of initial operation of the vehicle on campus.

4.4(2) Employees. Motor vehicles and motorcycles owned or operated by employees may be registered with the university if the employee so desires, but registration of such vehicles is not required unless the employee desires parking privileges on the campus. A registration identification may be issued for display on vehicles registered by employees.

4.4(3) Visitors. Vehicles owned or operated by visitors may be registered with the university if the visitor so desires, but registration of these vehicles is not required unless the visitor desires parking privileges on campus or the visitor needs temporary or extended access to parking lots. A registration identification shall be displayed on vehicles registered by visitors in the manner prescribed by the university.

4.4(4) Procedure. Applications for registration shall be submitted to the appointed authority in the manner the appointed authority prescribes. No student shall register any vehicle owned or actually maintained by another student. No fee shall be charged for registration without parking privileges.

4.4(5) Bicycles. Each university may prescribe additional policies regarding the registration of bicycles.

681—4.5(262) Parking facilities. The university may set aside and designate certain areas of the campus for the parking of motor vehicles, motorcycles, and bicycles, and the use of any lot, ramp, or part of the parking facilities so established may be restricted to students, employees, or visitors. The appointed authority shall cause signs to be erected and maintained clearly identifying those areas of the university campus designated for vehicle parking, and any restrictions applicable thereto shall be conspicuously posted.

4.5(1) Parking control devices. Gates and other devices may be installed and maintained to control access to any parking facility.

4.5(2) Parking meters. Parking meters, toll houses, and other devices may be installed and maintained to regulate the use of any parking facility.

4.5(3) Hours of operation. Reasonable hours shall be established by the university for the normal operation of the parking facilities, and a schedule of hours of operation shall be published and available for public inspection in the office of the appointed authority.

4.5(4) Closing. The appointed authority may temporarily close any parking facility for cleaning, maintenance or other university purpose, or may temporarily restrict or reassign the use of any facility as may be necessary or convenient. The appointed authority shall give advance notice of such temporary closing, restriction, or reassignment by posting or otherwise when practical. No parking fees will be refunded during the temporary closing of a parking facility.

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4.5(5) *Restricted areas.* The appointed authority is delegated authority to restrict access to campus streets, parking lots and other facilities by means of gates or other barriers. Streets or portions of streets may be closed to vehicle traffic or limited to specific vehicles. Access to restricted areas is limited to established gate openings or designated entrances, and no other means of access is permitted. Moving or driving around authorized barriers is prohibited.

4.5(6) *Restricted zones.* The appointed authority may designate areas of the campus as restricted zones, such as loading zones or service vehicle zones, and such restricted zones shall be conspicuously posted. No parking shall be permitted in such restricted zones except as authorized.

4.5(7) *No parking.* Motor vehicle and motorcycle parking on the campus shall be restricted to designated parking facilities, and no parking for motor vehicles and motorcycles shall be permitted at any other place on the campus.

a. Vehicles shall not be parked in such a manner as to block or obstruct sidewalks, crosswalks, driveways, roadways, or designated parking stalls.

b. No parking is permitted in prohibited zones, such as in the vicinity of fire hydrants or fire lanes, and such zones shall be conspicuously posted or marked by painted curbs or other standard means.

c. No parking is permitted on grass or other vegetation or in pedestrian areas.

d. Motor vehicles are not allowed in university buildings except:

(1) Where a shop or garage is designated as a vehicle repair or storage area;

(2) Where there is a designated vehicle loading area; or

(3) Where there is a parking ramp or deck.

e. Improper parking is parking in any place on campus other than those areas designated for parking.

f. Improper parking is parking incorrectly in designated parking areas. Improper parking includes, but is not limited to:

(1) Parking in an area restricted by signs;

(2) Parking without an appropriate permit;

(3) Parking in an area designated for persons with disabilities;

(4) Parking in a loading zone over the time limit; and

(5) Parking over a stall marker line.

4.5(8) *Motorcycle and moped parking.* The appointed authority may designate areas of the parking facilities for motorcycle parking, and such areas shall be conspicuously posted. Motorcycles shall be parked only in areas designated for motorcycle parking, and no other vehicles shall be parked in such areas. The university may require that a parking permit be displayed on all motorcycles and mopeds.

4.5(9) *Bicycle parking.* The appointed authority may install and maintain bicycle parking racks or designate other facilities for bicycle parking. Bicycles shall be parked only in bicycle racks or other facilities designated for bicycle parking. Improperly or illegally parked and abandoned bicycles may be impounded. Locking devices may be cut and removed when necessary. Bicycles may not be taken inside university buildings except as approved by the appointed authority.

4.5(10) *Violations.* Bicycles attached to, or rested against, trees, shrubs, handrails, or handicapped parking meters, or limiting access to, or use of, any university facility may be impounded, the owners fined, or both. Bicycles parked inside a university building that is not designated for bicycle parking may be impounded or the owners fined, or both. Bicycles bearing proper registration decals that are attached to, or rested against, street furniture may be ticketed or immobilized and the owners fined. If the bicycles interfere with the use of the furniture, they may be impounded. Bicycles considered abandoned may be labeled for impending impoundment by placing impoundment tags on the bicycles. If the bicycles display the proper registration decals, an attempt will be made to contact the owners to remove the bicycles. If the bicycles do not display the proper registration decals, the owners have two weeks to contact the parking and transportation office from the time the bicycles are tagged until the bicycles may be impounded.

REGENTS BOARD[681](cont'd)

681—4.6(262) Parking privileges. Students and employees may be granted parking privileges on the campus in accordance with these rules and upon such other reasonable terms and conditions as may be established by the university.

4.6(1) Students. Students may be granted parking privileges in parking facilities designated for student use. Optional plans and facilities may be offered as determined by the appointed authority. Reasonable classifications may be established on the basis of a student's age, class, college or department, course load, proximity of the student's residence to the campus, physical disability, employment, the availability of facilities, or any other relevant criterion to determine the eligibility of students for parking privileges or any optional plan or facility.

4.6(2) Employees. Employees may be granted parking privileges in parking facilities designated for employee use. Optional plans and facilities may be offered as determined by the appointed authority. Reasonable classifications may be established on the basis of an employee's job classification, length of service, place of work or the nature thereof, or physical disability; the availability of facilities; or any other relevant criterion to determine the priority of employees for assignment of parking privileges or any optional plan or facility.

4.6(3) Visitors. Visitors may be granted parking privileges in parking facilities designated for visitor parking. Optional plans and facilities may be offered as determined by the appointed authority. Reasonable classifications may be established on the basis of the time, duration or purpose of the visit; physical disability; the availability of facilities; or any other relevant criterion to determine the eligibility of visitors for parking privileges or any optional plan or facility.

4.6(4) Persons with disabilities. Persons with disabilities will be granted parking privileges in parking facilities designated for use by persons with disabilities.

4.6(5) Procedure. Applications for parking privileges shall be submitted to the appointed authority in the manner the appointed authority prescribes. No student shall apply for parking privileges for any vehicle owned or actually maintained by another student. The appointed authority shall determine the eligibility and priority of each applicant for parking privileges within the classifications established in subrules 4.6(1), 4.6(2) and 4.6(3) and shall make all parking assignments. A parking permit or other means of identification may be issued to each applicant who is granted parking privileges, and such permit or other identification must be displayed on the vehicle in the manner prescribed by the appointed authority. Parking permits are not transferable. Parking privileges shall not be granted to a student and to an employee or visitor for the same vehicle, and a student parking permit and an employee or visitor parking permit shall not be displayed on the same vehicle. The unauthorized possession, use, alteration, forging or counterfeiting of a parking permit, or any portion thereof, is prohibited. The appointed authority shall adopt a procedure to replace lost, stolen and destroyed parking permits and controlled access entry cards.

4.6(6) Parking fees. The university may assess and collect from students, employees, and visitors reasonable fees or charges for parking privileges and the use of parking facilities. The amount of such fees and charges shall be established by the university and approved by the board of regents, and a schedule of all parking fees and charges shall be published and available for inspection during normal business hours in the office of the appointed authority and in the office of the board of regents. Parking fees and charges may be assessed and collected on an annual, semester, monthly, or hourly basis. Parking fees and charges may be added to student tuition bills and may by agreement be withheld from the salaries or wages of employees by payroll deduction. Parking fees and charges may be collected by means of parking meters or toll houses. Use of any parking facility constitutes an implied agreement to pay the prescribed fee or charge therefor.

4.6(7) University business. Special parking privileges may be granted for vehicles being used on official university business on the conditions and in the manner prescribed by the appointed authority.

4.6(8) Responsibility. Any person who maintains, owns or operates a vehicle that is parked on the campus or in whose name the vehicle is registered or to whom parking privileges have been granted is responsible for the proper parking of the vehicle at all times when it is on the campus and for all parking violations involving the vehicle.

REGENTS BOARD[681](cont'd)

4.6(9) *Liability.* Parking privileges granted hereunder constitute a license to use university parking facilities and do not constitute a lease of such facilities or a bailment of the vehicle by the university. Use of university parking facilities is at the owner's or applicant's risk, and the university shall not be liable or responsible for loss of or damage to any vehicle parked on the campus.

4.6(10) *Revocation.* Parking privileges on the campus may be revoked by the university for good cause at any time upon five days' written notice and refund of any advance payment of parking fees or charges on a pro rata basis for the revoked period.

681—4.7(262) *Violations.* Sanctions may be imposed for violation of traffic, registration and parking rules as follows:

4.7(1) *Notice of violations.* The university shall give written notice of all parking violations. Such notice may be given by means of a notice of parking violation placed conspicuously on the offending vehicle or provided in an alternative manner as determined by the appointed authority, and such notice shall constitute constructive notice of the violation to the owner and operator of the vehicle and to any person in whose name the vehicle is registered or parking privileges have been granted.

4.7(2) *Sanctions.* Reasonable monetary sanctions may be imposed upon students, employees, and visitors for violation of university traffic, vehicle registration or parking rules. The amount of such sanctions shall be established by the university and approved by the board of regents, except sanctions established by statute will be imposed at the current statutory amount. A schedule of all sanctions for traffic violations, improper registration and parking shall be published and available for public inspection during normal business hours in the office of the appointed authority and in the office of the board of regents. Traffic, 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 the 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.

4.7(3) *Impoundment and immobilization.* Any vehicle parked on the campus in violation of parking rules may be impounded, removed or immobilized. The university shall give written notice of impoundment to the owner of the vehicle or to the person in whose name the vehicle is registered or parking privileges have been granted or notice may be provided in an alternative manner as determined by the appointed authority. A reasonable fee may be charged for the cost of impoundment and storage, which fee must be paid prior to the release of the vehicle by the university or by contract with private operators. Impounded vehicles that are not claimed within 60 days will be deemed abandoned property and may be sold under procedures set forth in Iowa Code chapter 579, and the proceeds of the sale will be applied to the payment of the costs of impoundment, storage and sale. The balance, if any, shall be sent to the owner.

a. Immobilization. Immobilized bicycles bearing proper registration permits may be claimed by proving ownership and payment of immobilization fees and any fines. Immobilized bicycles not bearing proper registration permits may be claimed by proving ownership, registering the bicycle under a valid name and address, and paying the appropriate fines and immobilization fees. Immobilization fees for first-time offenders may be waived after immobilized bicycles have been registered. Immobilized bicycles not reclaimed after two working days may be impounded.

b. Impoundment. Impounded bicycles bearing proper registration permits may be claimed by proving ownership and paying the impoundment fees and any fines. Impounded bicycles not bearing proper registration permits may be claimed by proving ownership, registering the bicycles under a valid name and address, and paying the appropriate fines and impoundment fees. Impoundment fees for first-time offenders may be waived after impounded bicycles have been registered. All impounded bicycles will be held for 60 days, during which time they may be claimed by the owners upon payment of all outstanding fines and charges. After 60 days, all unclaimed impounded bicycles will be deemed abandoned property and sold pursuant to Iowa law, and the proceeds applied to the costs of impoundment, storage and sale. The balance, if any, shall be sent to the owner, if known.

REGENTS BOARD[681](cont'd)

4.7(4) Administrative hearing. Students and employees may request a hearing and administrative ruling concerning a controversy, based on the imposition of a sanction for a registration or parking violation, or an impoundment procedure, by the appropriate university official or hearing body as set forth in university policy. Visitors may request the appointed authority to conduct a hearing and issue an administrative ruling in such cases.

4.7(5) Judicial review. Judicial review of an administrative ruling may be sought in an Iowa district court in accordance with the terms of the Iowa administrative procedure Act.

681—4.8(262) Administration of rules. The president of the university shall be responsible for the proper administration of these rules. The president is authorized to establish traffic and parking procedures not inconsistent with these rules as may be reasonably necessary and convenient for the effective administration of presidential duties hereunder, and any procedure so established shall be published and available for public inspection during normal business hours in the office of the appointed authority and in the office of the board of regents. The president may delegate authority under these rules to the appointed authority or to any other person designated by the president to perform any function or duty hereunder.

681—4.9(262) Effect of rules. These rules constitute a condition of registration as a student at the university and a condition of employment as an employee of the university. Registration as a student or acceptance of employment constitutes an acceptance of these rules and an agreement to pay all prescribed fees and monetary fines imposed in accordance with these rules.

Rules 681—4.1(262) to 681—4.9(262) are intended to implement Iowa Code section 262.69.

ARC 5697C

REGENTS BOARD[681]

Notice of Intended Action

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

The Board of Regents hereby proposes to amend Chapter 7, “Equal Employment Opportunity, Affirmative Action, and Targeted Small Business,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 262.9(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 19B.3.

Purpose and Summary

The proposed amendments to Chapter 7 update references to be consistent with the Iowa Civil Rights Act and current institutional practice and rescind language related to targeted small business.

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.

REGENTS BOARD[681](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 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 July 6, 2021. Comments should be directed to:

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322
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 **681—Chapter 7**, title, as follows:

**EQUAL EMPLOYMENT OPPORTUNITY, ~~AFFIRMATIVE ACTION, AND~~
TARGETED SMALL BUSINESS**

ITEM 2. Amend rule 681—7.1(262), introductory paragraph, as follows:

681—7.1(262) Equal opportunity policy. It is the policy of the board of regents, hereinafter board, to provide equal opportunity in all aspects of regent operations to all persons without regard to race, creed, color, religion, sex, gender identity, sexual orientation, national origin, age, or status as a protected veteran of the Vietnam era, or physical or mental disability except where it relates to a bona fide occupational qualification. The board of regents and all officials who are responsible to the board of regents shall take affirmative action in personnel administration to overcome the effects of past or present practices, policies, or other factors which serve as barriers to equal employment opportunity. Contractors doing business with the board of regents shall take affirmative action to ensure that all persons without regard to race, creed, color, religion, sex, gender identity, sexual orientation, national origin, age, or status as a protected veteran of the Vietnam era, or physical or mental disability except where it relates to a bona fide occupational qualification above are effectively afforded equal employment opportunities. Institutions under the governance of the board of regents shall provide opportunities for minority and women businesses in the awarding of contracts through a procurement set-aside program as authorized by statute.

REGENTS BOARD[681](cont'd)

ITEM 3. Rescind and reserve subrule 7.1(2).

ITEM 4. Amend paragraph 7.2(2)“a” as follows:

a. Each institution and the board office shall regularly review its personnel practices and procedures with a view to correcting personnel practices and procedures which may contribute to discrimination in appointment, assignment, or advancement. Each institution shall conduct programs of job orientation and provide training and organizational structure for upward mobility and shall place emphasis upon fair practices in employment. Each institution shall also bar from all employment application forms any inquiry as to race, creed, color, religion, sex, gender identity, sexual orientation, national origin, age, or status as a protected veteran of the ~~Vietnam era~~, or ~~physical or mental~~ disability, except for statistical purposes, unless it relates to a bona fide occupational qualification. The employment practices of the board of regents shall be in strict conformity to the provisions of all federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action.

ITEM 5. Amend rule 681—7.4(262) as follows:

681—7.4(262) State educational, counseling, and training programs. All educational and vocational guidance programs and their essential components, counseling and testing and all on-the-job training programs for the employees of regent institutions and the board office shall be administered in accordance with the provisions of all federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action. Every official responsible for the implementation of such programs shall be charged with the duty of seeking to provide equal opportunity for all, regardless of race, creed, color, religion, sex, gender identity, sexual orientation, national origin, age, or status as a protected veteran of the ~~Vietnam era~~, or ~~physical or mental~~ disability except where it relates to a bona fide occupational qualification.

This rule is intended to implement Executive Order number 15 of 1973.

ITEM 6. Amend rule 681—7.6(262) as follows:

681—7.6(262) Contract compliance.

7.6(1) Equal employment opportunity. The state board of regents and the institutions under its jurisdiction are responsible for the administration and promotion of equal opportunity in contracts and services and the prohibition of discriminatory and unfair practices within any program administered by institutions under the board of regents receiving or benefiting from state financial assistance in whole or in part. Every official responsible to the board of regents who is authorized to make contracts or subcontracts for ~~public works construction~~ or for goods or services shall cause to be inserted into every such contract or subcontract a clause in which the contractor or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and state laws, executive orders, and rules and regulations of the board of regents and of its institutions which pertain to equal employment opportunity and affirmative action. ~~Contractors, vendors, and suppliers shall further be required to submit or have on file with the board of regents' equal employment opportunity compliance office a copy of their affirmative action program containing goals and time specifications.~~ These contractual provisions shall be fully ~~monitored and~~ enforced. Any breach of them shall be regarded as a material breach of contract.

a. Compliance shall be determined by ~~a comprehensive review and~~ an evaluation of a contractor's employment policies and practices and shall depend on an analysis of all relevant factors, including the following:

- (1) The contractor's publicly stated and posted policy regarding equal opportunity employment.
- (2) The contractor's external dealings with unions, employment agencies, newspapers, and other sources of employees.
- (3) The methods by which and places where the contractor seeks to recruit employees.
- (4) The contractor's use of tests and qualifications for positions which are job-related ~~job-related~~ and not culturally biased.

REGENTS BOARD[681](cont'd)

- (5) Classification and compensation plans which apply equally to all employees.
- (6) Training programs which provide all persons including those in the protected classes with an equal opportunity to qualify for employment and advancement.
- (7) The contractor's active support of local and national community action programs.
- (8) The effectiveness of the contractor's affirmative action program as evidenced, in part, by the number or percentage of persons of the protected classes employed at all levels, taking into account the geographical locations of the contractor's work force.

b. The judgment regarding compliance shall be favorable if it is determined that the contractor is working affirmatively toward extending opportunities for members of the protected classes and is not discriminating against these persons. Contractors must be able to demonstrate to the satisfaction of the compliance officer that their affirmative action program is productive.

7.6(2) Procedures. Any individual aggrieved by a contractor's alleged noncompliance with the board of regents equal opportunity policy may file a complaint with the institutional office designated for receiving and investigating complaints of discrimination. Complaints shall be investigated in accordance with established institutional policies and procedures and shall take into consideration the compliance factors in subrule 7.6(1).

a. ~~Contractors will be sent periodically an informative statement explaining the regents' equal employment opportunity policy. In the case of construction contracts, the statement constitutes part of the general conditions and bid specifications, and compliance with these is a condition of doing business with regent institutions. It is the intention of the regents to be fair and to avoid harassment and unnecessary reporting requirements and to be clear and firm about policy and expectations.~~

b. ~~Contractors are to submit periodic reports as requested by the compliance office. The report forms shall be as brief as possible and designed to elicit relevant information about employment practices. The compliance office may request other relevant information from a contractor at any time.~~

c. ~~The compliance office will solicit and compile additional information about present and prospective contractors from any reliable source including regent institutions, the Iowa civil rights commission, department of economic development, and other state and federal agencies.~~

d. ~~The compliance office shall systematically review the reports and all other available information concerning the employment practices of present and prospective contractors. Whenever there is reasonable doubt, based on such reports and information, as to whether or not a contractor is discriminating or is failing to take affirmative action in compliance with the regents' policy, the compliance office shall undertake a compliance review of the contractor. Every reasonable effort shall be made to secure compliance through conciliation and persuasion. The burden shall be on the contractor to demonstrate compliance and eligibility to do business with the regents.~~

e. ~~The compliance office will receive written and signed complaints against a contractor from any person aggrieved by the contractor's alleged discrimination. The compliance office shall promptly notify the institution involved of a complaint. The burden shall be on the complainant to prove the truth of the allegations. Cognizance will also be taken of verbal complaints, newspaper reports, and any other legitimate source, and these will be followed up if investigation appears to be justified. Award of contracts may be deferred while an investigation is pending, but executed contracts will not be suspended except in compelling situations.~~

f. ~~If an investigation or compliance evaluation discloses that a contractor has discriminated or has failed to take affirmative action, the executive director in consultation with regent institutions may declare the contractor ineligible unless it can otherwise be affirmatively determined that the contractor is able to comply. The executive director shall issue a written notice of ineligibility to the contractor, and give the contractor 30 days to show cause why enforcement proceedings should not be instituted. During the 30-day show cause period, every effort shall be made to effect compliance through the processes of conciliation, mediation, and persuasion.~~

g. ~~If the contractor fails to show good cause for failure to comply or fails to remedy that failure, the executive director in consultation with regent institutions may issue a written notice of proposed cancellation or termination of the existing contract or subcontract and debarment from future contracts and subcontracts, giving the contractor ten days to request a hearing. If a request for hearing has not been~~

REGENTS BOARD[681](cont'd)

~~received within ten days from the notice, the contractor may be declared ineligible for future contracts and current contracts may be terminated for default following the approval of the state board of regents.~~

~~h.—Hearings shall be conducted by a hearing examiner appointed by the executive director of the board from a panel for hearing examiners selected and approved by the board. The hearing examiner shall submit findings of fact and conclusions to the executive director who shall make final recommendations for final action to the board of regents.~~

~~i.—The equal opportunity compliance officer shall promptly notify the board of regents and regent institutions when such action is pending regarding the suspension, cancellation, or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts.~~

7.6(3) No change.

ITEM 7. Rescind and reserve rule **681—7.7(73GA,ch315)**.

ARC 5698C

REGENTS BOARD[681]

Notice of Intended Action

Proposing rule making related to purchasing, policies, practice, and procedures and providing an opportunity for public comment

The Board of Regents hereby proposes to rescind Chapter 8, “Purchasing,” and to amend Chapter 9, “Policies, Practices and Procedures,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 262.9.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 23A and section 262.9(18).

Purpose and Summary

Item 1 proposes to rescind Chapter 8. The proposed amendments to Chapter 9 implement 2020 Iowa Acts, Senate File 2284, section 5, by removing the reference to “on campus”; amend competition policy with private enterprise to be consistent with current law; rescind the telecommunication policies and procedures not required by the Iowa Code; remove outdated language; and add the procurement policy transferred from Chapter 8.

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).

REGENTS BOARD[681](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on July 6, 2021. Comments should be directed to:

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322
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. Rescind and reserve **681—Chapter 8**.

ITEM 2. Amend subrule 9.4(5) as follows:

9.4(5) Exceptions provided by statute. This prohibition does not apply to the on-campus activities of an institution under the control of the state board of regents as provided in Iowa Code section 23A.2(10)“k”(1) to (10) or any other applicable provision of Iowa law.

ITEM 3. Amend paragraph **9.4(6)“i”** as follows:

i. Sales of books, records, tapes, software, educational equipment and supplies ~~offered primarily to students, faculty, and staff of the institution; sales of, and~~ personal computers and associated hardware ~~pursuant to institutional policy and limited to students, faculty, and staff.~~

ITEM 4. Adopt the following **new** paragraph **9.4(6)“j”**:

j. Goods and services provided to other state board of regents institutions; affiliates of state board of regents institutions; federal, state, and local government entities; nonprofit organizations; entities established pursuant to Iowa Code chapter 28E; and student organizations.

ITEM 5. Rescind and reserve rule **681—9.5(262)**.

ITEM 6. Rescind and reserve rule **681—9.6(262)**.

ITEM 7. Rescind and reserve rule **681—9.7(262)**.

ITEM 8. Adopt the following **new** rule 681—9.8(262):

681—9.8(262) Procurement policy. The best interests of the state of Iowa and of the regent institutions are served through implementation of a full and free competitive purchasing system fostered by the use of open specifications, competitive bids or quotations, and awards to the lowest responsible bidder or to the bidder that submits the bid or quotation that provides the best overall value. The name of the successful

REGENTS BOARD[681](cont'd)

bidder and all other bidders and the amounts bid shall be supplied to any person upon oral or written request following the execution of the prime contract(s) or agreement(s) related to the procurement.

ARC 5699C

REGENTS BOARD[681]

Notice of Intended Action

Proposing rule making related to terminology, addresses, and meeting and chalking policies and providing an opportunity for public comment

The Board of Regents hereby proposes to amend Chapter 11, “Board of Regents Organization and General Rules,” Chapter 12, “University of Iowa Organization and General Rules,” Chapter 13, “Iowa State University of Science and Technology Organization and General Rules,” Chapter 14, “The University of Northern Iowa Organization and General Rules,” and Chapter 16, “Iowa School for the Deaf Organization and General Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 262.9.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.3.

Purpose and Summary

Proposed Item 1 updates terminology and the Board’s address, removes outdated and unnecessary language, and clarifies the Board’s procedures for conducting meetings. Items 2 to 10 update university links to websites and update terminology. Items 11 to 24 update university links to websites, update terminology, and add reference to the chalking policy. Items 25 and 26 update the university mission statement and update terminology. Item 27 implements 2020 Iowa Acts, House File 2585, by replacing the term “hearing impaired” with “deaf and hard of hearing.” Items 4 and 28 propose to reference the Regents Policy Manual instead of Chapter 8, which is proposed to be rescinded in **ARC 5694C**, IAB 6/16/21. Item 28 also adds an implementation sentence to rule 681—16.7(262).

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 July 6, 2021. Comments should be directed to:

REGENTS BOARD[681](cont'd)

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322
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 rule 681—11.1(262) as follows:

681—11.1(262) Organization.

11.1(1) and 11.1(2) No change.

11.1(3) *Executive director.* The executive director is ~~elected~~ appointed by the board. The duties of the executive director include recording proceedings of the board, preserving the documents and records of the board, providing a meeting agenda to the board, administering the board office, providing such staff work as may be necessary to assist the board in its planning and decision making, participating in budget preparation and presentation to the board, maintaining liaison between the board and other state agencies, providing information to the general assembly and the public, participating in the preparation and completion of matters relating to financing of capital improvements, and such other duties as may be assigned by the board.

~~Agendas containing matters to be brought before the board together with supporting material will be assembled by the executive director. Such agendas will be indexed and included in a binder for easy reference. Assembled agendas will be forwarded to members of the board by the executive director about a week prior to any scheduled meeting.~~

~~The agenda for the board meeting also will be made available to students, faculty, staff, and the general public through the board office and the public information offices at each institution prior to each board meeting.~~

11.1(4) *Submissions and requests.* Inquiries, submissions, petitions, and other requests directed to the board of regents may be made by letter or electronic message addressed to the ~~Executive Director, Board of Regents, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905~~ executive director using the contact information available on the board of regents website.

Any person may petition for a written or oral hearing before the board. All requests for a hearing must be in writing and state the specific subject to be discussed and the reasons why a personal appearance is necessary if one is requested.

~~Students, faculty, and other employees of institutions under the control of the board must route their petitions through the chief executive officer of the institution concerned. The chief executive officer will forward the petition, with the chief executive officer’s comments, to the executive director of the board. The executive director of the board will place the item on the agenda for consideration by the board.~~

REGENTS BOARD[681](cont'd)

~~All other persons may request hearings by written petition directly to the executive director of the board. The executive director shall cause the subject matter of the petition to be investigated, make a written report to the board, and place the item on the agenda for consideration by the board and determine whether a request is to be granted.~~

If the board grants a hearing, it shall be conducted in the manner prescribed by the board. The board may decide to grant a written hearing, an oral hearing, or both.

11.1(5) *Adoption of rules and policies.* The board of regents is the policymaking body representing the citizens of Iowa. It establishes goals and monitors progress toward those goals to ensure that the institutions under its governance accomplish their mission. The board of regents adopts rules and policies having general application to the institutions subject to its governance. The president of each institution is delegated the authority to adopt policies as may be appropriate for the operation of the individual institution and which are not inconsistent with the general rules and policies adopted by the board. The board of regents retains the authority to rescind any institutional policy.

11.1(6) *Meetings.* The board meets regularly throughout the year. The schedule of meetings is available from may be established by the executive director at the address given in 11.1(4). The advance schedule of meetings is shown in each agenda that is distributed to the press and the public at the board meeting. The meeting schedule is to be set several months in advance and indicate the site at which the meetings will be held and the date(s) of the meetings. Formal notification of meeting details is given to the press about a week prior to each board meeting and will be made available to the public at the office of the board of regents and on the board of regents website.

Six members of the board shall constitute a quorum for a meeting of the full board of regents. The number of votes required to constitute a majority for a given purpose shall be a majority of those present, assuming a quorum. Except where otherwise required by statute or these rules, the board shall conduct its meetings according to Robert's Rules of Order.

Members of the public are permitted to attend meetings of the board of regents to the fullest extent required by Iowa Code chapter 21, the Iowa open meetings Act. The president of the board of regents reserves the right to have individual attendees removed from any board meeting if the attendee engages in behavior that materially interferes with the board's ability to conduct the meeting or other attendees' ability to observe or hear the proceedings.

11.1(7) *General role and scope of regent institutions.* ~~The universities under the control of the board of regents, State University of Iowa, Iowa State University, and the University of Northern Iowa, strive to offer diversified and high quality programs of undergraduate and postgraduate study at reasonable cost to a major segment of those seeking postsecondary education in this state. Educational programs are designed to allow the individual student a wide range of subject selection and the greatest freedom to fulfill potentialities in pursuit of knowledge and in preparation for a role in society.~~

~~These universities are the primary Iowa training ground for the professions including medical doctors, dentists, pharmacists, nurses, lawyers, veterinarians, educators, architects, agriculturists, engineers and others who will achieve advanced degrees in various fields of the arts and sciences. The state universities are deeply committed to research which expands knowledge and benefits society. They make educational programs and the results of research available through extension services and will offer services to the public appropriate to the role of each university.~~

~~General role and scope of the two specialized schools under the board of regents, Iowa School for the Deaf and Iowa Braille and Sight Saving School, are to provide residential, educational, and training programs for the blind and the deaf through grade 12.~~

~~The board of regents is the policymaking body representing the citizens of Iowa. It establishes goals and monitors progress toward those goals to ensure that the institutions under its governance accomplish their mission.~~

11.1(8) 11.1(7) *Committees.* The board of regents may establish standing committees of the board, interinstitutional committees of professional educators professionals drawn from the institutions and staff under its governance, and special committees or task forces. ~~The function of all committees and task forces is to advise the board on matters related to development of policy. An additional goal of interinstitutional committees is to ensure cooperation among the several institutions and promote~~

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~~efficiency of operation.~~ The function of any committee or task force shall be set by the president of the board of regents.

This rule is intended to implement Iowa Code sections 262.9 and 262.12.

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

12.3(2) A detailed listing of the university's administrative units is shown on the organizational chart at the following ~~Web site~~ website: <http://www.uiowa.edu/~our/opmanual/app/a01ui.pdf> opsmanual.uiowa.edu/governance/university-iowa/organizational-charts-and-mission-statements.

ITEM 3. Amend rule 681—12.4(262) as follows:

681—12.4(262) University operations manual. The university's operations manual contains policies and procedures governing the internal operations of the university. It is available for review at the following ~~Web site~~ website: <http://www.uiowa.edu/~our/opmanual/> opsmanual.uiowa.edu. ~~The operations manual is printed annually, and a copy is available for public review at the university's main library.~~ The university archivist maintains prior versions of the operations manual at wayback.archive-it.org/org-120/*/http://www.uiowa.edu/~our/opmanual/.

ITEM 4. Amend rule 681—12.5(262) as follows:

681—12.5(262) Contracting authority. Except for authority retained by the board of regents in ~~681—8.2(262) or in the Regents Policy Manual~~ regents policy manual, the board of regents has delegated to the president authority to make contracts and agreements as specified in ~~681—Chapter 8 the regents policy manual~~. Pursuant to and in accordance with that delegation, the president has further delegated contracting authority as outlined in the university's operations manual, part V, chapter 6. This delegated contracting authority is available for review at the following ~~Web site~~ website: <http://www.uiowa.edu/~our/opmanual/v/06.htm> opsmanual.uiowa.edu/administrative-financial-and-facilities-policies/contracting.

ITEM 5. Amend rule 681—12.6(262) as follows:

681—12.6(262) No-smoking Tobacco-free campus policy. In accordance with the Iowa smokefree air Act (Iowa Code chapter 142D), the University of Iowa has adopted a ~~smoke-free~~ tobacco-free campus policy, which is incorporated by reference herein. The policy, together with campus boundary maps, is available at the following ~~Web site~~ website: <http://www.uiowa.edu/~our/opmanual/v/35.htm#355> opsmanual.uiowa.edu/community-policies/tobacco-free-campus.

ITEM 6. Amend rule 681—12.7(262) as follows:

681—12.7(262) Alcoholic beverage policy. Alcoholic beverages may be consumed, served and sold in those areas of the University of Iowa as may be designated by the university but only in compliance with all existing university policies which are incorporated by reference herein, including, but without limitation, the alcoholic beverage service guidelines and procedures at the following ~~Web site~~ website: <http://www.uiowa.edu/~our/opmanual/v/26.htm> and the guidebook for university housing at the following Web site: <http://housing.uiowa.edu/res-hall-guidebook/> opsmanual.uiowa.edu/administrative-financial-and-facilities-policies/alcoholic-beverage-service-guidelines-and.

ITEM 7. Amend rule 681—12.8(262) as follows:

681—12.8(262) Communication, marketing, and public relations. Inquiries, submissions, and requests should be addressed to the Office of ~~the Vice President for Strategic Communication~~, The University of Iowa, 300 Plaza Centre One, Iowa City, Iowa 52242, or to the Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905. Generally, inquiries, submissions, and requests from the public (other than applications for admission or employment) should be submitted either in writing or by ~~e-mail~~ email: sitenow.uiowa.edu/contact-us.

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ITEM 8. Amend rule 681—12.9(262) as follows:

681—12.9(262) Merit system employee grievances. For purposes of the grievance procedure set forth in 681—12.10(262) and 681—12.11(262), “employee” means a merit system employee who has completed the six-month probationary period and is presently employed or who has been dismissed within the previous one-year period.

Disputes or complaints by permanent employees regarding the interpretation or application of institutional rules governing terms of employment or working conditions (other than general wage levels) or the provisions of the merit system rules, other than disputes whose resolution is provided for in 681—3.127(49A 8A) and 681—3.128(49A 8A), will be resolved in accordance with this procedure, which has been approved by the merit system director in accordance with 681—subrule 3.129(1). Employees in an initial probationary period will be allowed access to the grievance procedure with the right to appeal orally at Step 1 and in writing at Steps 2 and 3. The university may permit an oral presentation at Steps 2 and 3 if deemed necessary.

ITEM 9. Amend paragraph **12.10(4)“a”** as follows:

a. Any request for time off for a grievant’s representative is made in writing to the associate vice president for human resources or a designee, who will convey the request to the representative’s supervisor, with an informational copy sent to the director of personnel, and should contain. ~~The written request must contain~~ an indication of the reason released time is necessary. The representative’s supervisor shall provide a reasonable bona fide amount of released time for the investigation, such time being scheduled as soon as reasonably possible and preferably within the same work day, consistent with the normal functioning of the employee’s department.

ITEM 10. Amend subrule 12.10(5) as follows:

12.10(5) Steps in the grievance procedure.

a. The grievance procedure consists of the following four steps:

(1) Step 1. An aggrieved employee states in writing that a grievance is being presented and then presents the grievance orally, providing to the employee’s immediate supervisor the pertinent circumstances of the complaint or dispute and the actions requested. The supervisor responds in writing to the grievance within seven calendar days. In the response, the supervisor states the supervisor’s understanding of the grievance, the response to the grievance, and justification for the response. If a satisfactory settlement is not reached, the employee has seven calendar days to request Step 2.

(2) Step 2. If the employee requests Step 2, a written grievance is forwarded by the aggrieved employee to the administrative head of the unit or department within seven calendar days. The administrative head of the unit or department or designee has ten calendar days to reply in writing. If satisfactory settlement is not reached, the employee has seven calendar days to request Step 3.

(3) Step 3. If the employee decides to request Step 3, the written grievance is forwarded by the aggrieved employee to the head of the major functional or administrative unit of the university with a copy sent to the office of associate vice president for human resources. A meeting shall be held within ten calendar days after the grievance has been submitted to the head of the major functional or administrative unit. The university may be represented by the office of associate vice president for human resources, the head of the major functional or administrative unit or designee, and the administrative personnel involved in Steps 1 and 2. The aggrieved employee has the right to be accompanied by representatives. The head of the major functional or administrative unit shall respond in writing within seven calendar days. If a satisfactory settlement is not reached, the employee has seven calendar days to proceed to Step 4.

(4) Step 4. If the employee is not satisfied with the decision rendered under Step 3, a hearing before an arbitrator may be requested within seven calendar days following receipt of the Step 3 decision.

1. Such a request shall be in writing and include all of the information included in the initial grievance and subsequent appeals, all of the decision related thereto, and any other pertinent information the employee wishes to submit.

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2. The appeal shall be signed and dated by the employee and shall be directed to the Merit System Director, State Board of Regents, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905, who will arrange for a hearing before an arbitrator. The arbitrator will be expected to render a decision within 30 calendar days following the conclusion of the hearing.

b. A written grievance shall contain a brief description of the complaint or dispute and the pertinent circumstances and dates of occurrence. It shall specify the university or merit system rule which has allegedly been violated and shall state the corrective action desired by the employee.

c. Presentations, reviews, investigations and hearings held under this procedure may be conducted during working hours, and employees who participate in such meetings shall not suffer loss of pay as a result thereof.

d. If an employee does not appeal a decision rendered at any step of this procedure within the time prescribed by this rule, the decision shall become final. If a university representative does not reply to an employee's grievance or appeal within the prescribed time, the employee may proceed to the next step. With Notwithstanding the foregoing, with the consent of both parties, any of the time limits prescribed by this rule may be extended.

ITEM 11. Amend subrule 13.1(1) as follows:

13.1(1) *Statement of university mission.* Iowa State University of science and technology is a public land-grant institution serving the people of Iowa, the nation, and the world through its interrelated programs of instruction, research, extension and professional service. With an institutional emphasis in areas related to science and technology, the university carries out its traditional mission of discovering, developing, disseminating and preserving knowledge. The university's mission and vision may be found in the strategic plan at www.president.iastate.edu/planning/strategic/plan.php www.president.iastate.edu/projects/mission.

ITEM 12. Amend subrule 13.1(2) as follows:

13.1(2) *Officers.* The university has three statutory officers: president, secretary, and treasurer. The president is the chief administrative officer of the university and has authority and duties as have been delegated by the board of regents.

A detailed listing of the university units is shown on the organizational chart at the following ~~Web—site~~ website: www.president.iastate.edu/org/univorg.pdf www.president.iastate.edu/sites/default/files/org/univorg.pdf.

ITEM 13. Amend paragraphs **13.1(3)“d”** and **“f”** as follows:

d. The vice president for research ~~and economic development~~ oversees the university's broad range of research, which contributes to economic development in the state and the nation.

f. The senior vice president for business operations and finance oversees the various business-related functions of the university, including physical plant, safety, accounting and purchasing.

ITEM 14. Amend subrule 13.1(4) as follows:

13.1(4) *Communications.* Inquiries, submissions, and requests should be addressed to the Office of ~~University Relations~~ Strategic Relations and Communications. Contact information for the Office of ~~University Relations~~ Strategic Relations and Communications may be found online at the following address: www.ur.iastate.edu. Communications may also be addressed to the office of the Board of Regents, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905. Generally, inquiries, submissions, and requests by the public may be submitted by informal letter or ~~e-mail~~ email. However, application for some purposes is to be made on a specified form. Rule 681—13.6(262) provides an address for obtaining forms.

ITEM 15. Amend rule 681—13.10(262) as follows:

681—13.10(262) General priority for facilities and grounds use. University facilities and grounds are primarily dedicated to the university's missions of teaching, research and service. While facilities and grounds are generally open to noncommercial use by the public, students, student organizations and staff, use for other than university-related purposes must not substantially interfere with university activities

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and must be in conformity with the requirements of this chapter. University-related activities, including the activities of recognized campus and student organizations, will be given priority. (The ISU facilities and grounds use activities policy may be found in the policy library.)

13.10(1) Except as specifically indicated, the policies stipulated in rules 681—13.11(262) to 681—13.19(262) 681—13.13(262) are applicable to noncommercial uses.

13.10(2) No change.

ITEM 16. Amend subrule 13.11(2) as follows:

13.11(2) The following facilities and grounds are restricted areas. Access requires express permission of the relevant building supervisor, superintendent or other person in charge of the facility: individual residences or dwellings; research laboratories or facilities; farms and associated buildings; animal storage and confinement facilities; utility and maintenance closets; mechanical rooms; utility facilities; utility tunnels; storage areas; hazardous materials waste storage and handling areas; marked or fenced construction areas; institutional food preparation areas; private offices; workrooms; shops; areas where medical, psychological or other consultation takes place; radio and television studios; intercollegiate athletics competition facilities; or areas which bear signs indicating that access is restricted. The university has leased some of its facilities and grounds to other parties for use related to university purposes (~~for example, the Ames Laboratory and the National Laboratory for Agriculture and the Environment~~). Such areas are not open to public use except as provided by the lessee of the property or facility. The buildings at the Iowa State Center (~~Scheman Continuing Education Building, Stephens Auditorium and Fisher Theater~~) and the Iowa State University Research Park are managed by ~~a separate organizations~~ organization that regulate regulates the use of these facilities and grounds.

ITEM 17. Amend subrule 13.11(3) as follows:

13.11(3) Access to facilities and grounds may be denied when they are closed to the public for special university events or when access would conflict with an approved use of the facilities or grounds. The university may limit or control access to areas of the campus for ceremonial events and celebrations such as graduation ~~and VEISHEA~~.

ITEM 18. Amend paragraph **13.12(1)“c”** as follows:

c. Uses that require approval. A public event not at a designated public forum, and which does not meet the above criteria, requires prior approval by the filing of an Online Event Authorization Request Form with the Student Activities Center when recognized student organizations make the request and with Facilities Planning and Management when university departments and nonuniversity entities make the request. It is preferred that the online request be made at least ten business days and not less than four business days in advance of the proposed event. The Student Activities Center or Facilities Planning and Management will make every effort to provide approval or nonapproval, with a statement of the reasons for nonapproval, in a timely manner. The sponsors of the event may request a waiver of the four-day requirement. A waiver may be granted if the Student Activities Center or Facilities Planning and Management determines that there are good reasons for an exception.

(1) No change.

(2) Following approval of the event, the organization shall make particular arrangements regarding location, electrical power needs, custodial services, and provision for liability insurance as directed by the Student Activities Center or Facilities Planning and Management. If parking lots will be involved, the organization must receive clearance from the Parking Division, (515)294-3388. If streets will be involved, the organization must receive clearance from the office of the senior vice president for business operations and finance, (515)294-6162. Preferred locations for outdoor events covered under this subrule are the areas south or north of the Campanile, west of Curtiss Hall, south of MacKay Hall, south of the Hub, south of the Parks Library, and west of Marston Hall provided the events do not conflict with university classes or scheduled activities and provided the events conform to appropriate uses for the area.

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ITEM 19. Adopt the following **new** subrule 13.13(3):

13.13(3) Chalking. The university's policy regarding chalking on campus may be found in the policy library.

ITEM 20. Amend subrule 13.14(2) as follows:

13.14(2) No person shall engage in harassment or stalking as defined by Iowa criminal law or engage in ~~sexual or racial~~ harassment in violation of university policy.

ITEM 21. Amend subrule 13.14(7) as follows:

13.14(7) Vehicles are not permitted off roadways or parking areas without permission from Manager, ~~Campus Facilities Services~~, 152 General Services Building, telephone (515)294-0692 or from the ~~Manager of Parking Division~~ Director of the Parking Department, 27 Armory, telephone (515)294-1987.

ITEM 22. Amend subrule 13.14(8) as follows:

13.14(8) For reasons of safety, sanitation, and preservation of campus property, camping is not permitted except for special events approved by the senior vice president for business operations and finance or senior vice president for student affairs.

ITEM 23. Amend rule 681—13.15(262) as follows:

681—13.15(262) Commercial and charitable uses. This rule applies to commercial and charitable uses other than those of university units, of university-affiliated entities or of recognized campus organizations.

13.15(1) Commercial solicitation, advertising and sales. Commercial solicitation, advertising and sales are not permitted on the campus except as follows:

a. Newspapers and periodicals may be distributed in established locations in accordance with the university's periodical distribution policy, which is available from the senior vice president for business operations and finance.

b. No change.

c. Commercial sales or solicitation may be approved by the senior vice president for business operations and finance. Such activity may be approved for academic areas of the campus if the activity directly relates to the academic program. Otherwise, such commercial activity may be approved only in the area directly to the north of the Memorial Union, with priority being given to all other campus-related uses.

13.15(2) Charitable solicitation. Use of university mail systems and related facilities may be approved by the senior vice president for business operations and finance for the solicitation of employees by charitable organizations when the following criteria are met.

a. to e. No change.

ITEM 24. Amend rule 681—13.19(262) as follows:

681—13.19(262) Authority to order persons off the campus. Any person violating university regulations may have the person's permission to remain in or on university premises revoked. A person who does not voluntarily leave, or who immediately returns, is subject to arrest for trespassing under state law. A person who has engaged in serious or repeat violations of university regulations, who has committed crimes, or who has endangered other persons may be banned by the director of public safety or the director's designee from all or part of the campus. Such orders shall be issued in writing. Any person who is subject to such an order may appeal such action to the senior vice president for business operations and finance, who shall promptly handle the appeal. A person who violates such orders is subject to arrest and prosecution for trespassing.

ITEM 25. Amend rule 681—14.1(262) as follows:

681—14.1(262) Organization.

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14.1(1) *Statement of university mission.* ~~The University of Northern Iowa at Cedar Falls is recognized as having a mission of sufficient scope to enable it to be a distinguished arts and sciences university with outstanding professional programs in education and business. It provides leadership in the development of programs for the preservice and in-service preparation of teachers and other educational personnel for schools, colleges, and universities. The institution offers undergraduate and graduate programs and degrees in the liberal arts and sciences, including selected areas of technology. It offers preprofessional programs and conducts research and community outreach programs to strengthen the educational, social, cultural, and economic development of Iowa and the larger community. The University of Northern Iowa is a comprehensive public university with the mission to provide the state and region with the highest quality undergraduate education, as well as professional, graduate, and continuing education programs. Along with being a distinguished arts and sciences university, it maintains outstanding professional programs in areas such as education and business. It provides leadership in the preservice and in-service preparation of teachers, administrators and other educational personnel for schools, colleges, and universities. It offers programs and conducts research and community outreach programs to strengthen the educational, social, cultural, and economic development of Iowa and the larger community.~~

It is imperative that the quality of the university's instruction be maintained and enhanced through increasingly strong emphasis on: (1) general or liberal arts education as the most essential ingredient for the undergraduate student; (2) the central importance and complementary relationship of teaching and research; (3) enrichment of instruction through extensive clinical, laboratory and field experiences and through experiential learning, community engagement, and independent study; and (4) development of the life of the university community itself as an effective educational force. In order to serve students of all ages and to be responsive to their needs and preferences and to the needs of society, it is imperative that the university offer a variety of programs in such areas as liberal arts, education, business, social work, and technology. It will offer no major programs in agriculture, architecture, dentistry, engineering, forestry, hospital administration, law, pharmacy, medicine, or veterinary medicine.

In the area of teacher preparation, the university must remain at the forefront of developments in the field of education and be prepared to offer instruction in new areas required by society. Furthermore, UNI should be more than merely responsive to changing needs and interests of its students and society. It must provide leadership in educational innovations, programs, and research.

Future programs will be determined by the continuing study of existing programs and of developing needs. Programs will be curtailed or eliminated when the assessment of need and resources indicates that resources could better be devoted to other programs. The university approaches the addition of new programs with considerable caution. Generally, new programs are fashioned out of existing programs in response to developing needs. However, if the university is to remain vital, it must consider at the appropriate time the development of some new programs that fall within its general mission and meet the new needs of students and of society.

14.1(2) *Officers.* The university has three statutory officers: president, secretary, and treasurer. The president is the chief administrative officer of the university and has such authority and duties as have been delegated by the board of regents.

The president has nominated and the board of regents has appointed ~~three~~ four vice presidents. The ~~provost and executive vice president and provost~~ is acting president in the president's absence and is the chief academic officer of the university, having general administrative responsibility under the president for the educational program of the university. The vice president for student affairs is responsible for the administration of all student services. The vice president for ~~administration and financial services~~ finance and operations serves as the chief fiscal officer of the university.

A detailed listing of the university units is shown on the organizational chart contained in the ~~policies and procedures~~ directory of the university.

14.1(3) *Operation.* In order to fulfill the academic mission of the university, the following academic units have been established: college of business ~~administration~~, college of education, graduate college, college of humanities ~~and fine arts, college of natural sciences, and~~, arts and sciences, college of social and behavioral sciences, office of continuing education and the library.

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The dean of each college or unit is its chief administrative officer. Academic departments function within the organizational structure of colleges. The executive officer of a department is the head, who is the chief administrative officer of an academic department.

14.1(4) Policies and procedures. The university policies and procedures govern the internal academic and administrative operations of the university. The policies and procedures are available for public inspection on the university ~~Web site~~ website.

ITEM 26. Amend rule 681—14.2(262) as follows:

681—14.2(262) General rules.

14.2(1) Sales persons or agents for any product, proposition, or cause are prohibited from soliciting employees or students in any building or part of the university property, except with the permission of the vice president for ~~administration and financial services~~ finance and operations in the case of employees or the vice president for student affairs in the case of the students.

14.2(2) Permission is granted in limited cases by the vice president for ~~administration and financial services~~ finance and operations for the solicitation of employees by charitable organizations under all of the following circumstances:

a. to f. No change.

These rules are intended to implement Iowa Code sections 70A.14, 70A.15, and 262.9.

ITEM 27. Amend subrule 16.1(1) as follows:

16.1(1) Statement of mission. The mission of the Iowa School for the Deaf (ISD) has two primary components: to provide direct educational services to ~~hearing-impaired deaf and hard-of-hearing~~ children and youth of the state of Iowa and to serve a leadership and resource role in statewide efforts to meet the needs of the ~~hearing-impaired deaf and hard of hearing~~. In fulfilling its stated mission, ISD will coordinate its efforts with all appropriate state agencies, area education agencies, and local education agencies. Such coordination will be accomplished in the spirit of cooperation reflected in the agreements with these agencies.

Consistent with various sections of the Iowa Code, the educational mission of the Iowa School for the Deaf is to provide an appropriate individual education program for ~~hearing-impaired deaf and hard-of-hearing~~ children and youth who require the comprehensive programs provided by the school.

The educational programs of the Iowa School for the Deaf will be consistent with the philosophy, reflected in federal and state legislation, that disabled and nondisabled children and youth be educated together to the greatest extent possible. Thus, ISD assumes responsibility for providing an education for those ~~hearing-impaired deaf and hard-of-hearing~~ children and youth, including those with additional disabilities, for whom the comprehensive educational programs of the school are most appropriate.

The educational programs of the Iowa School for the Deaf are based on the premise that the school exists to serve its students by providing a learning environment which, to the greatest extent possible, maximizes each child's potential to become a contributing member of society by enhancing the development of communication, knowledge, self-realization, human relationships, economic independence, and a sense of civic and social responsibility. The child-centered programs include learning activities and experiences that appropriately and specifically meet the needs of each child.

The scope of the educational program includes provisions for the ~~hearing-impaired deaf and hard of hearing~~ from infancy through secondary education. Program formats include full-time residential, day school, summer and other short-term residential programs to meet specific needs, vocational, and on- and off-campus individual assessment and evaluation services. For residential students, activities and experiences on a 24-hour basis, not restricted to the traditional academic day, are an integral part of the program.

The Iowa School for the Deaf also serves as a state resource and dissemination center for education of the ~~hearing-impaired deaf and hard of hearing~~. In this role, the school has a central and vital mission in the statewide education of the ~~hearing-impaired deaf and hard of hearing~~ and provides a resource center for educators, related field professionals, parents, the deaf and hard-of-hearing community, and

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all interested citizens. Such a role affords the opportunity for the community-at-large to draw upon the specialized programs and services available at ISD.

The Iowa School for the Deaf will make its special resources available to regent universities, area education agencies, local education agencies, and other public and private agencies. Resource services would provide support in such activities as:

1. Assessment, counseling, and educational planning for hearing-impaired deaf and hard-of-hearing children and youth;
2. Programs for development of specialized communications skills;
3. Parent education;
4. Extended educational programming for hearing-impaired deaf and hard-of-hearing adults;
5. Research;
6. Preservice and continuing education of teachers and related professionals;
7. Curriculum development and evaluation; and
8. Development and dissemination of instructional materials and technology.

Within the scope of the school's mission, future programs will be determined by the ongoing evaluation of existing programs and an analysis of developing needs. Programs will be added, curtailed, or eliminated based on assessment of need and the most effective use of resources. The school remains flexible so as to respond quickly and effectively to unmet needs of hearing-impaired deaf and hard-of-hearing children and youth of Iowa.

ITEM 28. Amend rule 681—16.7(262) as follows:

681—16.7(262) Contracting authority. The board of regents has delegated to the superintendent authority to make contracts and agreements as specified in ~~681—subrule 8.2(3)~~ the regents policy manual. The superintendent has delegated authority for signing such agreements and contracts to the business manager in all cases except the following:

1. to 3. No change.

This rule is intended to implement Iowa Code section 262.9.

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REGENTS BOARD[681]

Notice of Intended Action

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

The Board of Regents hereby proposes to amend Chapter 18, “Declaratory Orders,” and Chapter 19, “Procedure for Rule Making,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 262.9(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

The proposed amendments update addresses for the Board of Regents and Iowa State University and implement 2020 Iowa Acts, House File 2389, by removing references to “variances.”

Fiscal Impact

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

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Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the 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 July 6, 2021. Comments should be directed to:

Aimee Claeys
Board of Regents
11260 Aurora Avenue
Urbandale, Iowa 50322
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 18.4(3), introductory paragraph, as follows:

18.4(3) A petition for intervention shall be filed at the office of the Board of Regents, ~~400 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition. Such a petition is deemed filed when it is received by that office. The board of regents 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:

ITEM 2. Amend rule 681—18.6(17A) as follows:

681—18.6(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director of the Board of Regents, ~~400 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition.

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ITEM 3. Amend subrule 18.7(2) as follows:

18.7(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 of Regents, ~~100 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322, or, in the case of a matter assigned to an institution, to the person and address indicated in the notice of assignment of the petition. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board of regents or, in the case of a matter assigned to an institution, the president or superintendent.

ITEM 4. Amend subrule 19.3(1) as follows:

19.3(1) Docket maintained. The board of regents shall maintain a current public rule-making docket. The board of regents designates its director of legal affairs, human resources and information technology as its agency rules coordinator. Persons interested in information about rules being considered by the board of regents should contact the following office:

Board of Regents
~~Legal Affairs~~
~~100 Court Avenue~~ 11260 Aurora Avenue
~~Des Moines, IA 50319~~ Urbandale, IA 50322

Persons interested in information about rules being considered at each regent institution should contact the following offices:

University of Iowa
 Office of University Relations
 5 Old Capitol
 Iowa City, IA 52242

Iowa State University
~~University Legal Services~~ Office of University Counsel
~~305 3550 Beardshear Hall~~
515 Morrill Road
 Ames, IA ~~50010~~ 50011

University of Northern Iowa
 Office of the Operations Auditor
 242 Gilchrist Hall
 Cedar Falls, IA 50614

Iowa School for the Deaf
 Superintendent
 1600 S. Highway 275
 Council Bluffs, IA 51503

Iowa Braille and Sight Saving School
 Superintendent
 1002 G Avenue
 Vinton, IA 52349

ITEM 5. Amend subrule 19.5(1) as follows:

19.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the

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office of the Board of Regents, ~~100 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322, or the person designated in the Notice of Intended Action.

ITEM 6. Amend subrule 19.5(5) as follows:

19.5(5) Accessibility. The board of regents shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the office of the Board of Regents, ~~100 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322, telephone (515)281-3934, in advance to arrange access or other needed services.

ITEM 7. Amend subrule 19.6(2), introductory paragraph, as follows:

19.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the board of regents small business impact list by making a written application addressed to the office of the Board of Regents, ~~100 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322. The application for registration shall state:

ITEM 8. Amend rule 681—19.18(17A) as follows:

681—19.18(17A) Waiver ~~or variance~~ from rule.

19.18(1) Applicability. Waiver ~~or variance~~ from board of regents rules may be requested but only in the event that:

a. The board of regents has exclusive rule-making authority to promulgate the rule from which a waiver ~~or variance~~ is requested or has final decision-making authority over a contested case in which a waiver ~~or variance~~ is requested; and

b. No federal or state statute or rule otherwise controls the grant of a waiver ~~or variance~~ from the rule from which a waiver ~~or variance~~ is requested.

19.18(2) Authority. The board of regents, the president or superintendent of a regent institution, or designee, or the presiding officer as part of the decision in a contested case, may grant a waiver of, ~~or variance of, or variance from,~~ all or part of a rule to the extent allowed by these rules.

19.18(3) Compliance with law. No waiver ~~or variance~~ may be granted from a requirement that is imposed by state or federal statute. Any waiver ~~or variance~~ must be consistent with state or federal statute.

19.18(4) Criteria. A waiver ~~or variance~~ under this chapter may be granted only upon a showing that:

a. The waiver ~~or variance~~ will not harm other persons and will not adversely affect the public interest; and

b. There are exceptional circumstances which justify an exception to the general rule to the extent that the requester is unable to comply with the particular rule without undue hardship or compliance with the particular rule would be unnecessarily and unreasonably costly and serve no public benefit.

19.18(5) Request. All requests for a waiver ~~or variance~~ must be in writing and shall include the following information:

a. The name, address, and telephone number of the person requesting the waiver ~~or variance~~ and the person's representative, if any;

b. The specific rule from which a waiver ~~or variance~~ is requested;

c. The nature of the waiver ~~or variance~~ requested, including any alternative means or other proposed condition or modification proposed to achieve the purpose of the rule;

d. An explanation of the reason for the waiver ~~or variance~~, including all material facts relevant to the grant of the waiver ~~or variance~~ in question;

e. Any information known to the requester regarding the board of regents, or any regent institution's, treatment of similar cases;

f. The name, address and telephone number of any person(s) with knowledge of the matter with respect to which the waiver ~~or variance~~ is requested; and

g. Any necessary release of information authorizing persons with knowledge to disclose relevant information necessary to a decision.

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19.18(6) *With whom filed.* A request for a ~~waiver or variance~~ which pertains to a rule applicable to only a specific regent institution shall be submitted to the president or superintendent of that institution. A request for a ~~waiver or variance~~ which pertains to a matter involving more than one regent institution, or the board of regents or its staff, shall be submitted to the Executive Director, Board of Regents, ~~400 Court Avenue, Des Moines, Iowa 50319~~ 11260 Aurora Avenue, Urbandale, Iowa 50322. A request for waiver or variance which pertains to a pending contested case shall be filed in the contested case proceedings.

19.18(7) *Ruling.* Rulings on requests shall be in writing. The ruling shall include the reason for granting or denying the request and, if approved, the time period during which the ~~waiver or variance~~ is effective. Rulings on a ~~waiver or variance~~ shall be made in the following manner:

a. Requests submitted to the president or superintendent of a regent institution shall be decided by the president or superintendent, or designee.

b. Requests submitted to the board of regents shall be decided by the board, unless the board determines that the request was inappropriately submitted to it, in which case it shall forward the request to the appropriate decision maker as designated by these rules.

c. Requests submitted in a contested case shall be decided by the presiding officer in the contested case proceeding.

19.18(8) *Public availability.* All final rulings in response to requests for ~~waiver or variances~~ waivers shall be indexed and available to members of the public at the offices listed below:

Board of Regents
 Legal Affairs
~~400 Court Avenue~~ 11260 Aurora Avenue
~~Des Moines, IA 50319~~ Urbandale, IA 50322

University of Iowa
 Office of University Relations
 5 Old Capitol
 Iowa City, IA 52242

Iowa State University
~~University Legal Services~~ Office of University Counsel
~~305~~ 3550 Beardshear Hall
515 Morrill Road
 Ames, IA ~~50010~~ 50011

University of Northern Iowa
 Office of the Operations Auditor
 242 Gilchrist Hall
 Cedar Falls, IA 50614

Iowa School for the Deaf
 Superintendent
 1600 S. Highway 275
 Council Bluffs, IA 51503

Iowa Braille and Sight Saving School
 Superintendent
 1002 G Avenue
 Vinton, IA 52349

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19.18(9) Conditions. The board of regents, or other designated decision maker allowed pursuant to these rules, may condition the grant of a waiver ~~or variance~~ on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

19.18(10) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request is based are not true or if material facts have been withheld. The decision maker may at any time cancel a waiver ~~or variance~~ upon appropriate notice and hearing if it is determined that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver ~~or variance~~ have failed to achieve the objectives of the statute, or the requester has failed to comply with conditions set forth in the waiver ~~or variance~~ approval.

19.18(11) Violations. Violation of conditions in the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

19.18(12) Appeals. Any request for an appeal from a decision on a waiver ~~or variance~~ request made by the board of regents, the president or superintendent of a regent institution, or designee, shall be in accordance with the procedures provided in Iowa Code chapter 17A.

Any request for an appeal from a decision by the presiding officer in a contested case proceeding which grants or denies a waiver ~~or variance~~ shall be made pursuant to the procedures provided in rule 681—20.26(17A) or rule 681—20.27(17A), as applicable.

ARC 5688C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rule making related to excise taxes and fees
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 3, “Voluntary Disclosure Program,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 421.5.

Purpose and Summary

In the design of its new tax administration system, the Department is incorporating its voluntary disclosure agreement (VDA) process into the filing system. In reviewing relevant rules for the VDA program, the Department noticed the list of permitted tax types does not include all excise taxes and fees. The Department proposes to add excise taxes and fees that were not part of the Iowa Code the last time subrule 3.1(3) was updated: the water service excise tax, equipment excise tax, state and local hotel and motel taxes, automobile rental excise tax, and prepaid wireless 911 surcharge. The proposed amendments to the subrule would make clear that all tax types are eligible for a VDA.

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.

REVENUE DEPARTMENT[701](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 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 6, 2021. Comments should be directed to:

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

Public Hearing

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 subrule 3.1(3) as follows:

3.1(3) *Type of taxes eligible.* Only taxes, penalties and interest related to Iowa source income are eligible for settlement under the voluntary disclosure program. For purposes of this rule, “Iowa source income” means the tax base and the tax collection responsibility for the following enumerated taxes: corporate income tax, franchise tax, fiduciary income tax, withholding income tax, individual income tax, local option school district income surtax, state sales tax, state use tax, motor fuel taxes, cigarette and tobacco taxes, ~~and~~ local option taxes, state and local hotel and motel taxes, automobile rental excise tax, equipment excise tax, water service excise tax, and the prepaid wireless 911 surcharge.

ARC 5710C**REVENUE DEPARTMENT[701]****Notice of Intended Action****Proposing rule making related to motor fuel and undyed special fuel and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 68, “Motor Fuel and Undyed Special Fuel,” Iowa Administrative Code.

REVENUE DEPARTMENT[701](cont'd)

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 452A.59.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 452A as amended by 2020 Iowa Acts, Senate File 2403.

Purpose and Summary

Item 1 of this proposed rule making amends Chapter 68 primarily to reflect the enactment of 2020 Iowa Acts, Senate File 2403. Notably, Senate File 2403 changed tax rates for gasoline and biodiesel-blended fuel rated B11 or higher and created new classifications of ethanol blended gasolines. Senate File 2403 also modified the report the Department uses to calculate motor fuel distribution percentages used to determine these rates, switching from fuel tax monthly reports to an annual retailers' report.

Items 2 through 13 reflect cleanup of outdated citations or terms throughout the chapter.

Item 14 strikes language relating to how taxpayers should round for purposes of reporting tax due for liquefied petroleum gas, liquefied natural gas, and compressed natural gas on returns being designed as a part of the Department's modernization initiative. The current rule requires rounding to the nearest whole dollar. This proposed amendment would require taxpayers to enter cents rather than round.

Fiscal Impact

The fuel tax rates modified by 2020 Iowa Acts, Senate File 2403, are estimated by the Department to impact the Road Use Tax Fund positively by \$1.18 million in FY 2022. The Department can provide additional detail on this fiscal analysis upon request.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 6, 2021. Comments should be directed to:

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

Public Hearing

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

REVENUE DEPARTMENT[701](cont'd)

July 6, 2021
2 to 3 p.m.

Via video/conference call

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

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

ITEM 1. Amend rule 701—68.2(452A) as follows:

701—68.2(452A) Tax rates—time tax attaches—responsible party.

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	<p>20.3¢ per gallon (for July 1, 2003, through June 30, 2004) 20.5¢ per gallon (for July 1, 2004, through June 30, 2005) 20.7¢ per gallon (for July 1, 2005, through June 30, 2006) 21¢ per gallon (for July 1, 2006, through June 30, 2007) 20.7¢ per gallon (for July 1, 2007, through June 30, 2008) 21¢ per gallon (for July 1, 2008, through February 28, 2015) 31¢ per gallon (for March 1, 2015, through June 30, 2015) 30.8¢ per gallon (for July 1, 2015, through June 30, 2016) 30.7¢ per gallon (for July 1, 2016, through June 30, 2017) 30.5¢ per gallon (for July 1, 2017, through June 30, 2018) 30.7¢ per gallon (for July 1, 2018, through June 30, 2019) 30.5¢ per gallon (beginning for July 1, 2019, through June 30, 2020) 30¢ per gallon (beginning July 1, 2020)</p>
Ethanol blended gasoline	<p>19¢ per gallon (for July 1, 2003, through February 28, 2015) 29¢ per gallon (for March 1, 2015, through June 30, 2015) 29.3¢ per gallon (for July 1, 2015, through June 30, 2016) 29¢ per gallon (beginning for July 1, 2016, through June 30, 2020)</p>
<u>Ethanol blended gasoline E-10 to E-14</u>	30¢ per gallon (beginning July 1, 2020)
E-85 gasoline	<p>17¢ per gallon (for January 1, 2006, through June 30, 2007) 19¢ per gallon (for July 1, 2007, through February 28, 2015) 29¢ per gallon (for March 1, 2015, through June 30, 2015) 29.3¢ per gallon (for July 1, 2015, through June 30, 2016) 29¢ per gallon (beginning for July 1, 2016, through June 30, 2020)</p>
<u>Ethanol blended gasoline E-15 or higher</u>	24¢ per gallon (beginning July 1, 2020)
Aviation gasoline	8¢ per gallon (beginning July 1, 1988)

REVENUE DEPARTMENT[701](cont'd)

Diesel fuel other than B-11 or higher	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (beginning March 1, 2015)
Biodiesel blended fuel (B-11 or higher)	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (for March 1, 2015, through June 30, 2015) 29.5¢ per gallon (beginning for July 1, 2015, through June 30, 2020) <u>30.1¢ per gallon (for July 1, 2020, through June 30, 2021)</u> <u>30.4¢ per gallon (beginning July 1, 2021)</u>
Aviation jet fuel	3¢ per gallon (on and before February 28, 2015) 5¢ per gallon (beginning March 1, 2015)
L.P.G.	20¢ per gallon (on and before February 28, 2015) 30¢ per gallon (beginning March 1, 2015)
C.N.G.	16¢ per 100 cu. ft. (on and before June 30, 2014) 21¢ per gallon (for July 1, 2014, through February 28, 2015) 31¢ per gallon (beginning March 1, 2015)
L.N.G.	22.5¢ per gallon (on and before February 28, 2015) 32.5¢ per gallon (beginning March 1, 2015)

68.2(2) Fuel distribution percentages.

a. Ethanol distribution percentage.

(1) Except as otherwise provided in this paragraph, ~~for March 1, 2015, through June 30, 2020,~~ this paragraph shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The An excise tax of 30 cents is imposed on each gallon of motor fuel other than ethanol blended gasoline classified as E-15 or higher.

<u>Ethanol Distribution %</u>	<u>Ethanol Tax</u>	<u>Gasoline Tax</u>
00+/50	29.0	30.0
50+/55	29.0	30.1
55+/60	29.0	30.3
60+/65	29.0	30.5
65+/70	29.0	30.7
70+/75	29.0	31.0
75+/80	29.3	30.8
80+/85	29.5	30.7
85+/90	29.7	30.4
90+/95	29.9	30.1
95+/100	30.0	30.0

(2) On and after July 1, 2026, an excise tax of 30 cents is imposed on each gallon of ethanol blended gasoline classified as E-15 or higher.

(3) Before July 1, 2026, the rate of the excise tax on ethanol blended gasoline classified as E-15 or higher shall be based on the ethanol distribution percentage as specified in Iowa Code section 452A.3. The ethanol distribution percentage is the number of gallons of ethanol blended gasoline classified as E-15 or higher that is are distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31

REVENUE DEPARTMENT[701](cont'd)

based on data from reports filed pursuant to Iowa Code section 452A.33. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. ~~The rate for the excise tax shall be as follows:~~

~~(2) Except as otherwise provided in this paragraph, after June 30, 2020, an excise tax of 30 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.~~

b. Biodiesel distribution percentage.

~~(1) Except as otherwise provided in this paragraph, the rate of the excise tax on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state, other than biodiesel blended fuel classified as B-11 or higher, is 32.5 cents.~~

~~1. Except as otherwise provided in this paragraph, for July 1, 2015, through June 30, 2020, this paragraph shall apply to the excise tax imposed on each gallon of special fuel for diesel engines of motor vehicles biodiesel blended fuel classified as B-11 or higher used for any purpose for the privilege of operating motor vehicles in this state. The~~

~~2. On and after July 1, 2026, the rate of the excise tax on each gallon of biodiesel blended fuel classified as B-11 or higher is 32.5 cents.~~

~~3. Before July 1, 2026, the rate of the excise tax shall be based on the biodiesel distribution percentage as specified in Iowa Code section 452A.3. The biodiesel distribution percentage is the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state. The number of gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles distributed in this state shall be based on the total taxable gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31 based on data from reports filed pursuant to Iowa Code section 452A.33. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:~~

<u>Biodiesel Distribution %</u>	<u>B-11 or Higher Tax</u>	<u>Other Than B-11 or Higher Tax</u>
00/50	29.5	32.5
50+/55	29.8	32.5
55+/60	30.1	32.5
60+/65	30.4	32.5
65+/70	30.7	32.5
70+/75	31.0	32.5
75+/80	31.3	32.5
80+/85	31.6	32.5
85+/90	31.9	32.5
90+/95	32.2	32.5
95+/100	32.5	32.5

~~(2) The determination period for the biodiesel distribution percentage is January through December each calendar year. Prior to July 1, 2015, Iowa licensees did not separately report the total taxable gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state. Accordingly, the department cannot calculate the biodiesel distribution percentage for calendar years 2014 and 2015 using the method described in subparagraph 68.2(2) "b"(1). However, the best information available to the department indicates the biodiesel distribution percentage is not greater than 50 percent for calendar years 2014 and 2015. Therefore, for the period between July 1, 2015, and June 30, 2016, and for the~~

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period between July 1, 2016, and June 30, 2017, the rates for the excise tax on special fuel for diesel engines of motor vehicles are based on a biodiesel distribution percentage of 00/50%.

~~(3) Except as otherwise provided in this paragraph, for the period between March 1, 2015, and June 30, 2015, and for the period after June 30, 2020, an excise tax of 32.5 cents is imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state.~~

c. Legislative review. The ethanol distribution percentage, the biodiesel distribution percentage, and the corresponding excise tax rates are subject to legislative review at least every ~~six~~ five years. The review is based upon a fuel distribution percentage formula status report, which contains the recommendations of a legislative interim committee appointed to conduct a review of the fuel distribution percentage formulas. The report is prepared with the assistance of the Iowa department of revenue and the Iowa department of transportation. The report includes recommendations for changes or revisions to the fuel distribution percentage formulas based upon advances in technology, fuel use trends, and fuel price fluctuations observed during the preceding ~~six-year~~ five-year interval; an analysis of the operation of the fuel distribution percentage formulas during the ~~preceding six-year~~ five-year interval; and a summary of issues that have arisen since the previous review and potential approaches for resolution of those issues. The first report will be submitted to the general assembly no later than January 1, 2020, with subsequent reports developed and submitted by January 1 at least every ~~sixth~~ fifth year thereafter.

68.2(3) No change.

~~**68.2(4)** The department shall determine the actual tax paid for E-85 gasoline in the previous calendar year and compare this amount to the amount that would have been paid using the tax rate imposed in Iowa Code section 452A.3, subsection 1 or 2. If the difference is less than \$25,000, the tax rate for the tax period beginning the following July 1 shall be 17¢ per gallon. If the difference is \$25,000 or more, the tax rate shall be the rate in effect pursuant to Iowa Code section 452A.3, subsection 1 or 2.~~

~~Beginning January 1, 2006, retailers of E-85 gasoline must file a report with the department by the last day of the month of each calendar quarter for each retail location showing the number of invoiced gallons of E-85 gasoline sold by the retailer in Iowa during the preceding calendar quarter. The report must also include a listing of the vendors providing E-85 gasoline to the retailer and the number of gallons received from each vendor. If the retailer blends E-85 gasoline, the retailer must show the number of gallons of motor fuel (including both gasoline and alcohol) purchased and blended. The report must be signed under penalty for false certificate.~~

~~**68.2(5)**~~ **68.2(4)** Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas which will be subject to the increased excise tax rate.

a. Persons subject to the tax imposed under this subrule shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within 30 days of the prescribed inventory date.

b. The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage. The inventory tax rate is equal to the increased excise tax rate less the previous excise tax rate. The inventory tax does not apply to an increase in the tax rate of a specified fuel, except for compressed natural gas, unless the increase in the tax rate of that fuel is in excess of one-half cent per gallon.

This rule is intended to implement Iowa Code sections 452A.3, 452A.8 and 452A.85.

ITEM 2. Amend rule 701—68.3(452A) as follows:

701—68.3(452A) Exemption.

REVENUE DEPARTMENT[701](cont'd)

68.3(1) Motor fuel or undyed special fuel sold for export or exported from this state to another state, territory, or foreign country is exempt from the excise tax. The fuel is deemed sold for export or exported only if the bill of lading or manifest indicates that the destination of the fuel withdrawn from the terminal is outside the state of Iowa. The mode of transportation is not of consequence. In the event fuel is taxed and then subsequently exported, an amount equal to the tax previously paid will be allowable as a refund, upon receipt by the department of the appropriate documents, to the party who originally paid the tax. If the sale of exported fuel is completed in Iowa, then the sale is subject to Iowa sales tax if it is not exported for resale or otherwise exempt from sales tax. The sale is completed in Iowa if the foreign purchaser takes physical possession of the fuel in this state. *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968). See sales tax rule 701—18.37(422,423).

68.3(2) Indelible dye meeting United States Environmental Protection Agency and Internal Revenue Service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel can only be used for a nontaxable purpose listed in Iowa Code section 452A.17, subsection 1, paragraph “a.” 452A.17(1) “a.” However, this exemption does not apply to fuel used for idle time, power takeoffs, reefer units, or pumping credits, or fuel used by contract carriers.

This rule is intended to implement Iowa Code section 452A.3 as amended by 1995 Iowa Acts, chapter 155.

ITEM 3. Amend rule 701—68.4(452A) as follows:

701—68.4(452A) Blended fuel taxation—nonterminal location.

68.4(1) *Responsibilities of all blenders at nonterminal locations.* A person who blends ethanol blended gasoline or biodiesel blended fuel at a nonterminal location must obtain a blender’s license. Blending ethanol with gasoline, or blending biodiesel with petrodiesel, may result in additional tax due or an allowable refund depending on the ~~alcohol~~ ethanol content of the mixture and the tax paid on its components. The blender must make payment to the department for the additional tax due. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product.

EXAMPLE 1. A blender blends three parts ethanol with 17 parts gasoline to create E-15. The E-15 is taxed as ethanol blended gasoline, and the blender may be due a refund for excess tax paid on the gasoline used.

EXAMPLE 2. A blender blends one part biodiesel with four parts petrodiesel to create B-20. The B-20 is taxed as B-11 or higher, and the blender may be due a refund for excess tax paid on the petrodiesel used.

EXAMPLE 3. A blender blends one part biodiesel with 19 parts petrodiesel to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the biodiesel used.

EXAMPLE 4. A blender blends one part B-20 with five parts B-2 to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the B-20 used.

68.4(2) *Blenders of ethanol blended gasoline.*

a. A blender who owns the ~~alcohol~~ ethanol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender’s license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline E-15 or higher is presumed to be ~~29¢~~ 24¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

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EXAMPLE:

Blender purchases 7,200 <u>7,000</u> gallons tax-paid gasoline (7,200 <u>7,000</u> × .30) =	\$2,160.00 <u>\$2,100.00</u>
Blender adds 800 <u>3,000</u> gallons untaxed alcohol <u>ethanol</u>	\$0.00
Total tax paid on products	\$2,160.00 <u>\$2,100.00</u>
Total tax due on 8,000 <u>10,000</u> gallons ethanol blended gasoline <u>E-15</u> or <u>higher</u> (8,000 <u>10,000</u> × . 29 <u>.24</u>) =	\$2,320.00 <u>\$2,400.00</u>
Additional Amount Due	\$160.00 <u>\$300.00</u>

b. A blender who purchases ~~alcohol~~ ethanol and gasoline from a supplier must pay tax on both the ~~alcohol~~ ethanol purchased and the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline E-15 or higher is presumed to be ~~29¢~~ 24¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 <u>7,000</u> gallons tax-paid gasoline (7,200 <u>7,000</u> × .30) =	\$2,160.00 <u>\$2,100.00</u>
Blender purchases 800 <u>3,000</u> gallons tax-paid alcohol <u>ethanol</u> (800 <u>3,000</u> × . 29 <u>.24</u>) =	\$232.00 <u>\$720.00</u>
Total tax paid on products	\$2,392.00 <u>\$2,820.00</u>
Total tax due on 8,000 <u>10,000</u> gallons ethanol blended gasoline <u>E-15</u> or <u>higher</u> (8,000 <u>10,000</u> × . 29 <u>.24</u>) =	\$2,320.00 <u>\$2,400.00</u>
Amount of Refund Allowable	\$72.00 <u>\$420.00</u>

c. A blender who purchases ethanol and gasoline from any source must pay tax on both the ethanol purchased and the gasoline purchased. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon, the tax rate for ethanol is presumed to be 24¢ per gallon, and the tax rate for ethanol blended gasoline E-10 is presumed to be 30¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases <u>7,200</u> gallons tax-paid gasoline (<u>7,200</u> × .30) =	<u>\$2,160.00</u>
Blender purchases <u>800</u> gallons tax-paid ethanol (<u>800</u> × .24) =	<u>\$192.00</u>
Total tax paid on products	<u>\$2,352.00</u>
Total tax due on <u>8,000</u> gallons ethanol blended gasoline E-10 (<u>8,000</u> × .30) =	<u>\$2,400.00</u>
Additional Amount Due	<u>\$48.00</u>

d. A blender who purchases ethanol blended gasoline E-10 to E-14 and ethanol blended gasoline E-15 or higher from a supplier must pay tax on both the ethanol blended gasoline E-10 to E-14 purchased and the ethanol blended gasoline E-15 purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. For purposes of the following example, the tax rate for E-10 to E-14 purchased is presumed to be 30¢ per gallon and the tax rate for ethanol blended

REVENUE DEPARTMENT[701](cont'd)

gasoline E-15 or higher is presumed to be 24¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

<u>Blender purchases 7,000 gallons tax-paid ethanol blended gasoline E-10 to E-14 (7,000 × .30) =</u>	<u>\$2,100.00</u>
<u>Blender purchases 3,000 gallons tax-paid ethanol blended gasoline E-15 or higher (3,000 × .24) =</u>	<u>\$720.00</u>
<u>Total tax paid on products</u>	<u>\$2,820.00</u>
<u>Total tax due on 10,000 gallons ethanol blended gasoline E-15 or higher (10,000 × .24) =</u>	<u>\$2,400.00</u>
<u>Amount of Refund Allowable</u>	<u>\$420.00</u>

e. e. Ethanol blended gasoline E-15 or higher—blending errors.

Where a blending error occurs and an insufficient amount of ~~alcohol~~ ethanol has been blended with gasoline so that the mixture fails to qualify as ethanol blended gasoline as defined in Iowa Code section ~~452A.2~~ E-15 or higher, a 1 percent tolerance applies in determining the tax on the blended product as described in this paragraph:

(1) If the amount of the ~~alcohol~~ ethanol erroneously blended with gasoline is at least ~~9~~ 14 percent of the total blended product by volume, the ~~alcohol~~ ethanol and gasoline blended product is considered ethanol blended gasoline E-15 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of ~~alcohol~~ ethanol erroneously blended with gasoline is less than ~~9~~ 14 percent of the total blended product by volume, the total blend of gasoline and ~~alcohol~~ ethanol is subject to tax as ethanol blended gasoline E-10 to E-14 at the prevailing rate of tax.

(3) This paragraph applies only if a blender intends to produce ethanol blended gasoline E-15 or higher. If a blender does not intend to produce ethanol blended gasoline when blending ~~alcohol~~ ethanol and gasoline, and the mixture contains less than ~~10~~ 14 percent ~~alcohol~~ ethanol by volume, no error has occurred and the mixture is subject to tax as ethanol blended gasoline E-10 to E-14.

(4) The following formulas are used to compute blending errors:

Actual gasoline + actual ~~alcohol~~ ethanol = total gallons of blended product

Total gallons of blended product × ~~.09~~ .14 = required ~~alcohol~~ ethanol

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend ethanol blended gasoline E-15 or higher. Figures are rounded to the nearest whole gallon; ethanol blended gasoline E-15 or higher is taxed at ~~\$.29~~ 24¢ per gallon; gasoline is taxed at ~~\$.30~~ 30¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1:

Actual gasoline	=	<u>8,000</u> gal.
		<u>8,500</u>
Actual alcohol ethanol	=	<u>800</u> gal.
		<u>1,500</u>
Total blended product	=	<u>8,800</u> gal.
		<u>10,000</u>
<u>8,800</u> <u>10,000</u> × .09 <u>.14</u>	=	<u>792</u> gal. required alcohol ethanol
		<u>1,400</u>

The actual ~~alcohol~~ ethanol (800 1,500 gallons) is more than the required ~~alcohol~~ ethanol (792 1,400 gallons), which means that the tax is applied according to subparagraph ~~68.4(2) "e"(1)~~ 68.4(2) "e"(1) as follows:

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$$\begin{array}{r} 8,800 \text{ gal. of blended} \\ \text{product} \times \underline{\$29.24} \end{array} = \begin{array}{r} \$2,552 \\ \underline{\$2,400} \end{array} \text{ tax on ethanol blended gasoline E-15 or} \\ \text{higher}$$

EXAMPLE 2:

$$\begin{array}{r} \text{Actual gasoline} \\ \text{Actual alcohol ethanol} \\ \text{Total blended product} \\ 8,800 \text{ gal.} \\ \underline{10,000} \\ 8,800 \text{ gal.} \\ \underline{10,000} \end{array} = \begin{array}{r} 8,010 \text{ gal.} \\ \underline{9,200} \\ 790 \text{ gal.} \\ \underline{800} \\ 8,800 \text{ gal.} \\ \underline{10,000} \\ 792 \text{ gal.} \\ \underline{1,400} \end{array} \text{ required alcohol ethanol}$$

The actual alcohol ethanol (~~790~~ 800 gallons) is less than the required alcohol ethanol (~~792~~ 1,400 gallons), which means that the entire blend is considered gasoline and the tax is applied according to subparagraph ~~68.4(2) "e"(2)~~ 68.4(2) "e"(2) as follows:

$$\begin{array}{r} 8,800 \text{ gal. of blended} \\ \text{product} \times \underline{\$30} \end{array} = \begin{array}{r} \$2,640 \\ \underline{\$3,000} \end{array} \text{ tax on gasoline}$$

68.4(3) Blenders of biodiesel blended fuel.

a. A blender who owns the biodiesel (~~supplier~~) being used to blend with diesel must purchase the diesel from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be ~~29¢~~ 30.1¢ per gallon and the tax rate for diesel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

$$\begin{array}{r} \text{Blender purchases 7,120 gallons tax-paid petrodiesel } (7,120 \times .325) = \\ \text{Blender adds 880 gallons untaxed biodiesel} = \\ \text{Total tax paid on products} = \end{array} \begin{array}{r} \$2,314.00 \\ \$0.00 \\ \underline{\$2,314.00} \end{array}$$

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

$$\begin{array}{r} \text{Total tax due on 8,000 gallons blended B-11 or higher } (8,000 \times \underline{\$29.301}) = \\ \text{Additional Amount Due} = \end{array} \begin{array}{r} \$2,320.00 \\ \underline{\$2,408.00} \\ \underline{\$6.00} \\ \underline{\$2,408.00} \end{array}$$

EXAMPLE 2.

$$\begin{array}{r} \text{Blender purchases 7,600 gallons tax-paid petrodiesel } (7,600 \times .325) = \\ \text{Blender adds 400 gallons untaxed biodiesel} = \\ \text{Total tax paid on products} = \end{array} \begin{array}{r} \$2,470.00 \\ \$0.00 \\ \underline{\$2,470.00} \end{array}$$

The blended product is 8,000 gallons of diesel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

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Total tax due on 8,000 gallons diesel other than B-11 or higher ($8,000 \times .325$) =	\$2,600.00
Additional Amount Due =	<u>\$130.00</u>

EXAMPLE 3.

Blender purchases 7,750 gallons tax-paid B-2 ($7,750 \times .325$) =	\$2,518.75
Blender adds 250 gallons untaxed biodiesel =	\$0
Total tax paid on products =	<u>\$2,518.75</u>

7,750 gallons of B-2 contains 155 gallons (2%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 405 gallons (155 + 250, or 5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons diesel other than B-11 or higher ($8,000 \times .325$) =	\$2,600.00
Additional Amount Due =	<u>\$81.25</u>

b. A blender who purchases diesel products from a supplier must pay the appropriate tax on all diesel products purchased. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for any additional amount due. The blender must also obtain a refund permit to receive a refund of any overpayment of tax on the blended product. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be ~~29¢~~ 30.1¢ per gallon and the tax rate for diesel fuel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

Blender purchases 7,120 gallons tax-paid petrodiesel ($7,120 \times .325$) =	\$2,314.00
Blender purchases 880 gallons tax-paid biodiesel ($880 \times \text{.29 } \underline{.301}$) =	\$255.20 <u>\$264.88</u>
Total tax paid on products =	\$2,569.20 <u>\$2,578.88</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons blended B-11 or higher ($8,000 \times \text{.29 } \underline{.301}$) =	\$2,320.00 <u>\$2,408.00</u>
Amount of Refund Allowable =	\$249.20 <u>\$170.88</u>

EXAMPLE 2.

Blender purchases 7,600 gallons tax-paid petrodiesel ($7,600 \times .325$) =	\$2,470.00
Blender purchases 400 gallons tax-paid biodiesel ($400 \times \text{.29 } \underline{.301}$) =	\$116.00 <u>\$120.40</u>
Total tax paid on products =	\$2,586.00 <u>\$2,590.40</u>

The blended product is 8,000 gallons of biodiesel blended fuel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

Total tax due on 8,000 gallons blended B-5 ($8,000 \times .325$) =	\$2,600.00
Additional Amount Due =	\$14.00 <u>\$9.60</u>

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 3.

Blender purchases 4,000 gallons tax-paid B-2 ($4,000 \times .325$) =	\$1,300.00
Blender purchases 4,000 gallons tax-paid B-20 ($4,000 \times \text{.29 .301}$) =	\$1,160.00 <u>\$1,204.00</u>
Total tax paid on products =	\$2,460.00 <u>\$2,504.00</u>

4,000 gallons of B-2 contains 80 gallons (2%) of biodiesel, and 4,000 gallons of B-20 contains 800 gallons (20%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 880 gallons (80 + 800, or 11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

Total tax due on 8,000 gallons B-11 or higher ($8,000 \times \text{.29 .301}$) =	\$2,320.00 <u>\$2,408.00</u>
Amount of Refund Allowable =	\$140.00 <u>\$96.00</u>

c. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has been blended with petrodiesel so that the mixture fails to qualify as B-11 or higher as defined in rule 701—67.1(452A), a 1 percent tolerance applies in determining the tax on the blended product as described in this paragraph:

(1) If the amount of the biodiesel erroneously blended with petrodiesel is at least 10 percent of the total blended product by volume, the biodiesel and petrodiesel blended product is considered B-11 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of biodiesel blended with petrodiesel is less than 10 percent of the total blended product by volume, the entire mixture is considered taxable diesel other than B-11 or higher and subject to tax at the prevailing rate.

(3) This paragraph applies only if a blender intends to produce B-11 or higher. If a blender does not intend to produce B-11 or higher when blending biodiesel and petrodiesel, and the mixture contains less than 11 percent biodiesel by volume, no error has occurred and the mixture is subject to tax as diesel other than B-11 or higher.

(4) The following formulas are used to compute blending errors:

Actual biodiesel + actual petrodiesel = total gallons of blended product

Total gallons of blended product $\times .1$ = required biodiesel

(5) Examples. The following factors are assumed for all examples:

The blender in each example intends to blend B-11 or higher. Figures are rounded to the nearest whole gallon; B-11 or higher is taxed at ~~\$.29 .301~~¢ per gallon; diesel other than B-11 or higher is taxed at ~~\$.325 .325~~¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

Actual petrodiesel	=	8,095 gal.
Actual biodiesel	=	905 gal.
Total blended product	=	9,000 gal.
$9,000 \times .1$	=	900 gal. required biodiesel

The actual biodiesel (905 gallons) is more than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

9,000 gal. of blended product	=	\$2,610 <u>\$2,709</u> tax on B-11 or higher
$\times \text{.29 .301}$		

REVENUE DEPARTMENT[701](cont'd)

EXAMPLE 2.

Actual petrodiesel	=	8,105 gal.
Actual biodiesel	=	895 gal.
Total blended product	=	9,000 gal.
$9,000 \times .1$	=	900 gal. required biodiesel

The actual biodiesel (895 gallons) is less than the required biodiesel (900 gallons). Thus, the tax is applied according to subparagraph 68.4(3)“c”(2) as follows:

$$9,000 \text{ gal. of blended product} = \$2,925 \text{ tax on diesel other than B-11 or higher} \\ \times \$.325$$

EXAMPLE 3.

A blender erroneously mixes 5,000 gallons of B-2 with 4,500 gallons of B-20 with the intent of creating B-11 or higher. 5,000 gallons of B-2 contains 100 gallons (2%) of biodiesel. 4,500 gallons of B-20 contains 900 gallons (20%) of biodiesel. Thus, the 9,500 gallons (4,500 + 5,000) of blended product includes 1,000 gallons (100 + 900) of biodiesel and 8,500 gallons (9,500 – 1,000) of petrodiesel.

Actual petrodiesel	=	8,500 gal.
Actual biodiesel	=	1,000 gal.
Total blended product	=	9,500 gal.
$9,500 \times .1$	=	950 gal. required biodiesel

The actual biodiesel (1,000 gallons) is greater than the required biodiesel (950 gallons), which means that the entire blend is considered B-11 or higher and the tax is applied according to subparagraph 68.4(3)“c”(1) as follows:

$$9,500 \text{ gal. of blended product} = \$2,755 \text{ tax on B-11 or higher} \\ \times \$.29 \underline{.301} \quad \quad \quad \underline{\$2,859.50}$$

This rule is intended to implement Iowa Code section 452A.8 as amended by 2015 Iowa Acts, Senate File 257.

ITEM 4. Amend paragraph **68.5(1)“a”** as follows:

a. The fuel tax liability for a supplier is computed by multiplying the per gallon fuel tax rate by the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the supplier within the state or by the supplier with an Iowa nexus from a terminal outside the state during the preceding calendar month, less deductions for fuel exported in the case of in-state withdrawals and the distribution allowance provided for in Iowa Code section 452A.5.

Tax shall not be paid when the sale of ~~alcohol~~ ethanol occurs within a terminal from an ~~alcohol~~ ethanol manufacturer to a licensed supplier. The tax shall be paid by the licensed supplier when the invoiced gross gallonage of the ~~alcohol~~ ethanol or the ~~alcohol~~ ethanol part of the ethanol blended gasoline is withdrawn from a terminal for delivery in this state. This makes the licensed supplier responsible for the tax on both the ~~alcohol~~ ethanol and the gasoline portions of the ethanol blended gasoline and for the reporting and accounting of this fuel as ethanol blended gasoline on the supplier report.

ITEM 5. Amend subrule 68.5(4) as follows:

68.5(4) The tax liability for a nonlicensee is computed the same as a restrictive supplier. If motor fuel or undyed special fuel is exported from this state with no tax paid and subsequently returned to this state because all or a portion of it was not delivered where destined, the tax must be paid to the department by the nonlicensee.

REVENUE DEPARTMENT[701](cont'd)

All gallon entries on the return for determining the tax liability must be rounded to the nearest whole number.

ITEM 6. Amend subrule 68.7(1) as follows:

68.7(1) To qualify for the credit, the supplier must notify the department in writing of the uncollectible account no later than ten calendar days after the due date for payment of the tax.

Notification is to be sent to the Iowa Department of Revenue, ~~Examination Section~~, Compliance ~~Division~~ Section - Business, P. O. Box ~~40456~~ 10465, Des Moines, Iowa ~~50306-0456~~ 50306-0465.

ITEM 7. Amend subrule 68.8(1), introductory paragraph, as follows:

68.8(1) Federal government. Fuel sold to the United States or to any agency or instrumentality of the United States. The tax is subject to refund regardless of how the fuel is used.

a. The following factors, among others, will be considered in determining if any organization is an instrumentality of the United States government: (a) whether it was created by the federal government, (b) whether it is wholly owned by the federal government, (c) whether it is operated for profit, (d) whether it is “primarily” engaged in the performance of some “essential” government function, and (e) whether the tax will impose an economic burden upon the federal government or serve to materially impair the usefulness and efficiency of the organization or to materially restrict it in the performance of its duties if it were imposed. *Unemployment Compensation Commission v. Wachovia Bank & Trust Company*, 215 N.C. 491, 2 S.E.2d 592 (1939); 1976 O.A.G. 823, 827.

b. The American Red Cross, Project Head Start, Federal Land Banks and Federal Land Bank Associations, among others, have been determined to be instrumentalities of the federal government. Receivers or trustees appointed in the federal bankruptcy proceedings are subject to the excise tax. *Wood Brothers Construction Co. v. Bagley*, 232 Iowa 902, 6 N.W.2d 397 (1942).

ITEM 8. Amend subrule 68.8(3) as follows:

68.8(3) The state and political subdivisions. Fuel sold to the state of Iowa or any political subdivision of the state which is used for public purposes.

a. The refund is not available to agencies or instrumentalities of a political subdivision, but rather only to the state of Iowa, agencies of the state of Iowa, and political subdivisions of the state of Iowa. The general attributes and factors in determining if an entity is a political subdivision of the state of Iowa are: (a) the entity has a specific geographic area, (b) the entity has public officials elected at public elections, (c) the entity has taxing power, (d) the entity has a general public purpose or benefit, and (e) the foregoing attributes, factors or powers were delegated to the entity by the state of Iowa. (1976 O.A.G. 823)

b. The refund is also not available to employees of a governmental unit who purchase fuel individually and are later reimbursed by the governmental unit. The name of the governmental unit must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

ITEM 9. Amend subrule 68.8(4) as follows:

68.8(4) Contract carriers.

a. Motor fuel and undyed special fuel sold to a contract carrier who has a contract with a public school under Iowa Code section 285.5 for the transportation of pupils of an approved public or nonpublic school is refundable. If the contract carrier also uses fuel for purposes other than the transportation of pupils, the refund will be based on that percentage of the total amount of fuel purchased which reflects the pupil transportation usage.

b. A refund requested by contract carriers will be reduced by the applicable sales tax unless otherwise exempt. The name of the contract carrier must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

ITEM 10. Amend subrule 68.8(6) as follows:

68.8(6) Fuel used for producing denatured ~~alcohol~~ ethanol.

REVENUE DEPARTMENT[701](cont'd)

ITEM 11. Amend subrule 68.9(1) as follows:

68.9(1) Persons requesting a refund for fuel used for any exempt purpose will do so by providing all or a portion of the following: (a) refund permit number, (b) type of fuel, (c) total number of gallons/tons of fuel used to calculate the refund amount, (d) the beginning and ending dates of the tax period, (e) net cost of fuel, (f) Iowa sales tax due (net cost of fuel times sales tax rate), (g) other items depending on the type of permit and claim type, (h) the total amount of refund claimed, and (i) additional information as required.

Persons requesting a refund for casualty loss, transport diversions, blending errors of motor fuel and ~~alcohol~~ ethanol, and blending errors of special fuel must file in writing on the forms provided by the department and must attach supporting documents explaining why a refund is due.

ITEM 12. Amend subrule 68.9(4) as follows:

68.9(4) A claim for refund will not be allowed unless the claimant has accumulated \$60 in credits for one calendar year. A claim for refund may be filed anytime the \$60 minimum has been met within the calendar year. If the \$60 minimum has not been met in the calendar year, the credit must be claimed on the claimant's income tax return unless the claimant is not required to file an income tax return in which case a refund will be allowed. An income tax credit may not be claimed for any year in which a claim for refund was filed. Once the \$60 minimum has been met, the claim for refund must be filed within one year if met prior to July 1, 2002, and within three years if met on or after July 1, 2002.

~~EXAMPLE: A claim for refund in the amount of \$200 is filed in March of 1996. During the remainder of 1996 an additional \$50 in credits is accumulated. The claimant cannot claim this \$50 credit on the claimant's 1996 income tax return because an income tax credit cannot be filed for any year in which a claim for refund was filed. The claimant must file a claim for refund of the \$50 even though it is below the \$60 minimum.~~

~~EXAMPLE: The claimant does not have a refund permit. The claimant accumulates \$40 in credits during January of 2002 and \$50 in credits during June of 2002. The claimant may claim a \$90 credit on the claimant's 2002 income tax return or apply for a refund permit and claim a refund within one year of June 2002 which is the date the \$60 minimum was met. If the \$60 minimum is met on or after July 1, 2002, the claim for refund must be filed within three years of the date the \$60 minimum was met.~~

ITEM 13. Amend rule 701—68.13(452A) as follows:

701—68.13(452A) Reduction of refund—sales and use tax. Under Iowa Code section 423.3(56), the sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid, and no refund has been or will be allowed, is exempt from Iowa sales and use tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section 423.3 (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel or special fuel will be reduced by the applicable sales and use tax. See sales tax rule 701—18.37(422,423). The sales price upon which the sales and use tax will be applied shall include all federal excise taxes, but will not include the Iowa fuel tax. *Gurley v. Rhoden*, 421 U.S. 200 (1975).

This rule is intended to implement Iowa Code section 452A.17.

ITEM 14. Amend rule 701—69.2(452A) as follows:

701—69.2(452A) Tax rates—time tax attaches—responsible party—payment of the tax. See 701—subrule 68.2(1) for tax rates. The excise tax on L.P.G. attaches when the special fuel is placed in a fuel supply tank of a motor vehicle. The excise tax on C.N.G. and L.N.G. attaches at the time of delivery into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

69.2(1) The person responsible for the tax must collect the tax from the purchaser and remit the tax to the department. The person responsible for the tax is:

4. a. The licensed L.P.G., L.N.G., or C.N.G. dealer, or

REVENUE DEPARTMENT[701](cont'd)

~~2. b.~~ The licensed L.P.G., L.N.G., or C.N.G. user.

69.2(2) The person responsible for placing L.P.G. into the fuel supply tank of a vehicle and the person responsible for placing C.N.G. or L.N.G. into compressing equipment must hold a license as a dealer or user as defined in Iowa Code section 452A.4.

69.2(3) The return and tax are due no later than the last day of the month following the month the L.P.G. was placed in a vehicle or C.N.G. or L.N.G. was placed into compressing equipment. The tax must be remitted by means of electronic funds transfer, unless the licensee can show that this method of payment would cause undue hardship on the licensee ~~and must be rounded to the nearest whole number.~~ The return must be remitted by means of electronic transmission.

This rule is intended to implement Iowa Code section 452A.8 as amended by 2014 Iowa Acts, Senate File 2338.

ARC 5720C

REVENUE DEPARTMENT[701]

Amended Notice of Intended Action

Providing for a public hearing on rule making related to marketable food products for human consumption

The Notice of Intended Action published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5614C** proposes to amend Chapter 230, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code. In order to receive oral comments concerning **ARC 5614C**, the Revenue Department hereby gives notice that a public hearing will be held as follows:

July 8, 2021
1:30 to 2:30 p.m.

Room 430, Fourth Floor
Hoover State Office Building
Des Moines, Iowa

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

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

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3.

Purpose and Summary

Iowa Code section 423.3(49) provides a limited exemption for manufacturers producing “marketable food products for human consumption.” Specifically, the Iowa Code section exempts from sales tax:

“The sales price from the sale of carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services and the lease or rental of tangible personal property when used by a manufacturer of food products to produce *marketable food products for human consumption*, including but not limited to treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of

REVENUE DEPARTMENT[701](cont'd)

packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture.” [Emphasis added.]

This exemption was first codified in 1985 and has only been amended once, in 2005, to add leases or rentals of otherwise-qualifying tangible personal property to the exemption. The phrase “marketable food products for human consumption” has never been defined in the Iowa Code or the Department’s administrative rules. The Department’s long-standing interpretation of the term, articulated through audits and protests, has been that only final food products, not food ingredients, are “marketable food products for human consumption.” This interpretation is consistent with the statutory construction principle that exemption provisions be narrowly construed.

To provide clarity to taxpayers seeking to claim this exemption as manufacturers of marketable food products for human consumption, the Department proposes to adopt this definition of the term. The Department notes that if a taxpayer does not produce marketable food products for human consumption, the taxpayer may still be eligible for other processing-related exemptions, such as those in Iowa Code section 423.3(47).

The Department received a request to hold a public hearing at a later date. The Department is happy to provide interested parties more time to provide public comment on this rule making. No changes have been made from the original Notice.

Fiscal Impact, Jobs Impact, Waivers

Statements related to the fiscal impact, jobs impact, and waiver of this rule making may be found in the preamble of **ARC 5614C**.

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).

ARC 5687C

REVENUE DEPARTMENT[701]

Notice of Intended Action

**Proposing rule making related to data center businesses and refund requests
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 230, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” 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 423.4.

Purpose and Summary

The Department is incorporating the sales and use tax refund request process for data center businesses into its new tax administration system. The existing rule implementing the refund for data center businesses requires that an affidavit be filed by the business before the business can file a refund claim. The Department proposes this rule making to allow businesses to submit the refund claim

REVENUE DEPARTMENT[701](cont'd)

form and the affidavit simultaneously, after which the Department will review the affidavit prior to reviewing the refund claim form. This change will make it easier for data center businesses to provide the information required to request a refund.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 6, 2021. Comments should be directed to:

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

Public Hearing

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 **230.13(7)“d,”** introductory paragraph, as follows:

d. Affidavit. In addition to completing and filing Form IA 843, Claim for Refund, the owner of a data center business seeking a refund as specified in this rule must also complete and file with the department an affidavit certifying that qualifications for the refund have been met. The affidavit must be ~~filed prior to any refund request and must be~~ approved by the department before a refund claim can be ~~filed~~ reviewed. The following format must be used for the affidavit:

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:

July 1, 2020 — July 31, 2020	2.75%
August 1, 2020 — August 31, 2020	2.75%
September 1, 2020 — September 30, 2020	2.50%
October 1, 2020 — October 31, 2020	2.75%
November 1, 2020 — November 30, 2020	2.75%
December 1, 2020 — December 31, 2020	2.75%
January 1, 2021 — January 31, 2021	2.75%
February 1, 2021 — February 28, 2021	3.00%
March 1, 2021 — March 31, 2021	3.00%
April 1, 2021 — April 30, 2021	3.25%
May 1, 2021 — May 31, 2021	3.50%
June 1, 2021 — June 30, 2021	3.75%
July 1, 2021 — July 31, 2021	3.50%

DEPARTMENT OF TRANSPORTATION

Advisory Notice

Adjusted Bid Thresholds for City and County Highway, Bridge, and Culvert Construction, Reconstruction and Improvement Projects

Pursuant to the authority of Iowa Code section 314.1B, the Director of Transportation gives an advisory notice of adjusted bid thresholds for city and county highway, bridge, and culvert construction, reconstruction and improvement projects. The adjusted bid threshold values will become effective January 1, 2022.

The horizontal infrastructure bid threshold subcommittee, composed of three contractors, two county representatives, one city representative and the Director’s designee, corresponded via virtual meeting on April 8, 2021, to review bid thresholds. After a review of the construction price index, the subcommittee made the following three adjustments to bid thresholds for city and county highway, bridge, and culvert construction, reconstruction and improvement projects:

1. The county bid threshold in Iowa Code section 309.40 will be adjusted from \$93,000 to \$100,000 effective January 1, 2022.
2. The bid threshold in Iowa Code section 314.1(2) for cities with a population of 50,000 or less will be adjusted from \$50,000 to \$54,000 effective January 1, 2022.
3. The bid threshold in Iowa Code section 314.1(2) for cities with a population of more than 50,000 will be adjusted from \$72,000 to \$77,000 effective January 1, 2022.

All other bid thresholds for city and county highway, bridge, and culvert construction, reconstruction and improvement projects that are not addressed in this advisory notice will remain as currently stated in the appropriate Iowa Code sections.

ARC 5675C

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed Emergency After Notice****Rule making related to child care assistance fees**

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

Legal Authority for Rule Making

This rule making is adopted 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 Department is revising the child care assistance (CCA) fee chart based on the updated federal poverty levels, which are effective July 1, 2021. The annual poverty level update allows families that have received raises throughout the previous year to maintain eligibility for CCA without paying increased fees. The fee schedule changes are effective for eligibility determinations made on or after July 1, 2021.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 24, 2021, as **ARC 5533C**. No public comments were received. No changes from the Notice have been made.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on July 1, 2021, because the rule confers a benefit for child care assistance families by allowing the updated federal poverty levels to be used for eligibility determinations made on or after July 1, 2021.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on May 13, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

HUMAN SERVICES DEPARTMENT[441](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).

Effective Date

This rule making will become effective on July 1, 2021.

The following rule-making action is adopted:

Amend paragraph **170.4(2)“a”** as follows:

a. Sliding fee schedule.

(1) The fee schedule shown in the following table is effective for eligibility determinations made on or after July 1, ~~2020~~ 2021:

Level	Monthly Income According to Family Size													Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	11	12	13+	1	2	3 or more
A	\$1,011	\$1,365	\$1,720	\$2,075	\$2,429	\$2,784	\$3,139	\$3,493	\$3,848	\$4,203	\$4,557	\$4,912	\$5,267	\$0.00	\$0.00	\$0.00
	\$1,020	\$1,379	\$1,739	\$2,099	\$2,458	\$2,817	\$3,177	\$3,536	\$3,895	\$4,255	\$4,614	\$4,973	\$5,333			
B	\$1,064	\$1,437	\$1,810	\$2,184	\$2,557	\$2,930	\$3,304	\$3,677	\$4,050	\$4,424	\$4,797	\$5,170	\$5,544	\$0.20	\$0.45	\$0.70
	\$1,074	\$1,452	\$1,830	\$2,209	\$2,587	\$2,965	\$3,344	\$3,722	\$4,100	\$4,479	\$4,857	\$5,235	\$5,614			
C	\$1,094	\$1,477	\$1,861	\$2,245	\$2,629	\$3,012	\$3,397	\$3,780	\$4,163	\$4,548	\$4,931	\$5,315	\$5,699	\$0.45	\$0.70	\$0.95
	\$1,104	\$1,493	\$1,881	\$2,271	\$2,659	\$3,048	\$3,438	\$3,826	\$4,215	\$4,604	\$4,993	\$5,382	\$5,771			
D	\$1,124	\$1,517	\$1,911	\$2,306	\$2,700	\$3,094	\$3,489	\$3,883	\$4,277	\$4,672	\$5,066	\$5,460	\$5,854	\$0.70	\$0.95	\$1.20
	\$1,134	\$1,533	\$1,932	\$2,333	\$2,732	\$3,131	\$3,531	\$3,930	\$4,330	\$4,730	\$5,129	\$5,528	\$5,928			
E	\$1,155	\$1,560	\$1,965	\$2,371	\$2,776	\$3,181	\$3,587	\$3,992	\$4,397	\$4,803	\$5,207	\$5,612	\$6,018	\$0.95	\$1.20	\$1.45
	\$1,166	\$1,576	\$1,987	\$2,398	\$2,808	\$3,219	\$3,630	\$4,040	\$4,451	\$4,862	\$5,273	\$5,683	\$6,094			
F	\$1,187	\$1,602	\$2,018	\$2,435	\$2,851	\$3,267	\$3,684	\$4,100	\$4,516	\$4,933	\$5,349	\$5,765	\$6,182	\$1.20	\$1.45	\$1.70
	\$1,198	\$1,619	\$2,041	\$2,463	\$2,885	\$3,306	\$3,729	\$4,151	\$4,572	\$4,995	\$5,416	\$5,838	\$6,260			
G	\$1,220	\$1,647	\$2,075	\$2,504	\$2,931	\$3,359	\$3,788	\$4,215	\$4,643	\$5,071	\$5,499	\$5,927	\$6,355	\$1.45	\$1.70	\$1.95
	\$1,231	\$1,665	\$2,098	\$2,532	\$2,966	\$3,399	\$3,833	\$4,267	\$4,700	\$5,135	\$5,568	\$6,001	\$6,436			
H	\$1,253	\$1,692	\$2,131	\$2,572	\$3,011	\$3,450	\$3,891	\$4,330	\$4,769	\$5,210	\$5,649	\$6,088	\$6,529	\$1.70	\$1.95	\$2.20
	\$1,265	\$1,710	\$2,155	\$2,601	\$3,046	\$3,492	\$3,938	\$4,383	\$4,828	\$5,274	\$5,720	\$6,165	\$6,611			
I	\$1,288	\$1,740	\$2,191	\$2,644	\$3,095	\$3,547	\$4,000	\$4,451	\$4,903	\$5,355	\$5,807	\$6,259	\$6,711	\$1.95	\$2.20	\$2.45
	\$1,300	\$1,758	\$2,215	\$2,674	\$3,132	\$3,589	\$4,048	\$4,506	\$4,963	\$5,422	\$5,880	\$6,337	\$6,796			
J	\$1,323	\$1,787	\$2,251	\$2,716	\$3,180	\$3,644	\$4,109	\$4,572	\$5,036	\$5,501	\$5,965	\$6,429	\$6,894	\$2.20	\$2.45	\$2.70
	\$1,336	\$1,806	\$2,276	\$2,747	\$3,217	\$3,687	\$4,158	\$4,628	\$5,098	\$5,570	\$6,040	\$6,510	\$6,981			
K	\$1,360	\$1,837	\$2,314	\$2,792	\$3,269	\$3,746	\$4,224	\$4,700	\$5,177	\$5,655	\$6,132	\$6,609	\$7,087	\$2.45	\$2.70	\$2.95
	\$1,373	\$1,856	\$2,339	\$2,824	\$3,307	\$3,790	\$4,275	\$4,758	\$5,241	\$5,726	\$6,209	\$6,692	\$7,177			
L	\$1,397	\$1,887	\$2,377	\$2,868	\$3,358	\$3,848	\$4,339	\$4,829	\$5,318	\$5,809	\$6,299	\$6,789	\$7,280	\$2.70	\$2.95	\$3.20
	\$1,410	\$1,907	\$2,403	\$2,901	\$3,397	\$3,894	\$4,391	\$4,888	\$5,384	\$5,882	\$6,378	\$6,874	\$7,372			
M	\$1,436	\$1,940	\$2,443	\$2,948	\$3,452	\$3,955	\$4,460	\$4,964	\$5,467	\$5,972	\$6,476	\$6,979	\$7,484	\$2.95	\$3.20	\$3.45
	\$1,450	\$1,960	\$2,470	\$2,982	\$3,492	\$4,003	\$4,514	\$5,024	\$5,535	\$6,046	\$6,557	\$7,067	\$7,579			
N	\$1,475	\$1,993	\$2,510	\$3,029	\$3,546	\$4,063	\$4,582	\$5,099	\$5,616	\$6,135	\$6,652	\$7,169	\$7,688	\$3.20	\$3.45	\$3.70
	\$1,489	\$2,013	\$2,538	\$3,063	\$3,587	\$4,112	\$4,637	\$5,161	\$5,685	\$6,211	\$6,735	\$7,259	\$7,785			
O	\$1,517	\$2,048	\$2,580	\$3,113	\$3,645	\$4,177	\$4,710	\$5,242	\$5,773	\$6,307	\$6,838	\$7,370	\$7,903	\$3.45	\$3.70	\$3.95
	\$1,531	\$2,070	\$2,609	\$3,149	\$3,688	\$4,227	\$4,767	\$5,306	\$5,845	\$6,385	\$6,924	\$7,463	\$8,003			
P	\$1,558	\$2,104	\$2,650	\$3,198	\$3,744	\$4,291	\$4,838	\$5,384	\$5,931	\$6,478	\$7,025	\$7,571	\$8,118	\$3.70	\$3.95	\$4.20
	\$1,573	\$2,126	\$2,680	\$3,235	\$3,788	\$4,342	\$4,897	\$5,450	\$6,004	\$6,559	\$7,112	\$7,666	\$8,221			
Q	\$1,602	\$2,163	\$2,725	\$3,288	\$3,849	\$4,411	\$4,974	\$5,535	\$6,097	\$6,660	\$7,221	\$7,783	\$8,346	\$3.95	\$4.20	\$4.45
	\$1,617	\$2,186	\$2,755	\$3,325	\$3,894	\$4,463	\$5,034	\$5,603	\$6,172	\$6,743	\$7,312	\$7,881	\$8,451			

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (2) To use the chart:
1. Find the family size used in determining income eligibility for service.
 2. Move across the monthly income table to the column headed by that number.
 3. Move down the column for the applicable family size to the highest figure that is equal to or less than the family's gross monthly income. Income at or above that amount (but less than the amount in the next row) corresponds to the fees in the last three columns of that row.
 4. Choose the fee that corresponds to the number of children in the family who receive child care assistance.

[Filed Emergency After Notice 5/14/21, effective 7/1/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5717C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency After Notice

Rule making related to first amended 9% qualified allocation plan (QAP)

The Iowa Finance Authority hereby amends Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 16.35, Internal Revenue Code section 42, and Pub. L. No. 116-260.

Purpose and Summary

The Authority has been designated as the housing credit agency for the allowance of low-income housing credits under the state housing credit ceiling. The Consolidated Appropriations Act of 2021 allocates disaster tax credits under the low-income housing tax credit program for 12 Iowa counties impacted by the August 2020 derecho (i.e., the derecho disaster set-aside credits). To allow developers to apply for derecho disaster set-aside credits as part of the 2021 round of tax credits, the Authority has adopted an amendment to the 2020-21 9% QAP to be known as the First Amended 9% QAP.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5468C**. A virtual public hearing was held on March 16, 2021, at 10 a.m. The Authority received comments at the public hearing; however, the comments were suggestions to increase the tax credit cap per unit based on recent increases in construction costs. The Authority declined to amend the QAP as suggested. The Authority instead addressed the concern about rising construction costs by revising the QAP to expand the use of HOME funds to all eligible projects. This revision to the QAP allows developers to close the financing gap and complete eligible projects.

The Authority received a written comment similar to the comments received at the public hearing. The written comment also suggested increasing the tax credit cap per unit based on recent increases in construction costs. The Authority addressed this comment as described above.

No changes from the Notice have been made.

IOWA FINANCE AUTHORITY[265](cont'd)

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Authority finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on May 28, 2021, because the amendments incorporate the derecho disaster set-aside tax credit allocation, thereby increasing the amount of tax credits available to produce new housing units in counties impacted by the August 2020 derecho.

Adoption of Rule Making

This rule making was adopted by the Authority on April 7, 2021.

Fiscal Impact

The Authority has been allocated an additional authority for \$4.2 million in disaster tax credits under the Low-Income Housing Tax Credit Program (LIHTC) for the 12 Iowa counties impacted by the derecho.

Jobs Impact

After analysis and review of this rule making, the impact on jobs is expected to be consistent with the impact of previous years' QAPs. The LIHTC has had a substantial positive impact on job creation in Iowa, creating many jobs annually in the construction, finance, and property management fields, among others.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making became effective on May 28, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 12.1(2) as follows:

12.1(2) *Nine percent qualified allocation plan.* The qualified allocation plan titled Iowa Finance Authority Low-Income Housing Tax Credit Program 2020-21 9% Qualified Allocation Plan (“9% QAP”) shall be the qualified allocation plan for the allocation of 9 percent low-income housing tax credits awarded in 2020, consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The qualified allocation plan titled Iowa Finance Authority Low-Income Housing Tax Credit Program 2020-21 First Amended 9% Qualified Allocation Plan (“first amended 9% QAP”) shall be the qualified allocation plan for the allocation of 9 percent low-income housing tax credits awarded in 2021, consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The 9% QAP is and the first amended 9% QAP are incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 9% QAP does not include any

IOWA FINANCE AUTHORITY[265](cont'd)

amendments or editions created subsequent to November 6, 2019. The first amended 9% QAP does not include any amendments or editions created subsequent to February 3, 2021.

ITEM 2. Amend subrule 12.2(2) as follows:

12.2(2) 9% QAP. The 9% QAP and the first amended 9% QAP can be reviewed and copied in ~~its~~ their entirety on the authority's website at ~~www.iowafinanceauthority.gov~~ www.iowafinance.com. Copies of the 9% QAP and the first amended 9% QAP, the application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority's website. The 9% QAP incorporates by reference IRC Section 42 and the regulations in effect as of November 6, 2019. The first amended 9% QAP incorporates by reference IRC Section 42 and the regulations in effect as of February 3, 2021. Additionally, both the 9% QAP ~~incorporates~~ and the first amended 9% QAP ~~incorporate~~ by reference Iowa Code section 16.35. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's website.

[Filed Emergency After Notice 5/28/21, effective 5/28/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5713C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Rule making related to animal welfare

The Agriculture and Land Stewardship Department hereby amends Chapter 67, “Animal Welfare,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 162.16.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 162.

Purpose and Summary

The purpose of this rule making is to accomplish the following:

- Allow for larger dog playgroups, of up to 30 dogs, while maintaining the same ratio of 15 dogs to one person.
- Decrease allowable play area size from 75 square feet per dog to 50 square feet per dog.
- Allow overnight group housing of dogs within dog day cares.
- Update euthanasia guidelines to the most current version of the American Veterinary Medical Association Guidelines.
- Update language for consistency.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 2, 2020, as **ARC 5298C**. A public hearing was held on December 29, 2020, at 11 a.m. in the Second Floor Conference Room, Wallace State Office Building, Des Moines, Iowa. Three comments, two of which were submitted at the meeting and one of which was submitted in writing, focused on providing additional clarity to the rule.

Following the public hearing and after review of public comments, minor adjustments were made to provide additional clarity to the amendments that were being proposed. The substance of the amendments did not change.

Adoption of Rule Making

This rule making was adopted by the Department on May 27, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](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).

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule **21—67.1(162)**, definition of “Ample space,” as follows:
“~~Ample Adequate~~ *space*” means the animals contained within the primary enclosure all must have the ability to comfortably turn about, stand erect, sit or lie with limbs fully extended.

ITEM 2. Amend paragraph **67.3(1)“e”** as follows:
e. ~~Ample Adequate~~ lighting shall be provided by natural or artificial means, or both, during sunrise to sunset hours to allow efficient cleaning of the facilities and routine inspection of the facilities and animals contained therein.

ITEM 3. Amend paragraph **67.3(2)“d”** as follows:
d. The shape and size of the enclosure shall afford ~~ample adequate~~ space for the individual animals within the enclosure. ~~Ample Adequate~~ space includes, but is not limited to, allowing the animal the ability to comfortably reposition, turn about, stand erect, sit or lie while limbs are fully extended. Cats must have adequate space for a litter box so that litter does not contaminate food and water.

ITEM 4. Amend paragraph **67.3(2)“g”** as follows:
g. Group housing.
(1) Group housing for animal shelters, pounds, commercial breeders, pet shops, dealers, public auctions or research facilities is permitted for animals that are compatible with one another, except as otherwise stated herein. ~~Ample Adequate~~ space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed within the primary enclosure. No more than 12 adult dogs or cats may be housed in the same primary enclosure. Dogs and cats shall not be housed in the same primary enclosure.

(2) Group housing in boarding kennels and commercial kennels is permitted only if the animals are owned by the same person and are compatible or by operating as a dog day care as required in rule 21—67.8(162).

ITEM 5. Amend paragraph **67.4(3)“b”** as follows:
b. Sick, diseased or injured animals shall be provided with prompt veterinary care or disposed of by euthanasia. Euthanasia must be performed in a manner deemed acceptable by and published in the American Veterinary Medical Association Guidelines for Euthanasia of Animals: ~~2013~~ 2020 Edition.

ITEM 6. Amend paragraph **67.7(1)“e”** as follows:
e. Group housing is permitted only if the animals are owned by the same person and are compatible or by operating as a dog day care as required in rule 21—67.8(162).

ITEM 7. Amend paragraph **67.7(2)“a”** as follows:
a. Dogs, cats and other vertebrates upon which euthanasia may be permitted by law shall be destroyed only by euthanasia in a manner deemed acceptable by and published in the American Veterinary Medical Association Guidelines for Euthanasia of Animals: ~~2013~~ 2020 Edition.

ITEM 8. Amend subrule 67.8(2) as follows:
67.8(2) Subclassification of license. Dog day cares can operate as a subclassification of a commercial kennel license or boarding kennel license by complying with rule 21—67.8(162). ~~A commercial kennel~~

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

or a boarding kennel that operates as a dog day care shall not provide overnight boarding or other kennel activities unless, during the time that the day care operation is closed, the kennel is operated in a manner consistent with applicable rules including, but not limited to, paragraphs 67.3(1)“j” and 67.7(1)“e,” which restrict the commingling of dogs.

ITEM 9. Amend paragraphs 67.8(4)“a” and “b” as follows:

a. Group interaction is permitted for dogs, including dogs owned by different owners, that are compatible with one another. A facility licensed as a dog day care shall comply with all requirements in this rule during all hours of operation.

b. The play area for dogs shall provide for a minimum of ~~75~~ 50 square feet per dog. Play areas ~~smaller than 1,125 square feet~~ must have a sign placed at the entry of the play area stating the maximum number of dogs allowed in the play area at any one time.

ITEM 10. Amend paragraph 67.8(6)“f” as follows:

f. A dog day care shall not establish a playgroup composed of more than ~~45~~ 30 dogs.

ITEM 11. Amend paragraph 67.8(6)“g” as follows:

g. A dog day care shall employ sufficient staffing so that there is a minimum of one person assigned to each playgroup with 15 or fewer dogs and two people assigned to each playgroup with 16 to 30 dogs. The person person(s) supervising a playgroup must provide direct and immediate visual supervision at all times.

ITEM 12. Amend paragraph 67.9(2)“b” as follows:

b. ~~Ample Adequate~~ lighting shall be provided by natural or artificial means, or both, during sunrise to sunset hours. Animals shall be protected from excessive illumination.

ITEM 13. Amend rule 21—67.16(162) as follows:

21—67.16(162) Acceptable forms of euthanasia. The euthanasia of all animals kept in facilities regulated under Iowa Code chapter 162 and these rules shall be performed in a manner deemed acceptable by and published in the American Veterinary Medical Association Guidelines for Euthanasia of Animals: ~~2013~~ 2020 Edition. A copy of this report is on file with the department.

[Filed 5/28/21, effective 7/21/21]

[Published 6/16/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5691C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rule making related to petitions for rule making and Iowa broadband deployment program

The Economic Development Authority hereby amends Chapter 197, “Petition for Rule Making,” and rescinds Chapter 411, “Iowa Broadband Deployment Program,” and Chapter 412, “Fair Information Practices, Waiver and Variance, and Petition for Rule Making,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 15.106A and 17A.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.7 and 2020 Iowa Acts, House File 2389.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Purpose and Summary

The changes to Chapter 197, regarding petitions for rule making, amend the chapter to remove outdated references and to conform to Iowa Code section 17A.7 as amended by 2020 Iowa Acts, House File 2389.

The Authority is also rescinding Chapter 411, regarding the Iowa Broadband Deployment Program, and Chapter 412, regarding Iowa Broadband Deployment Governance Board practices. The referenced board was eliminated in 2013, and current broadband programs are administered by the Office of the Chief Information Officer. Additionally, Chapter 412 contains an inconsistency with Iowa Code section 17A.9A as amended by 2020 Iowa Acts, House File 2389, regarding rule waivers.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 24, 2021, as **ARC 5536C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Authority on May 21, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the 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 July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 261—197.1(17A) as follows:

261—197.1(17A) Petition for rule making. Any person or state agency may file a petition for rule making with the ~~department~~ authority at the Director's Office, ~~Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819~~ Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, Attn: Legal Counsel. Petitions for rule making may be delivered, mailed, or sent by email or other electronic means reasonably calculated to reach the intended recipient. A petition is deemed filed when it is received by ~~that office~~ the authority. The ~~department~~ authority must provide the petitioner with a file-stamped copy of the petition if the petitioner provides

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

the ~~department~~ authority an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

<u>BEFORE THE DEPARTMENT OF IOWA ECONOMIC DEVELOPMENT <u>AUTHORITY</u></u>		
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 ~~department's~~ authority'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 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.
6. Any request by petitioner for a meeting provided for by subrule 197.4(1).

197.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, 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.

197.1(2) The ~~department~~ authority may deny a petition because it does not substantially conform to the required form.

ITEM 2. Amend rule 261—197.2(17A) as follows:

261—197.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The ~~department~~ authority may request a brief from the petitioner or from any other person concerning the substance of the petition.

ITEM 3. Amend rule 261—197.3(17A) as follows:

261—197.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the ~~Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel~~ address indicated in rule 261—197.1(17A).

ITEM 4. Amend rule 261—197.4(17A) as follows:

261—197.4(17A) Department Authority consideration.

197.4(1) ~~Forwarding of petition and meeting~~ Meeting. ~~Within five working days after the filing of a petition, the department shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the department authority shall schedule a brief and informal meeting between the petitioner and a member of the authority staff of the department to discuss the petition. The department authority may request the petitioner to submit additional information or argument concerning the petition. The department authority 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 department authority by any person.~~

197.4(2) Action on petition. Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the ~~department~~ authority shall, 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. Petitioner shall be deemed

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

notified of the denial or grant of the petition on the date when the ~~department~~ authority mails or delivers the required notification to petitioner. The authority shall submit the petition and the disposition of the petition to the administrative rules review committee.

197.4(3) Denial of petition for nonconformance with form. 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 department's~~ rejection of the petition.

ITEM 5. Amend **261—Chapter 197**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 17A.7 ~~as amended by 1998 Iowa Acts, chapter 1202, section 11.~~

ITEM 6. Rescind and reserve **261—Chapter 411**.

ITEM 7. Rescind and reserve **261—Chapter 412**.

[Filed 5/24/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5692C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rule making related to waivers

The Economic Development Authority hereby amends Chapter 199, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 15 and 17A and 2020 Iowa Acts, House File 2389.

Purpose and Summary

2020 Iowa Acts, House File 2389, amended Iowa Code section 17A.9A to remove references to "variances" and change how agencies report on rule waivers that are granted or denied. The changes to Chapter 199 amend the rules to conform to the changes implemented by House File 2389, delete references to repealed programs, and replace references to the "department of economic development" and the "department" with references to the "economic development authority" and the "authority." These amendments also clarify that a waiver may be granted only in response to a petition and may not be granted on the Director's or Economic Development Authority Board's own motion.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5438C**. No public comments were received.

Exhibit A, Sample Petition (Request) for Waiver, has been updated in paragraph "d" and numbered paragraph "1" to clarify a petitioner must explain and prove by clear and convincing evidence that applying the rule will result in "undue hardship," rather than "hardship." These changes make the language consistent with Iowa Code section 17A.9A and with previously proposed amendments to subrule 199.2(1).

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Adoption of Rule Making

This rule making was adopted by the Authority on May 21, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the 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 July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **261—Chapter 199**, title, as follows:

UNIFORM WAIVER AND VARIANCE RULES

ITEM 2. Amend rule 261—199.1(ExecOrd11) as follows:

261—199.1(ExecOrd11 17A,15) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the department authority. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department authority.

199.1(1) Definitions.

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

“Board” or “IDED board” means the Iowa department of economic development board created by Iowa Code chapter 15 members of the economic development authority board appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“Department” or “IDED” means the Iowa department of economic development authorized by Iowa Code chapter 15.

“Director” means the director of the department of economic development authority or the director’s designee.

“Director/board” means either the director or the board depending on which one has decision-making authority pursuant to rule 261—199.2(ExecOrd11 17A,15).

“Person” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

“Waiver or variance” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

199.1(2) Authority.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

a. A waiver ~~or variance~~ from rules adopted by the ~~department~~ authority may be granted in accordance with this chapter if (1) the ~~department~~ authority has exclusive rule-making authority to promulgate the rule from which waiver ~~or variance~~ is requested or has final decision-making authority over a contested case in which a waiver ~~or variance~~ is requested; and (2) no statute or rule otherwise controls the grant of a waiver ~~or variance~~ from the rule from which waiver ~~or variance~~ is requested.

b. No waiver ~~or variance~~ may be granted from a requirement which is imposed by statute. Any waiver ~~or variance~~ must be consistent with statute.

ITEM 3. Amend rule 261—199.2(ExecOrd11) as follows:

261—199.2(ExecOrd11 17A,15) Director/board discretion. The decision on whether the circumstances justify the granting of a waiver ~~or variance~~ shall be made at the discretion of the director upon consideration of all relevant factors, ~~except for the below listed programs, for which the board shall make the decision, upon consideration of all relevant factors.~~ The director may refer a petition for waiver to the board for decision. In the case of petition referred to the board by the director, the board shall make the decision on whether the circumstances justify the granting of a waiver, upon consideration of all relevant factors.

1. ~~Community Economic Betterment Account (CEBA) program, 261—Chapter 53.~~
2. ~~New Jobs and Income Program (NJIP), 261—Chapter 58.~~
3. ~~Workforce Development Fund, 261—Chapter 8.~~
4. ~~Accelerated Career Education Program Physical Infrastructure Assistance Program (ACE PIAP), 261—Chapter 20.~~

199.2(1) Criteria for waiver ~~or variance~~. The director/board may, in response to a completed petition ~~or on its own motion~~, grant a waiver ~~or variance~~ from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director/board finds each of the following:

- a.* Application of the rule to the person at issue would result in undue hardship ~~or injustice~~ to that person; and
- b.* Waiver ~~or variance~~ on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and
- c.* Waiver ~~or variance~~ in the specific case would not prejudice the substantial legal rights of any person; and
- d.* Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

In determining whether waiver ~~or variance~~ should be granted, the director/board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

199.2(2) Special waiver ~~or variance~~ rules not precluded. These uniform waiver ~~and variance~~ rules shall not preclude the director/board from granting waivers ~~or variances~~ in other contexts or on the basis of other standards if a statute or other ~~department~~ rule authorizes the director/board to do so, and the director/board deems it appropriate to do so.

ITEM 4. Amend rule 261—199.3(ExecOrd11) as follows:

261—199.3(ExecOrd11 17A,15) Requester's responsibilities in filing a waiver ~~or variance~~ petition.

199.3(1) Application Petition. All petitions for waiver ~~or variance~~ must be submitted in writing to the Iowa ~~Department~~ of Economic Development Authority, Office of the Director, ~~200 East Grand~~ 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50309-1819 50315, Attention: Legal Counsel. Petitions for waiver may be delivered, mailed, or sent by email or other electronic means reasonably calculated to

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

reach the intended recipient. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

199.3(2) Content of petition. A petition for waiver ~~or variance~~ shall include the following information where applicable and known to the requester (for an example of a petition for waiver ~~or variance~~, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.
- b. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.
- c. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.
- e. A history of any prior contacts between the ~~department~~ authority and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver ~~or variance~~, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.
- f. Any information known to the requester regarding the ~~department's~~ authority's treatment of similar cases.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver ~~or variance~~.
- h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the ~~department~~ authority with information relevant to the waiver ~~or variance~~.

199.3(3) Burden of persuasion. When a petition is filed for a waiver ~~or variance~~ from a ~~department~~ rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director/board should exercise its discretion to grant the petitioner a waiver ~~or variance~~.

ITEM 5. Amend rule 261—199.4(ExecOrd11) as follows:

261—199.4(ExecOrd11 17A,15) Notice. The ~~department~~ authority shall acknowledge a petition upon receipt. The ~~department~~ authority shall ensure that 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, within 30 days of the receipt of the petition. In addition, the ~~department~~ authority may give notice to other persons. To accomplish this notice provision, the ~~department~~ authority may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law or who may be impacted by the requested waiver, and provide a written statement to the ~~department~~ authority attesting that notice has been provided.

ITEM 6. Amend rule 261—199.5(ExecOrd11) as follows:

261—199.5(ExecOrd11 17A,15) Department Authority responsibilities regarding petition for waiver ~~or variance~~.

199.5(1) Additional information. Prior to issuing an order granting or denying a waiver ~~or variance~~, the director/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 director/board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director/board, the director's/board's designee, a committee of the board, or a quorum of the board.

199.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver ~~or variance~~ of

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

rule filed within a contested case; (b) when the director/board so provides by rule or order; or (c) when a statute so requires.

199.5(3) Ruling. An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

199.5(4) Conditions. The director/board may condition the grant of the waiver ~~or variance~~ on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

199.5(5) Time for ruling. The director/board shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable, but in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director/board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

199.5(6) and 199.5(7) No change.

ITEM 7. Rescind rule 261—199.6(ExecOrd11) and adopt the following **new** rule in lieu thereof:

261—199.6(17A,15) Submission of waiver information. Within 60 days of granting or denying a waiver, the authority shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rule(s) 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 authority's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

ITEM 8. Amend rule 261—199.7(ExecOrd11) as follows:

261—199.7(ExecOrd11 17A,15) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver ~~or variance~~ upon appropriate notice if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver ~~or variance~~ have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

ITEM 9. Amend rule 261—199.8(ExecOrd11) as follows:

261—199.8(ExecOrd11 17A,15) Violations. Violation of conditions in the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

ITEM 10. Amend rule 261—199.9(ExecOrd11) as follows:

261—199.9(ExecOrd11 17A,15) Defense. After the director/board issues an order granting a waiver ~~or variance~~, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

ITEM 11. Amend rule 261—199.10(ExecOrd11,17A) as follows:

261—199.10(ExecOrd11,17A,15) Appeals. Granting or denying a request for waiver ~~or variance~~ is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A

Sample Petition (Request) for Waiver/~~Variance~~

BEFORE THE IOWA ~~DEPARTMENT OF~~ ECONOMIC DEVELOPMENT AUTHORITY

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).



PETITION FOR WAIVER

Requests for waiver ~~or variance~~ from a ~~department~~ an authority rule shall include the following information in the petition for waiver ~~or variance~~ where applicable and known:

- a. Provide the petitioner's (person asking for a waiver ~~or variance~~) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver ~~or variance~~ is requested.
- c. Describe the specific waiver ~~or variance~~ requested; include the exact scope and time period that the waiver ~~or variance~~ will extend.
- d. Explain the important facts that the petitioner believes justify a waiver ~~or variance~~. Include in your answer why (1) applying the rule will result in undue hardship or injustice to the petitioner; and (2) granting a waiver ~~or variance~~ to the petitioner is consistent with the public interest; and (3) granting the waiver ~~or variance~~ will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.
- e. Provide history of prior contacts between the ~~department~~ authority and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver ~~or variance~~; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.
- f. Provide information known to the petitioner regarding the ~~department's~~ authority's treatment of similar cases.
- g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver ~~or variance~~.
- h. Provide the name, address, and telephone number of any person or entity who would be adversely affected or disadvantaged by the grant of the waiver ~~or variance~~.
- i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver ~~or variance~~.
- j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the ~~department~~ authority with information relevant to the waiver ~~or variance~~.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

Petitioner should note the following when requesting or petitioning for a waiver ~~or variance~~:

1. The petitioner has the burden of proving, by clear and convincing evidence, the following to the director/board: (a) application of the rule to the petitioner would result in undue hardship or injustice to the petitioner; and (b) waiver ~~or variance~~ on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver ~~or variance~~ in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable,

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The ~~department~~ authority may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Iowa ~~Department of Economic Development~~ Authority, Office of the Director, ~~200 East Grand~~ 1963 Bell Avenue, Suite 200, Des Moines, Iowa ~~50309-1819~~ 50315, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

ITEM 12. Amend ~~261~~—**Chapter 199**, implementation sentence, as follows:

These rules are intended to implement ~~Executive Order Number 11 and 2000 Iowa Acts, House File 2206~~ Iowa Code section 17A.9A and chapter 15.

[Filed 5/24/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5693C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rule making related to rural housing needs assessment grant program

The Economic Development Authority hereby amends Chapter 220, “Rural Housing Needs Assessment Grant Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 15.106A and 2019 Iowa Acts, Senate File 608.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 608.

Purpose and Summary

The Rural Housing Needs Assessment Grant Program, administered pursuant to 2019 Iowa Acts, Senate File 608, supports the interpretation and implementation of hard data and housing-related information specific to the communities applying for financial assistance under the program. Under the current rules, only an Iowa city is an eligible applicant. These amendments allow applications by cities, counties, or entities that have entered into agreements with a qualified city or county pursuant to Iowa Code chapter 28E.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 24, 2021, as **ARC 5535C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Authority on May 21, 2021.

ECONOMIC DEVELOPMENT AUTHORITY[261](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 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 July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 261—220.2(88GA,SF608) as follows:

261—220.2(88GA,SF608) Definitions. For purposes of this chapter, unless the context otherwise requires:

“*Agreement*” means a contract for financial assistance under the program describing the terms on which financial assistance is to be provided.

“*Applicant*” means an Iowa ~~city~~ community applying for financial assistance under the program. ~~The terms “applicant” and “community” may be used interchangeably in this chapter.~~

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

“*Community*” means a county, an incorporated city, or a community designee.

“*Community designee*” means a legal entity established or designated by a county or incorporated city in an agreement pursuant to Iowa Code chapter 28E for the purposes of evaluating housing needs.

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

“*Financial assistance*” means a grant made by the authority to an applicant approved for funding under the program.

“*Program*” means the procedures, agreement, terms, and assistance established and provided pursuant to this chapter.

ITEM 2. Amend paragraph **220.3(2)“a”** as follows:

a. Forms. All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority or by visiting the authority's website: Iowa Economic Development Authority, Community Development Division, ~~200 East Grand Avenue, Des Moines, Iowa 50309, (515)328-3000, iowaeconomicdevelopment.com~~ 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, (515)348-6200, iowaeda.com.

ITEM 3. Amend subrule 220.4(1) as follows:

220.4(1) Program eligibility. An applicant must meet the following eligibility criteria to qualify for financial assistance under this program:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- a. The applicant must be an Iowa ~~city~~ community as defined in rule 261—220.2(88GA,SF608).
- b. ~~The~~ An applicant that is an incorporated city must have a population of 20,000 or fewer and shall not be contiguous to a city with a population of 40,000 or greater. An applicant that is a county shall be one of the 88 least populous counties in the state. An applicant that is a community designee shall have entered an agreement pursuant to Iowa Code chapter 28E with an incorporated city or county meeting the population criteria in this paragraph.
- c. to h. No change.

[Filed 5/25/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5679C**ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed****Rule making related to water quality certification requests**

The Environmental Protection Commission (Commission) hereby amends Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," and Chapter 61, "Water Quality Standards," Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.105 and 455B.173.

Purpose and Summary

This rule making streamlines the process by which the Department of Natural Resources (Department) certifies that each United States Army Corps of Engineers (Corps) nationwide or regional Federal Water Pollution Control Act (the Act) Section 404 permit (Corps's nationwide or regional permit), or other federal permit or license, meets Iowa's water quality requirements. This rule making achieves this by removing the requirement that the Department certify via rule making that each Corps's nationwide or regional permit meets Iowa's water quality requirements. Such certification is required by Section 401 of the Act, but certification via rule making is not. Certification by rule making is unnecessarily burdensome and can delay the applicability of the benefits of the Corps's nationwide or regional permits to the regulated community. In addition, the rule making reorganizes and clarifies the list of potential conditions that may be included by the Department in state water quality certification of federal permits and licenses. This reorganization places the conditions together in one portion of the rule. Despite the removal of required rule making, the procedure for certifying the Corps's federal permits will continue to provide opportunity for public comments.

Finally, other amendments reflect recently promulgated federal rules found in 40 CFR part 121. These changes include substantive edits to the chapter as well as semantic changes. Specifically, the following amendments are adopted: (1) a "prefiling meeting request" must be made 30 days before a certification request; (2) the decertification process contained in the original Notice was removed because the federal rules do not contemplate decertification; (3) all references to an "application" now refer to a "certification request"; (4) all references to the Corps have been replaced with a broader "federal agency" or "federal permits and licenses" to clarify that the rule is actually applicable to all federal permits and licenses that

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

require state water quality certifications; and (5) all references to “water quality standards” now refer to “water quality requirements.” The new term “water quality requirement” is being added to the applicable list of definitions in rule 567—60.2(455B,17A). “Water quality requirement” is defined by reference to the corresponding federal definition.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 12, 2020, as **ARC 5134C**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5508C**. A virtual public hearing was held on March 30, 2021, at 3 p.m. One oral comment was received during the virtual hearing. One written comment was received during the public comment period. Both comments were from the Iowa Environmental Council. The comments requested changes beyond the scope of federal rules on water quality certification. No changes from the Amended Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on May 18, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definition of “Water quality requirement” in rule **567—60.2(455B)**:

“Water quality requirement” means the same as defined in 40 CFR §121.1(n).

ITEM 2. Amend paragraph **61.2(2)“g”** as follows:

g. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

to 567—Chapters 70, 71, and 72 and this policy. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, and 52 as well as Corps regional permits 7, 27, 33, and 34 as revised through July 16, 2014, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

(4) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

(5) For single family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

(6) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

(7) For projects that impact an outstanding national resource water, outstanding Iowa water, fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(8) For nationwide permits when the Corps' district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(9) Heavy equipment shall not be used or operated within the stream channel. If in-stream work is unavoidable, it shall be performed in such a manner as to minimize the duration of the disturbance, turbidity increases, substrate disturbance, bank disturbance, and disturbance to riparian vegetation. This condition does not further restrict otherwise authorized drainage ditch maintenance activities (Iowa Section 401 Water Quality Certification condition).

Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permits or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require a preconstruction notice under nationwide permit conditions.

ITEM 3. Adopt the following **new** subrule 61.2(6):

61.2(6) State water quality certification. This subrule describes the procedures the department will follow when processing certification requests for state water quality certification (certification) of federally issued licenses and permits pursuant to Section 401 of the Act, including but not limited to permits issued by the United States Corps of Engineers (Corps) pursuant to Section 404 of the Act.

a. General. The department shall receive, consider, and process certification requests in accordance with Section 401 of the Act.

b. Certification requests. Certification requests shall be made on the department's Section 401 Water Quality Certification Request form. This form is available on the department's website. Individual permits or licenses issued by federal agencies require submission of a prefilming meeting request and

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

certification request to obtain certification. The prefilng meeting request must be submitted to the department at least 30 days prior to submitting the certification request.

c. Public notice. The department shall issue a public notice of a certification request. The public notice may be a joint public notice issued by a federal agency on behalf of the department. When there is no joint public notice issued by the federal agency, a public notice issued by the department will be provided on its website. The public notice shall solicit comments from the public regarding whether the proposed project complies with state water quality requirements in accordance with Section 401 of the Act. The public notice shall specify the procedure and time frame for submitting comments on the proposed project.

d. Public notice for new or renewed nationwide or regional permits. The department shall provide additional notice to the public of certification of new or renewed nationwide or regional permits issued by the Corps pursuant to Section 404 of the Act. The department shall provide such notice on its website. The public notice shall solicit comments from the public regarding whether the proposed permit complies with state water quality requirements in accordance with Section 401 of the Act. The public notice shall specify the procedure and time frame for submitting comments on the proposed certification.

e. Department action on certification request. After the close of the public comment period and consideration of comments received, the department may issue a certification letter which may include conditions necessary to ensure compliance with state water quality requirements, waive issuance of the certification, or deny certification in accordance with Section 401 of the Act.

f. Certification of federal permits or licenses may require conditions, which may include one or more of the following, to ensure water quality requirements are met:

(1) During construction and upon completion of the project, actions must be taken to prevent pollution affecting public health, fish, shellfish, wildlife, and recreation due to turbidity, pH, nutrients, suspended solids, floating debris, visible oil and grease, or other pollutants entering waters of the state;

(2) Equipment used in waters of the state shall be cleaned of all hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, or other construction-related, potentially hazardous substances before arriving on site. Wash water shall not be discharged into a water of the state;

(3) All cleared vegetative material shall be properly managed in such a manner that it cannot enter a water of the state and cause a violation of water quality requirements;

(4) All construction debris shall be properly managed in such a manner that it cannot enter a water of the state;

(5) Erosion shall be managed so that sediment is not discharged to a water of the state in a manner that causes a violation of water quality requirements;

(6) Riprap, treated lumber products, and temporary structures shall consist of clean material free of coatings of potentially hazardous substances. No asphalt or petroleum-based material shall be used as or included in material placed in any water of the state or within the high-water table;

(7) Stockpiled dredged materials on the shore shall be managed so that sediment is not discharged in a manner that causes a violation of water quality requirements;

(8) Water quality monitoring will be required for Federal Energy Regulatory Commission hydropower projects at the baseline, construction and operational phases of the project;

(9) Hydraulically dredged material shall be managed to ensure the return water meets water quality requirements.

g. Duration of certification. The department's certification shall remain in effect until the expiration date of the applicable permit or license.

[Filed 5/18/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5680C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to subsidized guardianship program**

The Human Services Department hereby amends Chapter 204, "Subsidized Guardianship Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 234.

State or Federal Law Implemented

This rule making implements, in whole or in part, 45 CFR 1356.21 (Foster Care Maintenance Payments and Assistance Program), 42 U.S.C. 672 (Foster Care Maintenance Payments Program), and 42 U.S.C. 673 (Adoption and Guardianship Assistance Program).

Purpose and Summary

Current rules are amended to lower the age for subsidized guardianship payments from 14 to 10 years of age. Rules are also amended to provide for the extension of guardianship subsidies until the youth reaches age 21 under certain limited circumstances. A child who has a diagnosis of intellectual, mental or medical disability or who has not graduated from high school will be able to continue the subsidy until age 21.

Under these amendments, there will no longer be an age distinction for younger siblings to be eligible for subsidized guardianship payments when those siblings reside in the same home as a child who meets eligibility requirements.

These amendments will also allow Department staff to suspend subsidized guardianship payments under certain conditions. These amendments specify when and how such suspensions would occur.

Additionally, minor changes have been made to improve the clarity of the rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5505C**. The Department received one comment in support of the rules. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on May 13, 2021.

Fiscal Impact

There will be a fiscal impact resulting from the lowering of the age requirement from 14 to 10 years of age. This should be offset by the additional IV-E dollars collected for payment and the exit of children from the foster care system. There will also be a financial impact resulting from allowing children to receive the subsidized guardianship payment until completion of high school. State dollars will be used to cover these costs. Based on data provided, the Department estimates a new cost of \$151,356 annually to serve 24 children on average per month. The Department realizes that costs for the program will rise by the number cited above. However, the Department also notes these costs would have been realized in either adoption or foster care. Due to this consideration, the impact of these costs will be minimal, if there is any impact at all to the overall Child Welfare budget.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule ~~441—204.1(234)~~, definitions of “Child” and “Sibling group,” as follows:

~~“Child” means a person who has not attained the age of 18.~~ either a person less than 18 years of age or a person 18, 19, or 20 years of age who meets one or more of the following conditions:

1. Is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma.
2. Is attending an instructional program leading to a high school equivalency diploma.
3. Has been identified by the director of special education of the area education agency as a child requiring special education as defined in Iowa Code section 256B.2(1).

~~“Sibling group” means at least two children who are whole or half-siblings. A sibling group may include adopted children who have a common parent. Stepsiblings are not included as part of the sibling group.~~

ITEM 2. Amend subrule 204.2(1) as follows:

204.2(1) General conditions of eligibility. The guardian named in a permanency order under Iowa Code section 232.104(2) “d”(1) or Iowa Code chapter 633 for a child who was previously in the custody of the department is eligible for subsidy when all of the following conditions exist:

- a. No change.
- b. The child is either:
 - (1) ~~14~~ Ten years of age or older and consents to the guardianship; or
 - (2) ~~No younger than 12 years of age and part~~ Part of a sibling group with a child aged ~~14~~ ten or older.
- c. and d. No change.
- e. A child ~~12 years of age or older and who is~~ part of a sibling group with a child ~~14~~ ten years of age or older may be eligible for subsidy if all criteria are met. The following conditions for the younger sibling shall also be met:
 - (1) and (2) No change.

ITEM 3. Amend subrule 204.3(5) as follows:

204.3(5) Determination of eligibility after age 18. The department shall review the subsidy agreement when the child reaches the age of 17½ to determine whether the child is eligible to receive subsidy to the age of 21 to complete high school or equivalency or due to the child's physical, intellectual, or mental health disability.

- a. and b. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. Documentation of the child's diagnosed disability shall be provided by the child's ~~parents~~ guardian to the department to make the determination of continued eligibility to the age of 21.

d. Upon the child's reaching the age of 18, the subsidy may continue until the child completes courses leading to a high school diploma or equivalency or reaches the age of 21. Documentation of school enrollment and completion shall be provided by the child's guardian.

ITEM 4. Amend rule 441—204.5(234) as follows:

441—204.5(234) Parental liability. These subsidy payments are considered foster care payments for purposes of child support recovery and as such create a support debt for the legally responsible parent or parents.

ITEM 5. Renumber rules **441—204.6(234)** to **441—204.9(234)** as **441—204.7(234)** to **441—204.10(234)**.

ITEM 6. Adopt the following new rule 441—204.6(234):

441—204.6(234) Determination of ongoing subsidy eligibility and suspension of subsidy payments.

204.6(1) Eligibility for continuation of guardianship subsidy shall be evaluated when the department has good cause to suspect the guardian is not providing financial support, or is no longer legally responsible for the child. Good cause includes, but is not limited to, the following circumstances:

- a.* The child is placed in out-of-home care under Iowa Code chapter 232.
- b.* A person alleges the guardian is not providing financial support to the child.
- c.* A person other than the guardian is awarded legal custody of the child.
- d.* A person other than the guardian is appointed as the guardian of the child.
- e.* The child has applied for food assistance or other benefits.
- f.* The child has not resided with the guardian for the past 30 consecutive days.
- g.* The guardian is incarcerated.
- h.* The guardian is awaiting trial for criminal charges related to harm caused to a child in the home.

204.6(2) The department shall contact the child's guardian via letter, telephone, or electronic or other means and document such efforts if an evaluation is determined to be necessary.

204.6(3) If such an evaluation occurs, the child's guardian shall provide documentation of support, including receipts, to the department upon request.

204.6(4) Upon completion of the department's evaluation of the child's continued eligibility for guardianship subsidy, the department shall issue a written notice to the guardian documenting required ongoing actions by the guardian, including an expectation of continued cooperation by the guardian to provide documentation of ongoing support to the child at the request of the department.

204.6(5) The department shall suspend guardianship subsidy payments if the guardian refuses to cooperate with any department evaluation designed to determine legal responsibility for the child or to determine whether the guardian is providing financial support for the child.

204.6(6) In the event the evaluation has determined the guardianship subsidy payment will be suspended, modified, or terminated, the department shall notify the guardian with proper notice, using Notice of Decision Form 470-5613.

204.6(7) When the child has resided out of the guardian's home for 30 consecutive days, the department shall request a renegotiation of the Guardianship Subsidy Agreement with the guardian to reduce or suspend payments as agreed to by the guardian.

ITEM 7. Amend renumbered rule 441—204.7(234) as follows:

441—204.7(234) Termination of subsidy. A Guardianship Subsidy Agreement shall remain in effect until the subsidy is terminated based on one of the grounds listed in this rule. The subsidy shall terminate when any of the following occur, and a notice shall be sent which states the reason for the termination:

1. The child reaches the age of 18, unless the department determines that the subsidy may continue until the child reaches the age of ~~19~~ 21 to facilitate the child's completion of high school or a high school equivalency diploma.

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. to 10. No change.

[Filed 5/14/21, effective 8/1/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5719C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to waivers

The Inspections and Appeals Department hereby amends Chapter 6, “Uniform Waiver and Variance Rules,” Chapter 41, “Psychiatric Medical Institutions for Children (PMIC),” Chapter 50, “Health Care Facilities Administration,” Chapter 51, “Hospitals,” Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 60, “Minimum Physical Standards for Residential Care Facilities,” Chapter 61, “Minimum Physical Standards for Nursing Facilities,” Chapter 63, “Residential Care Facility—Three- to Five-Bed Specialized License,” Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” and Chapter 71, “Subacute Mental Health Care Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 10A.104(5).

State or Federal Law Implemented

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

Purpose and Summary

These amendments update rules in accordance with changes included in 2020 Iowa Acts, House File 2389. The legislation called for removal of the word “variance” when the word is used in relation to “waiver.” This rule making also removes a reference to granting a waiver upon the Department’s own motion, updates an outdated term for administrative rules, and updates references to the Department’s attached units.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5560C**. No public comments were received. One change from the Notice has been made. A technical change has been made to the definition of “attached units” in rule 481—6.2(10A,17A,ExecOrd11). Because the definition of “attached units” was also amended in **ARC 5670C** (IAB 6/2/21) to strike the reference to the “hospital licensing board,” those words have been removed from the definition in this rule making to reflect the current wording of the definition. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on May 26, 2021.

Fiscal Impact

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

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **481—Chapter 6**, title, as follows:

UNIFORM WAIVER AND VARIANCE RULES

ITEM 2. Amend rule 481—6.1(10A,17A,ExecOrd11) as follows:

481—6.1(10A,17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

ITEM 3. Amend rule **481—6.2(10A,17A,ExecOrd11)**, definition of “Attached units,” as follows:
 “Attached units” means units attached to the department and includes the employment appeal board, ~~state citizen foster care review board~~ child advocacy board, racing and gaming commission, and state public defender’s office.

ITEM 4. Amend rules 481—6.4(10A,17A,ExecOrd11) to 481—6.8(10A,17A,ExecOrd11) as follows:

481—6.4(10A,17A,ExecOrd11) Compliance with statute. The department shall not grant a petition for waiver ~~or a variance~~ from a rule unless a statute or other provision of law has delegated authority to the department sufficient to justify that action and the waiver ~~or variance~~ is consistent with the statute or other provision of law. No waiver ~~or variance~~ may be granted from a requirement that is imposed by statute, unless the statute itself specifically authorizes that action. Any waiver ~~or variance~~ must be consistent with statute.

481—6.5(10A,17A,ExecOrd11) Criteria for waiver ~~or variance~~. At the sole discretion of the director/board, the director/board may issue an order, in response to a completed petition ~~or on the department’s own motion~~, granting a waiver ~~or variance~~ from a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person or a specific and narrowly drawn class of persons if the director/board finds based on clear and convincing evidence that:

1. The application of the rule to the petitioner would pose an undue hardship on the person or class of persons for whom the waiver ~~or variance~~ is requested;
2. The waiver ~~or variance~~ from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person;

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3. The provisions of a rule subject to a petition for a waiver ~~or variance~~ 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 ~~or variance~~ is requested.

481—6.6(10A,17A,ExecOrd11) Filing of petition. A petition for a waiver ~~or variance~~ must be submitted in writing to the Department of Inspections and Appeals, Office of the Director, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. If the petition relates to a pending contested case, the petition shall also be filed in the contested case proceeding.

481—6.7(10A,17A,ExecOrd11) Content of petition. A petition for waiver ~~or variance~~ shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver ~~or variance~~ is being requested and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.

3. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.

4. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.

5. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department that would be affected by the proposed waiver ~~or variance~~, including a description of each regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department within the last five years.

6. Any information known to the requester regarding the department's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver ~~or variance~~.

481—6.8(10A,17A,ExecOrd11) Additional information. Prior to issuing an order granting or denying a waiver ~~or variance~~, the department 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 department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department or department's designee.

ITEM 5. Amend rules 481—6.10(10A,17A,ExecOrd11) to 481—6.17(10A,17A,ExecOrd11) as follows:

481—6.10(10A,17A,ExecOrd11) 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 ~~or variance~~ of rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver ~~or variance~~ only when the department so provides by rule or order or is required to do so by statute.

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481—6.11(10A,17A,ExecOrd11) Ruling. An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

6.11(1) Director/board discretion. The decision on whether the circumstances justify the granting of a waiver ~~or variance~~ shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the applicable board, commission or state public defender shall make the decision, upon consideration of all relevant factors:

- a. Employment appeal board, 486—Chapter 1.
- b. ~~Hospital licensing board, 481—Chapter 51.~~
- e. b. ~~State citizen foster care review~~ Child advocacy board, 489—Chapter 1.
- ~~d. c.~~ Racing and gaming commission, 491—Chapter 1.
- e. d. State public defender's office, 493—Chapter 1.

6.11(2) Burden of persuasion. The petitioner has the burden of persuasion when a petition is filed for a waiver ~~or variance~~ from a department rule. The standard of proof is clear and convincing evidence.

6.11(3) Special waiver ~~or variance~~ rules not precluded. This chapter shall not preclude the department from granting waivers ~~or variances~~ in other contexts or on the basis of other standards if a statute authorizes the department to do so and the department deems it appropriate to do so.

6.11(4) Administrative deadlines. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

6.11(5) Conditions. The director/board may condition the granting of the waiver ~~or variance~~ on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means and in compliance with the following provisions:

- a. Each petition for a waiver ~~or variance~~ shall be evaluated by the department based on the unique, individual circumstances set out in the petition;
- b. A waiver ~~or variance~~, if granted, shall be drafted by the department so as to provide the narrowest exception possible to the provisions of the rule;
- c. The department may place on a waiver ~~or variance~~ a condition that the department finds desirable to protect the public health, safety, and welfare;
- d. A waiver ~~or variance~~ shall not be permanent, unless the petitioner can show that a temporary waiver ~~or variance~~ would be impracticable; and
- e. If a temporary waiver ~~or variance~~ is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver ~~or variance~~ may be renewed if the department finds that all of the factors set out in rule ~~481—6.5(10A,17A,ExecOrd11)~~ remain valid.

6.11(6) Time for ruling. The director/board shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director/board has the discretion to wait until the contested case is resolved before entering an order on the petition for waiver ~~or variance~~.

6.11(7) When deemed denied. Failure of the director/board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director/board.

6.11(8) 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.

481—6.12(10A,17A,ExecOrd11) Public availability.

6.12(1) Subject to the provisions of Iowa Code section 17A.3(1)“e,” the department shall maintain a record of all orders granting or denying waivers ~~and variances~~ under this chapter. All final rulings in response to requests for waivers ~~or variances~~ shall be indexed and available to members of the public at the director's office.

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~~6.12(2) Twice each year~~ Within 60 days of granting or denying a waiver, the department must ~~prepare a report that:~~ make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information.

a. The submission shall:

- 1. ~~(1)~~ ~~Identifies~~ Identify the rules for which a waiver ~~or variance~~ has been granted or denied;
- 2. ~~(2)~~ ~~The~~ Identify the number of times a waiver ~~or variance~~ was granted or denied for each rule;
- 3. ~~(3)~~ ~~A~~ Include a citation to the statutory provisions implemented by these rules; and
- 4. ~~(4)~~ ~~A~~ Include a general summary of the reasons justifying the department's actions.

b. To the extent practicable, the department shall include information detailing the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

481—6.13(10A,17A,ExecOrd11) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver ~~or variance~~ upon appropriate notice and hearing if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver ~~or variance~~ have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

481—6.14(10A,17A,ExecOrd11) Violations. Violation of conditions in the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

481—6.15(10A,17A,ExecOrd11) Defense. After the director/board issues an order granting a waiver ~~or variance~~, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

481—6.16(10A,17A,ExecOrd11) Appeals. Any request for an appeal from a decision granting or denying a waiver ~~or variance~~ shall be in accordance with the procedures provided in Iowa Code chapter 17A and ~~departmental rules~~ rules adopted by the department. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

481—6.17(10A,17A,ExecOrd11) Sample petition for waiver ~~or variance~~.

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

Petition by (insert the name of petitioner)
for the waiver of (insert rule citation)
relating to (insert the subject matter).



PETITION FOR WAIVER

Include the following information in the petition for waiver where applicable and known:

- 1. Provide the petitioner's (the person that is asking for the waiver ~~or variance~~) name, address and telephone number.
- 2. Describe and cite the specific rule from which a waiver ~~or variance~~ is requested.
- 3. Describe the specific waiver ~~or variance~~ requested. Include the exact scope and time period that the waiver ~~or variance~~ will extend.
- 4. Explain the important facts that the petitioner believes justify the waiver ~~or variance~~. Include in your explanation (a) why application of the rule would pose an ~~and~~ undue hardship to the petitioner; (b) why granting the waiver ~~or variance~~ would not prejudice the substantial legal rights of any person; (c) state whether the provisions of a rule subject to this petition are specifically mandated by statute or another provision of law; and (d) state whether public health, safety and welfare will be affected if the requested waiver ~~or variance~~ is granted.
- 5. Provide history of prior contacts between the department and the petitioner relating to the regulated activity, license, audit, investigation, inspection or representation that would be affected

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by the waiver ~~or variance~~. In that history, include a description of each affected regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department within the last five years.

6. Provide information known to the petitioner regarding the department's treatment of similar cases.

7. Provide the name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.

8. Provide the name, address and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver ~~or variance~~.

9. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver ~~or variance~~.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

ITEM 6. Amend rule 481—41.5(135H) as follows:

481—41.5(135H) ~~Variance~~ Waivers. ~~Variance~~ Waivers from these rules may be granted by the director of the department:

1. When the need for a ~~variance~~ waiver has been established; and
2. When there is no danger to the health, safety, welfare or rights of any child.

The ~~variance~~ waiver will apply only to a specific PMIC.

~~Variance~~ Waivers shall be reviewed at the time of each licensure survey by the department to determine continuing need.

41.5(1) To request a ~~variance~~ waiver, the licensee must:

- a. Apply in writing on a form provided by the department;
- b. Cite the rule or rules from which a ~~variance~~ waiver is desired;
- c. State why compliance with the rule or rules cannot be accomplished;
- d. Explain how the ~~variance~~ waiver is consistent with the individual program plans; and
- e. Demonstrate that the requested ~~variance~~ waiver will not endanger the health, safety, welfare or rights of any child.

41.5(2) Upon receipt of a request for ~~variance~~ waiver, the director shall:

- a. Examine the rule from which the ~~variance~~ waiver is requested;
- b. Evaluate the requested ~~variance~~ waiver against the requirement of the rule to determine whether the request is necessary to meet the needs of the children; and
- c. Examine the effect of the requested ~~variance~~ waiver on the health, safety or welfare of the children.

ITEM 7. Amend paragraph **41.16(1)“b”** as follows:

- b. ~~Variance~~ Waiver requests and responses;

ITEM 8. Amend subparagraph **50.8(1)“a”(2)** as follows:

- (2) ~~Variance~~ Waiver requests and responses,

ITEM 9. Amend subrule 51.38(2) as follows:

51.38(2) Long-term care service general requirements. The general requirements for the hospital's long-term care service shall be the same as required by Iowa Code chapter 135C and the rules promulgated under its authority for the category of health care facility involved. Exceptions to those

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rules requiring distinct parts to be established may be waived where it is found to be in the best interest of the long-term care resident and of no detriment to the patients in the hospital.

Requests for ~~variances~~ waivers to other rules for which equivalent health, safety and welfare provisions are provided may be made in accordance with the appropriate health care facility rules. In any case where a distinct part has been established for long-term residents or where the department has given approval for the intermingling of such residents with acute care patients, the same provisions and rules promulgated under Iowa Code chapter 135C shall be applicable. These rules include, but are not limited to, the same restrictions, obligations, programs of care, personal and rehabilitative services and all of the conveniences and considerations which the residents would normally have received in a licensed health care facility.

ITEM 10. Amend subrules 51.50(2) and 51.50(3) as follows:

51.50(2) *Submission of construction documents.*

a. Submissions of architectural technical documents, engineering documents, and plans and specifications to the building code commissioner are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.

b. Submissions shall comply with the provisions of rule 661—300.4(103A).

c. The responsible design professional shall certify that the building plans meet the requirements specified in subrule 51.50(1), unless a ~~variance~~ waiver has been granted pursuant to subrule 51.50(3).

51.50(3) *Variances Waivers.* The director of the department may grant ~~variances~~ waivers to building and construction guidelines as contained in the Guidelines for Design and Construction of Hospitals, 2018 edition. The hospital or off-site premises must submit a ~~variance~~ waiver request in writing to the director. The request must demonstrate how patient safety and the quality of care offered will not be compromised by the ~~variance~~ waiver. The facility must demonstrate its ability to completely fulfill all other requirements of the service. The director shall make a written determination of the request. In determining whether a ~~variance~~ waiver request shall be granted, the director shall give consideration to the following conditions and to any other conditions the director deems relevant:

a. to c. No change.

d. The ~~variance~~ waiver shall be limited to the specific project under consideration and shall not be construed as establishing a precedent for similar acceptance in other cases;

e. and f. No change.

ITEM 11. Amend rule 481—57.2(135C,17A) as follows:

481—57.2(135C,17A) *Waiver or variance.* A waiver ~~or variance~~ from these rules may be granted by the director of the department in accordance with 481—Chapter 6. A request for waiver ~~or variance~~ will be granted or denied by the director within 120 calendar days of receipt.

ITEM 12. Amend rule 481—58.2(135C) as follows:

481—58.2(135C) *Variances Waivers.* Variances Waivers from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for ~~variance~~ a waiver has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the ~~variance~~ waiver will apply only to an individual nursing facility. Variances Waivers will be reviewed at the discretion of the director of the department of inspections and appeals.

58.2(1) To request a ~~variance~~ waiver, the licensee must:

a. Apply for ~~variance~~ a waiver in writing on a form provided by the department;

b. Cite the rule or rules from which a ~~variance~~ waiver is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangements or compensating circumstances which justify the ~~variance~~ waiver;

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e. Demonstrate that the requested variance waiver will not endanger the health, safety, or welfare of any resident.

58.2(2) Upon receipt of a request for variance a waiver, the director of inspections and appeals will:

a. Examine the rule from which variance a waiver is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance waiver on the health, safety, or welfare of the residents;

d. Consult with the applicant if additional information is required.

58.2(3) Based upon these studies, approval of the variance waiver will be either granted or denied within 120 days of receipt.

ITEM 13. Amend rule 481—60.2(135C) as follows:

481—60.2(135C) Variances Waivers. Procedures for variances waivers in rule 481—57.2(135C) or 481—63.2(135C) ~~of the rules of this department~~ are hereby incorporated by reference as part of this chapter. Certain occupancies, conditions in the area, or the site may make compliance with the rules impractical or impossible. Certain conditions may justify minor modification of the rules. In specific cases, variances waivers to the rules may be permitted by the reviewing authority.

ITEM 14. Amend subrule 61.3(4) as follows:

61.3(4) The responsible design professional shall certify that the building plans meet the requirements specified in this chapter, unless a variance waiver has been granted pursuant to rule 481—61.4(135C).

ITEM 15. Amend rule 481—61.4(135C) as follows:

481—61.4(135C) Variances Waivers.

61.4(1) Procedures in rule 481—58.2(135C) for requesting a variance waiver are incorporated by reference as part of this chapter.

61.4(2) Certain resident populations, conditions in the area, or the site may justify variances waivers. In specific cases, variances waivers to the rules may be granted by the director after the following conditions are met:

a. to f. No change.

ITEM 16. Amend rule 481—63.2(135C,17A) as follows:

481—63.2(135C,17A) Waiver or variance. A waiver ~~or variance~~ from these rules may be granted by the director of the department in accordance with 481—Chapter 6. A request for waiver ~~or variance~~ will be granted or denied by the director within 120 calendar days of receipt.

ITEM 17. Amend rule 481—64.2(135C) as follows:

481—64.2(135C) Variances Waivers. Variances Waivers from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance a waiver has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance waiver will apply only to an individual intermediate care facility for the intellectually disabled. Variances Waivers will be reviewed at the discretion of the director of the department of inspections and appeals.

64.2(1) To request a variance waiver, the licensee must:

a. Apply for variance a waiver in writing on a form provided by the department;

b. Cite the rule or rules from which a variance waiver is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangements or compensating circumstances which justify the variance waiver;

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e. Demonstrate that the requested variance waiver will not endanger the health, safety, or welfare of any resident.

64.2(2) Upon receipt of a request for variance a waiver, the director of the department of inspections and appeals will:

a. Examine the rule from which variance a waiver is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance waiver on the health, safety, or welfare of the residents;

d. Consult with the applicant if additional information is required.

64.2(3) Based upon these studies, approval of the variance waiver will be either granted or denied within 120 days of receipt.

ITEM 18. Amend rule 481—65.2(135C), introductory paragraph, as follows:

481—65.2(135C) Application for license. In order to obtain an initial license for an ICF/PMI, the applicant must comply with the rules and standards contained in Iowa Code chapter 135C and the standards in 481—Chapter 61. Variances Waivers from 481—Chapter 61 regulations are allowed under rule 481—61.2(135C). An application must be submitted to the department which states the type and category of license for which the facility is applying.

ITEM 19. Amend rule 481—65.4(135C) as follows:

481—65.4(135C) Variances Waivers. Variances Waivers from these rules may be granted by the director of the department when:

1. The need for a variance waiver has been established consistent with the résumé of care or the resident's individual program plan.

2. There is no danger to the health, safety, welfare or rights of any resident.

3. The variance waiver will apply only to a specific intermediate care facility for the mentally ill. Variances Waivers shall be reviewed at least at the time of each licensure survey and any other time by the department to see if the need for the variance waiver is still acceptable.

65.4(1) To request a variance waiver, the licensee must:

a. Apply in writing on a form provided by the department;

b. Cite the rule or rules from which a variance waiver is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain how the variance waiver is consistent with the résumé of care or the individual program plan; and

e. Demonstrate that the requested variance waiver will not endanger the health, safety, welfare or rights of any resident.

65.4(2) Upon receipt of a request for variance waiver, the director will:

a. Examine the rule from which the variance waiver is requested;

b. Evaluate the requested variance waiver against the requirement of the rule to determine whether the request is necessary to meet the needs of the residents;

c. Examine the effect of the requested variance waiver on the health, safety or welfare of the residents;

d. Consult with the applicant to obtain additional written information if required; and

e. Obtain approval of the Iowa mental health and disability services commission, when the request is for a variance waiver from the requirement for qualification of a mental health professional.

65.4(3) Based upon this information, approval of the variance waiver will be either granted or denied within 120 days of receipt.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 20. Amend rule 481—71.5(135G) as follows:

481—71.5(135G) Variances Waivers.

71.5(1) ~~Variances Waivers~~ from these rules may be granted by the director of the department if, in addition to the requirements of 481—Chapter 6:

- a. The need for a ~~variance waiver~~ has been established consistent with the résumé of care or the resident's individual program plan; and
- b. There is no danger to the health, safety, welfare, or rights of any resident.

71.5(2) The ~~variance waiver~~ will apply only to a subacute care facility.

71.5(3) ~~Variances Waivers~~ shall be reviewed by the department at the time of each licensure survey to verify whether the facility is still eligible for the ~~variance waiver~~.

[Filed 5/27/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5711C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to terminology

The Inspections and Appeals Department hereby amends Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 63, "Residential Care Facility—Three- To Five-Bed Specialized License," Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," and Chapter 71, "Subacute Mental Health Care Facilities," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 10A.104(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2585.

Purpose and Summary

These amendments update rules in accordance with changes included in 2020 Iowa Acts, House File 2585. The legislation required changes to the terminology used in relation to deaf and hard-of-hearing persons.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5567C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on May 26, 2021.

Fiscal Impact

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

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **57.24(4)“b”** as follows:

b. Residents' rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are non-English-speaking or deaf or hard of hearing, steps shall be taken to translate the information into a foreign or sign language. In the case of blind residents, either Braille or a recording shall be provided. Residents shall be encouraged to ask questions about their rights and responsibilities and these questions shall be answered. (II, III)

ITEM 2. Amend paragraph **57.24(4)“e”** as follows:

e. All residents shall be advised within 30 days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English-speaking, deaf or hard-of-hearing, or blind residents of changes. (II, III)

ITEM 3. Amend paragraph **58.39(7)“b”** as follows:

b. Residents' rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are non-English speaking or deaf or hard of hearing, steps shall be taken to translate the information into a foreign or sign language. In the case of blind residents, either Braille or a recording shall be provided. Residents shall be encouraged to ask questions about their rights and responsibilities and these questions shall be answered. (II)

ITEM 4. Amend paragraph **58.39(7)“e”** as follows:

e. All residents shall be advised within 30 days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English speaking, deaf or hard-of-hearing, or blind residents of such changes. (II)

ITEM 5. Amend paragraph **63.21(4)“b”** as follows:

b. Residents' rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are non-English-speaking or deaf or hard of hearing, steps shall be taken to translate the information into a foreign or sign language. In the case of blind residents, either Braille or a recording shall be provided. Residents shall be encouraged to ask questions about their rights and responsibilities, and these questions shall be answered. (II, III)

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 6. Amend paragraph **63.21(4)“e”** as follows:

e. All residents shall be advised within 30 days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English-speaking, deaf or hard-of-hearing, or blind residents of changes. (II, III)

ITEM 7. Amend paragraph **65.25(2)“b”** as follows:

b. Residents' rights and responsibilities shall be presented in language understandable to residents. If the facility serves residents who ~~do not speak English~~ are non-English-speaking or are deaf or hard of hearing, steps shall be taken to translate the information into a foreign or sign language. Blind residents shall be provided either Braille or a recording. Residents shall be encouraged to ask questions about their rights and responsibilities. Their questions shall be answered. (II)

ITEM 8. Amend paragraph **65.25(2)“d”** as follows:

d. All residents, next of kin, or legal guardian shall be advised within 30 days of changes made in the statement of residents' rights and responsibilities. Appropriate means shall be used to inform non-English-speaking, deaf or hard-of-hearing, or blind residents of changes. (II)

ITEM 9. Amend paragraph **71.21(3)“b”** as follows:

b. Residents' rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are ~~not English-speaking~~ non-English-speaking or are deaf or hard of hearing impaired, steps shall be taken to translate the information into the person's native language or sign language. In the case of visually impaired residents, either Braille or a recording shall be provided.

[Filed 5/27/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5682C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rule making related to deer hunting by residents

The Natural Resource Commission (Commission) hereby amends Chapter 106, “Deer Hunting by Residents,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

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

This rule making adopts six specific amendments to Chapter 106, which collectively accomplish the following three broader changes to the deer hunting regulations. First, general deer licenses are being reestablished as valid for all seasons in three counties: Hamilton, Webster, and Wright. Deer populations

NATURAL RESOURCE COMMISSION[571](cont'd)

have been steadily increasing in northwest Iowa, allowing for this increase in recreational opportunities for Iowa hunters.

Second, the January antlerless-deer-only season is being conditionally reinstated for five counties: Allamakee, Appanoose, Decatur, Wayne, and Winneshiek. The season will only happen, on a county-by-county basis, if the respective number of unsold antlerless-deer-only licenses exceeds 100 in a county on the third Monday in December. This change accomplishes two objectives for deer population and disease management: (1) it maintains a stable level of antlerless-deer harvest earlier during the hunting season when deer are still within their breeding home range, thus slowing the spread of chronic wasting disease among deer family groups, and (2) it allows opportunities for additional antlerless-deer harvest later in the hunting season to help with population management. The Department's goal moving forward will be to stabilize deer numbers in these counties and slow the spread of chronic wasting disease.

Third, county antlerless-deer-only license quotas are being modified in 25 counties for an overall statewide increase of 1,250 more tags. Quotas are being increased in Buchanan, Butler, Dallas, Des Moines, Dubuque, Fayette, Floyd, Henry, Johnson, Keokuk, Lee, Louisa, Madison, Marion, Muscatine, and Warren Counties to reduce deer densities for the purpose of disease control or to alleviate negative human-deer interactions. Quotas will be decreased in Adams, Fremont, Harrison, Jasper, Mills, Monona, Pottawattamie, Wapello, and Woodbury Counties to stabilize healthy local deer populations.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5509C**.

A public hearing was held on March 30, 2021, at 1 p.m. via video/conference call. No one attended the hearing. No public comments were received.

Two changes from the Notice have been made. The first is in Items 3 and 8 to correct the age eligibility for senior crossbow licenses from 70 to 65 to align with the authorizing statute, Iowa Code section 483A.8B(1) as amended by 2020 Iowa Acts, House File 2410 (signed by Governor Reynolds on June 25, 2020). The second is to correct an erroneous date in Item 4. The duration of the antlerless-deer-only season will run from January 11 through the second Sunday following that date, not through the third Sunday in January as stated in the Notice. That was an error. The antlerless-deer-only season has historically always run this corrected duration. This correction expands the season, provides more opportunity, and aligns with hunters' past experience and future expectations.

Adoption of Rule Making

This rule making was adopted by the Commission on May 13, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

NATURAL RESOURCE COMMISSION[571](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).

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **106.1(1)“a”** as follows:

a. General deer licenses. General deer licenses shall be valid for taking deer in one season selected at the time the license is purchased. General deer licenses shall be valid for taking deer of either sex except in Buena Vista, Calhoun, Cherokee, Clay, Dickinson, Emmet, ~~Hamilton~~, Humboldt, Ida, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, and ~~Sioux, Webster, and Wright~~ Counties during the first regular gun season when the general deer license will be valid for taking deer with at least one forked antler. Paid general deer licenses shall be valid statewide except where prohibited in deer population management zones established under 571—Chapter 105. Free general deer licenses shall be valid for taking deer of either sex only on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

ITEM 2. Adopt the following **new** subrule 106.1(6):

106.1(6) January antlerless-deer-only licenses. Licenses for the January antlerless-deer-only season may be issued for the following counties: Allamakee, Appanoose, Decatur, Wayne, and Winneshiek. January antlerless-deer-only licenses shall be issued for a county only when a minimum of 100 antlerless-deer-only licenses, as described in subrule 106.6(6), remain unsold in that county as of the third Monday in December. If 100 or more antlerless-deer-only licenses remain unsold for a given county as of the third Monday in December, those remaining antlerless-deer-only licenses shall be made available for the January antlerless-deer-only season in that county until the relevant antlerless-deer-only quota as described in subrule 106.6(6) is met.

ITEM 3. Amend subrule 106.1(8) as follows:

106.1(8) Antlerless-deer-only crossbow licenses for senior citizens. Persons ~~70~~ 65 years old or older may obtain one paid antlerless-deer-only license valid statewide for taking antlerless deer with a crossbow. The license will be valid only during the bow season.

ITEM 4. Adopt the following **new** subrule 106.2(5):

106.2(5) January antlerless-deer-only season. Deer may be taken in accordance with the type, season, and zone designated on the license from January 11 through the second Sunday following that date.

ITEM 5. Adopt the following **new** subrule 106.4(5):

106.4(5) January antlerless-deer-only season. The bag limit is one deer per license. The possession limit is one deer per license.

ITEM 6. Adopt the following **new** subrule 106.6(4):

106.6(4) January antlerless-deer-only season. Only antlerless-deer-only licenses, paid or free, are available in counties pursuant to the conditions described in subrule 106.1(6). A license must be used during the January antlerless-deer-only season as described in subrule 106.2(5) and in the county or deer population management area selected at the time the license is purchased. Free antlerless-deer-only licenses shall be available only in the portion of the farm unit located in a county where paid antlerless-deer-only licenses are available during the January antlerless-deer-only season.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 7. Amend subrule 106.6(6) as follows:

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

County	Quota	County	Quota	County	Quota
Adair	1200	Floyd	100 <u>150</u>	Monona	850 <u>750</u>
Adams	1200 <u>1000</u>	Franklin	0	Monroe	2250
Allamakee	3800	Fremont	200 <u>100</u>	Montgomery	500
Appanoose	2700	Greene	0	Muscatine	775 <u>900</u>
Audubon	0	Grundy	0	O'Brien	0
Benton	325	Guthrie	2150	Osceola	0
Black Hawk	0	Hamilton	0	Page	500
Boone	300	Hancock	0	Palo Alto	0
Bremer	300	Hardin	0	Plymouth	0
Buchanan	300 <u>400</u>	Harrison	850 <u>750</u>	Pocahontas	0
Buena Vista	0	Henry	925 <u>1050</u>	Polk	1350
Butler	150 <u>200</u>	Howard	450	Pottawattamie	850 <u>750</u>
Calhoun	0	Humboldt	0	Poweshiek	200
Carroll	0	Ida	0	Ringgold	1400
Cass	400	Iowa	450	Sac	0
Cedar	775	Jackson	1100	Scott	200
Cerro Gordo	0	Jasper	775 <u>575</u>	Shelby	0
Cherokee	0	Jefferson	1500	Sioux	0
Chickasaw	375	Johnson	850 <u>950</u>	Story	150
Clarke	2400	Jones	1100	Tama	300
Clay	0	Keokuk	450 <u>500</u>	Taylor	1500
Clayton	4000	Kossuth	0	Union	1400
Clinton	400	Lee	1500 <u>1700</u>	Van Buren	2100
Crawford	0	Linn	850	Wapello	1700 <u>1600</u>
Dallas	1875 <u>2100</u>	Louisa	675 <u>775</u>	Warren	2700 <u>3000</u>
Davis	1700	Lucas	2500	Washington	1000
Decatur	2200	Lyon	0	Wayne	2700
Delaware	950	Madison	3000 <u>3300</u>	Webster	0
Des Moines	800 <u>900</u>	Mahaska	475	Winnebago	0
Dickinson	0	Marion	1850 <u>2050</u>	Winneshiek	2700
Dubuque	975 <u>1200</u>	Marshall	150	Woodbury	300 <u>200</u>
Emmet	0	Mills	500 <u>300</u>	Worth	0
Fayette	2300 <u>2500</u>	Mitchell	100	Wright	0

ITEM 8. Amend subparagraph **106.7(1)“a”(2)** as follows:

(2) By persons over the age of ~~70~~ 65 with an antlerless-deer-only license as provided in Iowa Code section 483A.8B.

[Filed 5/18/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5681C**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed****Rule making related to adding two counties to the bobcat harvest zone**

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

Chapter 108 sets the season dates, bag limits, possession limits, and areas open to hunting or trapping fur-bearing animals. This rule making adds Delaware and Jones Counties to the one bobcat per fur harvester zone. Data from the past 12 years reveal that Iowa’s bobcat population continues to grow and expand into more counties that provide suitable habitats. Information about the bobcat population has been compiled from a variety of sources, such as hunter surveys, harvest information, field reports, and sightings. This rule change is biologically responsible, as required by law, and will increase recreational opportunities for Iowa fur harvesters while helping minimize social issues associated with high bobcat densities.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5510C**. A public hearing was held on March 30, 2021, at 12 noon via video/conference call. No one attended the public hearing.

Twenty-three total comments were received. Twenty comments were specifically against a bobcat season in Dubuque County. The other three were generally in favor of the zone expansion.

In response to these comments, Dubuque County was removed from the list of counties to be added to the one bobcat per fur harvester zone.

Adoption of Rule Making

This rule making was adopted by the Commission on May 13, 2021.

Fiscal Impact

The Department of Natural Resources (Department) anticipates a very modest increase in fur harvester license sales from this rule. Currently, resident fur harvester licenses, with the wildlife habitat fee, are \$41 per year. If any additional fur harvester licenses are sold as a result of the newly opened counties, revenue would be generated for the State Fish and Game Protection Fund. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

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

NATURAL RESOURCE COMMISSION[571](cont'd)

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 108.7(2) as follows:

108.7(2) *Open area.* River otters may be taken statewide. Bobcats may be taken in the following counties: Adair, Adams, Appanoose, Audubon, Boone, Cass, Cedar, Cherokee, Clarke, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Fremont, Guthrie, Harrison, Henry, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Plymouth, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Shelby, Sioux, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, and Woodbury.

ITEM 2. Amend paragraph **108.7(3)“b”** as follows:

b. The seasonal bag limit for bobcats is 1 bobcat per person in the following counties: Audubon, Boone, Cedar, Cherokee, Clinton, Crawford, Dallas, Delaware, Guthrie, Harrison, Iowa, Jackson, Jasper, Johnson, Jones, Lyon, Monona, Muscatine, Plymouth, Polk, Poweshiek, Scott, Shelby, Sioux, Webster, and Woodbury.

[Filed 5/18/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5686C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rule making related to mobile barbershops

The Board of Barbering hereby amends Chapter 21, “Licensure,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 158.15.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate File 155.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Purpose and Summary

These amendments implement changes recommended and required by 2020 Iowa Acts, Senate File 155, for licensing mobile barbershops. The amendments were initially approved by the Board on March 15, 2021, for publication under Notice of Intended Action.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 7, 2021, as **ARC 5557C**. A public hearing was held on April 27, 2021, at 9 a.m. via web conference. No one attended the public hearing. No public comments were received. One change has been made to the Notice. In the second sentence of subrule 21.19(4), the phrase “a mobile salon or barbershop that is parked in a legal parking spot” was changed to “a mobile barbershop that is parked in a legal parking spot.” No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on May 17, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 645—21.11(158) as follows:

645—21.11(158) Requirements for a barbershop license.

21.11(1) A barbershop shall not operate unless the owner of the barbershop possesses a current barbershop license issued by the board. The following criteria shall apply to licensure:

a. and *b.* No change.

c. A barbershop license may be for a stationary barbershop or a mobile barbershop.

(1) Stationary barbershop. A stationary barbershop license shall be issued for a specific location. A change in location or site of a stationary barbershop shall result in the cancellation of the existing license and necessitate application for a new license and payment of the fee required by 645—subrule 5.2(8). A change of address without change of actual location shall not be construed as a new site.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(2) Mobile barbershop. A mobile barbershop license shall be issued for a permanent physical address. The licensee is required to provide a permanent physical address for board correspondence. A mobile barbershop may operate in a legal parking spot or on private property, with the permission of the owner or the owner's designee, anywhere in the state of Iowa provided the mobile barbershop is operating in compliance with applicable federal and state transportation, environmental, and sanitary regulations, including those herein.

(3) Barbershop owner's contact information. The listed owner of either a stationary or mobile barbershop must update the board within 30 days of a change in contact information, which includes telephone number, email address, and mailing address.

d. to *g.* No change.

21.11(2) No change.

ITEM 2. Adopt the following **new** rule 645—21.19(158):

645—21.19(158) Mobile barbershops. A mobile home, motor home, trailer, or other recreational vehicle may be used as a mobile barbershop if it complies with the following:

21.19(1) The owner shall possess a current mobile barbershop license issued by the board.

21.19(2) The owner shall complete a board-approved application.

21.19(3) The mobile barbershop's owner's telephone number, email address, and permanent address must be included on the mobile barbershop's application for licensure and must be updated and accurate.

21.19(4) No service may be performed on a client in a moving vehicle. Services shall be performed in a mobile barbershop that is parked in a legal parking spot.

21.19(5) Mobile barbershops must provide:

a. A supply of hot and cold water;

b. Adequate lighting;

c. A floor surface in the service area that is nonabsorbent and easily cleanable;

d. Work surfaces that are easily cleaned;

e. Cabinets secured with safety catches wherein all chemicals shall be stored when the vehicle is moving;

f. A first-aid kit that includes adhesive dressing, gauze and antiseptic, tape, triple antibiotics, eyewash, and gloves.

21.19(6) Mobile barbershops must comply with all rules in 645—Chapter 22, Infection Control for Barbershops and Barber Schools, except rules 645—22.5(158) through 645—22.7(158).

[Filed 5/20/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5683C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to radiation, X-ray equipment, and continuing education

The Public Health Department hereby amends Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," and Chapter 42, "Permit to Operate Ionizing Radiation Producing Machines or Administer Radioactive Materials," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 136C.3.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 136C.

Purpose and Summary

These amendments provide clarity and updates regarding issues that have evolved over the years that these rules have been in place. The amendments are largely already in practical use in the industry, and the amendments clarify within the rules the activities that are actually occurring or need to be changed to support a need in the industry as a result of the addition of training/testing options from the Department, changes in applied uses for dual X-ray energy absorptiometry (DEXA) machines, and advancements in equipment and the scientific understanding of radiation protection for imaging the abdominal and pelvic area.

Specifically, the amendments do the following:

1. Radiation machines. In numbered paragraph 41.1(3)“a”(3)“5” and subparagraph 41.1(3)“a”(6), the amendments remove a specific reference to the type and place of gonadal shielding to be used and replace it with more general radiation protection and shielding requirements based on diagnostic and clinical needs. This change is being made to align with national consensus that demonstrates a need to change how gonadal shielding is applied due to new understanding of dose weighting factors for tissue and organs, as well as advances in radiation-emitting equipment and detector technologies.

2. Radiation machines. Paragraph 41.1(5)“n” indicates that the use of fluoroscopy by radiologist assistants shall be defined in rule 641—42.6(136C). This is an incorrect reference to Chapter 42. The addition of “radiologist assistant” to the list authorized to supervise fluoroscopy will define this use and align with clinical practice.

3. Permit. In rules 641—42.2(136C) and 641—42.10(136C), the amendments change the name of the X-ray equipment operator permit from bone densitometry to DEXA. Bone densitometry has always been performed using DEXA machines, but recent developments in clinical practice and technology have allowed these machines to expand in use to other body measurements beyond just bone density. These amendments are necessary to more accurately describe the activities performed using the DEXA equipment, which includes both bone densitometry measurements and body composition. To support this change, a definition is added for “body composition” and terminology is changed as appropriate throughout the chapter.

4. Permit. Disciplinary action added for examination subversion. This amendment is needed now that courses and examinations are offered directly by the Department, effective August 2019. Referenced national board standards from the American Registry of Radiologic Technologists (ARRT) certification board are to remain consistent with this definition and assessment of subversion.

5. Permit. Rule 641—42.26(136C), regarding Iowa approval for continuing education (CE), is rescinded since the Department no longer does those approvals. The rules were changed in March 2013 to remove this practice of Iowa approval of CEs, and the rule language allowed for transition at that time. All CE providers have transitioned to the non-Iowa approval processes, so this coverage language is no longer needed.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 24, 2021, as **ARC 5520C**.

Five public comments were received, all of which recommended that numbered paragraph 41.1(3)“a”(3)“5” and subparagraph 41.1(3)“a”(6) not be amended. The basis for these comments stated that these amendments would remove the requirement to provide radiation protection to the patient through shielding. This is not an accurate interpretation of these amendments. The amendments remove the very specific requirement of gonadal shielding for all imaging examinations, which can cause an increase in radiation dose based on the new considerations of tissue weighting factors and digital technology advancements in radiologic imaging. The rules instead require facilities to establish

PUBLIC HEALTH DEPARTMENT[641](cont'd)

procedures by which the proper use of radiation protection options, to include shielding, is considered and implemented for each imaging examination. The comments did not provide any scientific evidence contrary to the evidence and statement from the National Council on Radiation Protection that was used as the basis for these amendments.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on May 12, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **41.1(3)“a”(3)** as follows:

(3) A chart shall be provided in the vicinity of the diagnostic X-ray system's control panel which specifies, for all examinations performed with that system, the appropriate technique and guidance for employing available dose reduction methods and technologies across all patient sizes and clinical indications. The following information shall be included:

1. Patient's body part and anatomical size, or body part thickness, or age (for pediatrics), versus technique factors to be utilized unless automatically set by the X-ray system;
2. Type and size of the film or film-screen combination to be used;
3. Type and focal distance of the grid to be used, if any; and
4. Source to image receptor distance to be used, except for dental intraoral radiography; and
5. ~~Type and location of placement of human patient shielding to be used (e.g., gonad).~~

ITEM 2. Amend subparagraph **41.1(3)“a”(6)** as follows:

(6) ~~Gonad shielding of not less than 0.50 millimeter lead equivalent shall be used for human patients, who have not passed the reproductive age, during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure. A sufficient number of protective apparel (e.g., aprons, gloves, collars) and shields shall be available to provide the necessary radiation protection for all patients and personnel who are involved with X-ray operations.~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 3. Amend paragraph **41.1(5)“n”** as follows:

n. Supervision of fluoroscopy. The use of fluoroscopy by radiologic technologists and radiologic students shall be performed under the direct supervision of a licensed practitioner, a radiologist assistant or an advanced registered nurse practitioner (ARNP), pursuant to 655—subrule 7.2(2), for the purpose of localization to obtain images for diagnostic or therapeutic purposes. ~~The use of fluoroscopy by radiologist assistants shall be as defined in 641—42.6(136C).~~

ITEM 4. Adopt the following **new** definition of “Body composition scan” in rule **641—42.2(136C)**:
“Body composition scan” means the use of a low dose X-ray to generate images of a color-coded body map.

ITEM 5. Amend rule 641—42.10(136C), introductory paragraph, as follows:

641—42.10(136C) Permit to practice as an X-ray equipment operator in either podiatric radiography or bone densitometry (dual energy X-ray absorptiometry). After January 1, 2015, all individuals performing only bone densitometry or other examinations using DEXA machines must hold a bone densitometry permit.

ITEM 6. Amend paragraph **42.10(1)“e”** as follows:

e. Submit proof of at least a 70 percent score on a department-approved examination.

~~(1) All podiatric X-ray equipment operators must pass the examination with a 70 percent score. After January 1, 2015, all bone densitometry equipment operators must submit proof of at least a 70 percent score on a department-approved examination.~~

~~(2) (1)~~ Three failed attempts on the examination in ~~42.10(1)“e”(1)~~ 42.10(1)“e” will require the individual to repeat the formal education or complete a department-approved review program.

~~(3) (2)~~ Each individual making application to take an examination as an X-ray equipment operator to meet the requirements of ~~42.10“e”(1)~~ 42.10(1)“e” must submit an application and nonrefundable fee of \$100 to the department each time the individual takes the examination.

ITEM 7. Adopt the following **new** subrule 42.13(5):

42.13(5) An individual reinstating an expired permit shall submit the following:

a. Application to reinstate and a nonrefundable \$150 application fee. If the permit is expired six months or more, all previous exemptions from this chapter are no longer valid and the individual is subject to all requirements of subrule 42.7(1).

b. Any continuing education hours due at time of renewal. If the permit is expired more than one year past the expiration date, 24.0 hours of continuing education obtained within the previous 24 months must be submitted. If the permit includes the radiologist assistant classification, then the individual must submit a total of 50.0 hours of continuing education obtained within the biennium indicated on the individual’s permit.

c. Proof that all stipulations of any order(s) of disciplinary or enforcement action have been satisfied.

ITEM 8. Amend rule 641—42.22(136C), catchwords, as follows:

641—42.22(136C) Rules of conduct, self-reporting requirements, and enforcement actions for all permit holders or applicants.

ITEM 9. Amend paragraph **42.22(1)“n”** as follows:

n. Employing fraud or deceit to obtain, attempt to obtain or renew a permit under this chapter or in connection with a certification or license issued from a certifying or licensing entity. This includes altering documents, failing to provide complete and accurate responses or information, or indicating falsely in writing that a permit is valid when that is not the case, or any form of examination subversion.

ITEM 10. Adopt the following **new** paragraph **42.22(2)“c”**:

c. Report potential ethics violations (including state licensing issues and criminal charges and convictions) within 30 days of the occurrence or during the permit holder’s annual renewal process, whichever comes first.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 11. Rescind **641—Chapter 42, division heading** preceding rule 641—42.26(136C).

ITEM 12. Rescind and reserve rule **641—42.26(136C)**.

ITEM 13. Amend subparagraph **42.31(2)“e”(1)** as follows:

(1) All competency testing for limited radiography shall be directly supervised by the principal or clinical instructor, can only begin after the classroom hours in a category have been completed, and cannot begin until after the clinical site has been approved by the department using the Initial Clinical Site Form.

[Filed 5/13/21, effective 7/21/21]

[Published 6/16/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5684C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to definition of “dust-lead hazard”

The Public Health Department hereby amends Chapter 69, “Renovation, Remodeling, and Repainting—Lead Hazard Notification Process,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 135.105C.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.105C.

Purpose and Summary

This amendment to Chapter 69 is a minor update to the definition of “dust-lead hazard.” The dust-lead hazard levels changed in 2020, and this amendment is required to reflect the current definition of dust-lead hazard levels.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 24, 2021, as **ARC 5519C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on May 12, 2021.

Fiscal Impact

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

Jobs Impact

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

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 waiver provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making action is adopted:

Amend rule **641—69.2(135)**, definition of “Dust-lead hazard,” as follows:

“*Dust-lead hazard*” means surface dust in residential dwellings or child-occupied facilities that contains a mass-per-area concentration of lead equal to or exceeding ~~40~~ 10 micrograms per square foot on floors, ~~250~~ 100 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present in a residential dwelling or child-occupied facility when the weighted arithmetic mean lead loading for all single-surface or composite samples of floors and interior windowsills is equal to or greater than ~~40~~ 10 micrograms per square foot on floors, ~~250~~ 100 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled residential dwelling in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled residential unit on the property. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled common area in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled common area in the same common area group on the property.

[Filed 5/13/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5715C

PUBLIC SAFETY DEPARTMENT[661]**Adopted and Filed****Rule making related to sex offender registry**

The Public Safety Department hereby amends Chapter 83, “Iowa Sex Offender Registry,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 692A.130.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 692A.101(1)“a”(9), 692A.101(2)“a”(4), 692A.102(1)“c”(13), and 709.4.

Purpose and Summary

The amendments to Chapter 83 implement the new offense (continuous sexual abuse of a child) established by 2020 Iowa Acts, House File 2554, which was signed by the Governor on June 29, 2020. These amendments update the definitions related to the Sex Offender Registry (SOR) to reflect the addition of the new registrable offense. These amendments also remove outmoded references to 2009 Iowa Acts, Senate File 340, which made changes to the SOR language in the Iowa Code in 2009; to Iowa Code section 709C.1, which formerly made criminal transmission of HIV a registrable offense; to Iowa Code section 709.4, the since-revised statute relating to sexual abuse in the third degree; to risk assessments, which are no longer referenced in Iowa Code chapter 692A as of July 1, 2009; and to the DCI-150 form, which is now a tier notification form, not a request for registry information form. The outdated ten-day requirement is removed from rule 661—83.3(692A) pursuant to Iowa Code section 692A.109; verification is only required in the county of principal residence, and there is no ten-day requirement in the Iowa Code. Registrants have a month to verify their information; the rules now reflect that.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5586C**. A public hearing was held on May 7, 2021. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on May 28, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 21, 2021.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

The following rule-making actions are adopted:

ITEM 1. Amend rule ~~661—83.2(692A)~~, definitions of “Aggravated offense,” “Aggravated offense against a minor,” “Sex offender,” “Sex offense,” “Tier I offender,” “Tier II offender” and “Tier III offender,” as follows:

“*Aggravated offense*” means a conviction for any of the following offenses:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
3. Sexual abuse in the third degree in violation of Iowa Code section ~~709.4, subsection 1.~~ 709.4(1)“a.”
4. Lascivious acts with a child in violation of Iowa Code section ~~709.8, subsection 1 or 2.~~ 709.8(1)“a” or “b.”
5. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
6. Burglary in the first degree in violation of Iowa Code section ~~713.3, subsection 1, paragraph “d.”~~ 713.3(1)“d.”
7. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the commission of the offense.
8. Murder in violation of Iowa Code section 707.2 or 707.3, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
9. ~~Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph “a.”~~ Continuous sexual abuse of a child in violation of Iowa Code section 709.23.
10. Any conviction for an offense specified in the laws of another jurisdiction or any conviction for an offense prosecuted in a federal, military, or foreign court that is comparable to an offense listed in paragraphs “1” through “9” shall be considered an aggravated offense for purposes of registering under this chapter.

“*Aggravated offense against a minor*” means a conviction for any of the following offenses, if such offense was committed against a minor or otherwise involves a minor:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
3. Sexual abuse in the third degree in violation of Iowa Code section 709.4, except for a violation of Iowa Code section ~~709.4, subsection 2, paragraph “c,” subparagraph (4)~~ 709.4(1)“b”(3)(d).
4. Continuous sexual abuse of a child in violation of Iowa Code section 709.23.
5. Any offense specified in the laws of another jurisdiction or prosecuted in a federal, military, or foreign court that is comparable to an offense listed in paragraphs “1” through “4” shall be considered an aggravated offense against a minor if such an offense was committed against a minor or otherwise involves a minor.

“*Sex offender*” means a person who is required to be registered under Iowa Code chapter 692A as amended by 2009 Iowa Acts, Senate File 340.

“*Sex offense*” means an indictable offense for which a conviction has been entered that ~~has an element involving a sexual act, sexual contact, or sexual conduct, and which is enumerated in 2009 Iowa Acts, Senate File 340, section 2,~~ is enumerated in Iowa Code section 692A.102 and means any comparable offense for which a conviction has been entered under prior law, or any comparable offense for which a conviction has been entered in a federal, military, or foreign court, or another jurisdiction.

“*Tier I offender*” means a registrant who has been convicted of one or more of the offenses enumerated in ~~2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “a.”~~ Iowa Code section 692A.102(1)“a.”

“*Tier II offender*” means a registrant who has been convicted of one or more of the offenses identified in ~~2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “b,”~~ Iowa Code section 692A.102(1)“b” and is not a “tier I offender.”

PUBLIC SAFETY DEPARTMENT[661](cont'd)

“*Tier III offender*” means a registrant who has been convicted of one or more of the offenses enumerated in ~~2009 Iowa Acts, Senate File 340, section 2, subsection 1, paragraph “c,”~~ Iowa Code section 692A.102(1) “c” and is not a “tier I offender” or a “tier II offender.”

ITEM 2. Amend subrules 83.3(2) and 83.3(3) as follows:

83.3(2) Registration.

a. Form DCI-145 or Form DCI-144R, Sex Offender Registration, shall be completed, as required by ~~2009 Iowa Acts, Senate File 340, section 4, subsection 8~~ Iowa Code section 692A.104, on behalf of each offender and submitted, in printed or electronic form, to the sheriff of each county in which the offender will be residing, employed, or attending classes and to the division of criminal investigation, in order to satisfy the registration requirements of the Iowa sex offender registry. This form shall also be completed on behalf of each offender and submitted to the sheriff of any county in which the offender will be a student, be employed, or be engaged in a vocation on a full-time or part-time basis, in order to satisfy the registration requirements.

b. Form DCI-145, or information stored by the division of criminal investigation, shall be used to report changes of residence, telephone number, name of registrant, or change in status as a student, employee, or practicing a vocation at an institution of higher education. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of any county of residence each time the registrant’s relevant information changes. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county in which the registrant is a student, an employee, or practicing a vocation on a full-time or part-time basis at an institution of higher education within five days of the registrant’s becoming a student, an employee, or engaged in a vocation at the institution of higher education. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

(1) If any place of residence of a registrant changes from one county to another, the registrant shall submit copies, in printed or electronic form, of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

(2) When the department receives notification that a registrant has changed residence to a location outside of Iowa, the department shall notify the registering state agency in the registrant’s new state of residence of the registrant’s name, new address, and telephone number. Upon notification of the appropriate out-of-state agency, the department shall remove the registrant from the active registry, unless the registrant continues to maintain a residence or place of employment in Iowa or attends school in Iowa. The registrant shall not be required to submit periodic verifications of address while not on the active registry. The department shall maintain the registrant’s file in the event the registrant establishes a residence in Iowa or becomes a student, an employee, or practices a vocation at an institution of higher education in Iowa in the future. The department may also maintain the file for any other purpose.

c. Upon any submission of Form DCI-145, the form shall be accompanied by current photographs and fingerprints of the offender.

d. A list of all registrants within a county may be provided by the division of criminal investigation to the county sheriff.

83.3(3) Periodic verification. A registrant shall appear personally in the office of the sheriff of the county or counties of principal residence periodically as required by ~~2009 Iowa Acts, Senate File 340, section 8,~~ Iowa Code section 692A.108 to verify relevant information. A tier I offender shall appear annually, or more frequently if required by the sheriff; a tier II offender shall appear every six months, or more frequently if required by the sheriff; and a tier III offender shall appear every three months, or more frequently if required by the sheriff. Form ~~DCI-146~~ DCI-146R, Periodic Verification Notification Form, shall be mailed by the division of criminal investigation to each registrant at the last address known to the registry at least 30 days prior to each required appearance. The registrant shall appear between the first and last day of the verification month. Form ~~DCI-146~~ DCI-146R shall clearly state that it is

PUBLIC SAFETY DEPARTMENT[661](cont'd)

to be returned to the division of criminal investigation if the addressee no longer resides at the address indicated and that Iowa law prohibits its being forwarded.

a. Each registrant shall report to the sheriff of a the county of principal residence of the registrant ~~within ten days of receipt of the periodic verification notification form~~. The sheriff shall take a current photograph of the registrant and shall submit the photograph to the registry.

b. The sheriff of any county of residence of a registrant may, at any time, instruct the registrant to report to the sheriff's office for the purpose of the taking of a current photograph. Such instructions shall be mailed to the registrant at the registrant's current address of registration. The registrant shall report to the sheriff's office within ten days of receiving such instructions. The sheriff shall submit the current photograph of the registrant to the registry.

ITEM 3. Amend subrule 83.3(5) as follows:

83.3(5) *Application for determination.* Form DCI-148, Application for Determination, shall be completed by a person to initiate a request that the department review whether one or more offenses of which the person has been convicted require registration with the Iowa sex offender registry, whether the time period during which the person is required to register has expired, whether the person is exempt from the placement of information on the sex offender registry ~~Web site~~ website, and the tier placement of the offender. A person who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts or law which the person intends to present to the department in support of the application. Failure to submit any of the required information shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, relevant statutory provisions, and other records provided, and is material to the determination, the commissioner may refer the matter to an administrative law judge or presiding officer for a contested case hearing.

NOTE: Filing an application for determination does not excuse a person from having to comply with any of the applicable provisions of Iowa Code chapter 692A ~~as amended by 2009 Iowa Acts, Senate File 340~~, during the period prior to the issuance of the decision of determination.

ITEM 4. Amend subrule 83.3(7) as follows:

83.3(7) *Request for information.* Requests for information about whether a specific individual is registered shall be made to a county sheriff or local police department and may be made in person, by telephone, or in writing. ~~Form DCI-150, Request for Registry Information, may be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry may submit a completed copy of Form DCI-150 to a sheriff or police department. If a request for information is submitted using Form DCI-150, a separate form shall be submitted for each person about whom information is being requested.~~

ITEM 5. Amend subrule 83.4(2) as follows:

83.4(2) *Sex offender registry* ~~Web site~~ website. The department shall place information regarding each registrant on the registry ~~Web site (www.iowasexoffenders.com)~~ website (www.iowasexoffender.gov), except that information regarding any registrant for whom the sole basis of registration is a conviction or convictions for a violation or violations of Iowa Code section 709.4, ~~subsection 2, paragraph "c," subparagraph (4)~~ 709.4(1)"b"(3)(d), and whose offense was committed when the offender was under 20 years of age, shall not be placed on the ~~Web site~~ website. Information regarding a registrant placed on the sex offender registry ~~Web site~~ website may include any relevant information allowed under Iowa Code section 692A.121.

ITEM 6. Amend paragraph **83.4(3)"b"** as follows:

b. The general public, including public and private agencies, organizations, public places, child care facilities, religious and youth organizations, neighbors, neighborhood associations, community

PUBLIC SAFETY DEPARTMENT[661](cont'd)

meetings, and employers. Registry information may be distributed to the public through printed materials, visual or audio press releases, radio communications, or a criminal or juvenile justice agency's ~~Web-site~~ website.

ITEM 7. Amend subrule 83.4(5) as follows:

83.4(5) *Release of information in response to individual request.* A sheriff or police department that receives a request for information about whether a specific individual is registered or not shall inquire of the division of criminal investigation via the Iowa on-line warrants and articles (IOWA) system or the sex offender registry application (SORA) as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department shall notify the person making the inquiry that the person about whom the inquiry was made is a registrant and may provide the requester with the relevant information allowed under Iowa Code section 692A.121 regarding the registrant.

ITEM 8. Rescind subrule **83.4(9)**.

ITEM 9. Amend **661—Chapter 83**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 692A ~~as amended by 2009 Iowa Acts, Senate File 340.~~

[Filed 5/28/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5716C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to the statewide sobriety and drug monitoring program

The Department of Public Safety hereby amends Chapter 159, "Statewide Sobriety and Drug Monitoring Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 901D.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 901D and 2020 Iowa Acts, House File 2411.

Purpose and Summary

These amendments update Chapter 159 to reflect the revisions made to the Statewide Sobriety and Drug Monitoring Program by 2020 Iowa Acts, House File 2411. This legislation eliminated the provision that a person who has been ordered to participate in the Statewide Sobriety and Drug Monitoring Program by a court, and whose driver's license has been suspended or revoked, be eligible for a temporary restricted license before beginning participation in the program or being subject to the testing required by the program. The legislation also eliminated the requirement that a person install an approved ignition

PUBLIC SAFETY DEPARTMENT[661](cont'd)

interlock device on each of the vehicles owned or operated by that person in order to participate in the program.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5558C**. A public hearing was held on May 11, 2021. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on May 28, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making action is adopted:

Amend subrule 159.12(1) as follows:

159.12(1) Requirements. A person subject to testing in the 24/7 program is required to do all of the following:

a. and *b.* No change.

c. Participate in the 24/7 program when ordered as a condition of bond, pretrial release, sentence, probation, or parole, ~~or a temporary restricted license.~~

d. and *e.* No change.

f. ~~Install~~ Unless otherwise ordered by the court, install an approved ignition interlock device on all motor vehicles owned or operated by the person if the person's driver's license is suspended or revoked or as is otherwise required by Iowa Code section 321J.17, and in any circumstance in which Iowa Code chapter 321J requires the installation of an ignition interlock device, ~~or as ordered by the court pursuant to Iowa Code section 901D.3(2) "b."~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

g. and h. No change.

[Filed 5/28/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5714C

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to carbon monoxide alarms

The State Fire Marshal Division hereby amends Chapter 211, "Carbon Monoxide Alarms," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 100.18(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 100.18.

Purpose and Summary

The amendments to Chapter 211 implement the changes in nomenclature made by 2020 Iowa Acts, House File 2585, regarding persons who are deaf or hard of hearing. Section 4 of this legislation required owners of rental units to install light-emitting carbon monoxide alarms upon the request of tenants who are deaf or hard of hearing.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5559C**. A public hearing was held on May 7, 2021. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Fire Marshal on May 28, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

PUBLIC SAFETY DEPARTMENT[661](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).

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making action is adopted:

Amend rule 661—211.20(86GA,SF2219) as follows:

661—211.20(86GA,SF2219) Responsibility for installation and maintenance of carbon monoxide alarms.

211.20(1) and **211.20(2)** No change.

211.20(3) ~~*Hearing-impaired Deaf or hard-of-hearing tenant.*~~ An owner of a multiple-unit residential building or a single-family rental unit ~~in which a carbon monoxide alarm is required~~ that has a fuel-fired heater or appliance, a fireplace, or an attached garage, or the owner's agent, shall, upon request of a tenant who ~~has a~~ is deaf or hard of hearing impairment, install light-emitting carbon monoxide alarms.

[Filed 5/28/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5712C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rule making related to remittances payable to the department**

The Revenue Department hereby amends Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest," Chapter 70, "Replacement Tax and Statewide Property Tax," Chapter 78, "Replacement Tax and Statewide Property Tax on Rate-Regulated Water Utilities," and Chapter 82, "Cigarette Tax and Regulation of Delivery Sales of Alternative Nicotine Products or Vapor Products," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 421.14, 422.68, 422.69, 437A.21(5), 437B.17(4) and 453A.8(2).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 422.69, 437A.21(5), 437B.17(4) and 453A.8(2).

Purpose and Summary

This rule making implements statutory changes to how fees, taxes, interest, and penalties are paid and deposited with the Department. In particular, this rule making addresses a change to Iowa Code section 422.69. That section formerly required payment of fees, taxes, interest, and penalties to the Department to be paid in the form of remittances payable to the Treasurer of the State. The statute now requires that

REVENUE DEPARTMENT[701](cont'd)

remittances be made payable to the Department. The Department is still required to transmit payments to the Treasurer of the State. This rule making reflects that statutory change in the Department's rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5579C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on May 26, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 701—12.2(422,423) as follows:

701—12.2(422,423) Remittances.

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

12.2(2) ~~For tax periods starting on or after April 1, 1990, semimonthly~~ Semimonthly deposits and quarterly remittances of taxpayers required to make semimonthly deposits shall be made electronically in a format and by means specified ~~in~~ by the department. Deposit forms are not required to be filed when electronic transmission of deposits is done in the prescribed format by specified means. Quarterly returns shall be filed separately from the electronic transfer of remittances for taxpayers required to make

REVENUE DEPARTMENT[701](cont'd)

semimonthly deposits. Deposits and remittances transmitted electronically are considered to have been made on the date that the deposit or remittance is added to the bank account designated by the treasurer of the state of Iowa. The filing of a return within the period prescribed by law and payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

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

ITEM 2. Amend rule 701—70.17(437A) as follows:

701—70.17(437A) Payment of tax. Payment of the tax required to be shown due on the statewide property tax return shall accompany the filing of the return. All checks shall be made payable to ~~Treasurer, State of~~ the Iowa Department of Revenue. Failure to pay the tax required to be shown due on the tax return by the due date shall render the tax delinquent.

ITEM 3. Amend rule 701—78.16(437B) as follows:

701—78.16(437B) Payment of tax. Payment of the tax required to be shown due on the statewide property tax return shall accompany the filing of the return. All checks shall be made payable to ~~Treasurer, State of~~ the Iowa Department of Revenue. Failure to pay the tax required to be shown due on the tax return by the due date shall render the tax delinquent.

ITEM 4. Amend subrule 82.5(2) as follows:

82.5(2) Purchase of stamps from the department. Stamps may be purchased from the department and from authorized banks in unbroken rolls of 30,000 stamps, or other quantities authorized by the director. The stamps may be purchased only by persons holding an unrevoked distributor's permit or an unrevoked manufacturer's permit.

When cigarette stamps are purchased from the department, orders shall be sent directly to the department on a form prescribed by and available upon request from the department. The order must be accompanied by a remittance payable to ~~"Treasurer of State of Iowa"~~ the Iowa Department of Revenue in the amount of the face value of the stamps less any discount as provided in rule 701—82.7(453A). The stamps shall be sent to the purchaser through the United States Postal Service by registered mail or similar delivery service at the department's expense. The purchaser may request alternate methods of transmission, but such methods shall be at the expense of the purchaser. Regardless of the method used to send the stamps, title transfers to the purchaser at the time the department delivers the stamps to the carrier.

[Filed 5/27/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

ARC 5685C

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to restoration of agricultural lands during and after pipeline construction

The Utilities Board hereby amends Chapter 9, "Restoration of Agricultural Lands During and After Pipeline Construction," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 479.

UTILITIES DIVISION[199](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 479B.

Purpose and Summary

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). Based upon a review of stakeholder comments and the Board's review of various dockets, the Board has concluded that the best course for addressing the rules for the restoration of agricultural land during and after pipeline construction is for the Board to rescind the existing Chapter 9 and adopt a new Chapter 9. This rule making reorganizes the chapter, retains necessary provisions, and introduces new provisions to address issues that have arisen in various dockets.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 4, 2020, as **ARC 5266C**. The Board conducted an oral presentation on December 1, 2020, at 1:30 p.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

The Board received comments at the oral presentation from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Interstate Power and Light Company (IPL); MidAmerican Energy Company (MidAmerican); Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills); the Iowa Farm Bureau Federation (Farm Bureau); the Iowa State Association of Counties (ISAC); and the Northwest Iowa Landowners Association (NILA) relating to the scope of the rules as well as other technical changes throughout the rule making.

On December 8, 2020, the Board issued an order extending the deadline for initial comment submission. OCA, NILA, Farm Bureau, IPL, MidAmerican, and Black Hills filed comments based on the Board's order, which further addressed the issues raised at the oral presentation. On February 23, 2021, the Board issued an order requesting stakeholder comments on a draft adoption of the rules. OCA, NILA, Farm Bureau, IPL, MidAmerican, and Black Hills filed comments based on the Board's order requesting stakeholder comments on its proposed draft adoption, which addressed the last remaining issues stakeholders had with regard to the rule making.

The Board issued an order adopting new rules on May 12, 2021. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2020-0009.

Changes from the Notice have been made based upon comments made at the oral presentation, as well as the written comments submitted by interested parties.

Adoption of Rule Making

This rule making was adopted by the Board on May 12, 2021.

Fiscal Impact

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

Jobs Impact

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

Waivers

No waiver provision is included in the proposed rules because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 9.

UTILITIES DIVISION[199](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).

Effective Date

This rule making will become effective on July 21, 2021.

The following rule-making action is adopted:

Rescind 199—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE
CONSTRUCTION

199—9.1(479,479B) General information.

9.1(1) Authority and purpose. The rules in this chapter are adopted by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code sections 479.29 and 479B.20 to establish standards for the restoration of agricultural lands during and after pipeline construction. These rules constitute the minimum standards for restoration of agricultural lands disturbed by pipeline construction. These rules do not apply to land located within city boundaries, unless the land is used for agricultural purposes, or to interstate natural gas pipelines.

When a project-specific land restoration plan is required pursuant to Iowa Code section 479.29(9) or 479B.20(9), following notice and comment, the board may impose additional or more stringent standards as necessary to address issues specific to the nature and location of the particular pipeline project. Where a project-specific land restoration plan is not required pursuant to Iowa Code section 479.29(9) or 479B.20(9), the rules in this chapter shall constitute the minimum land restoration standards for any pipeline construction.

9.1(2) Definitions. The following words and terms, when used in these rules, shall have the meanings indicated below:

“Affected person” means any person with a legal right or interest in the property, including, but not limited to, a landowner, a contract purchaser of record, a person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.

“Agricultural land” means any land devoted to agricultural use, including, but not limited to, land used for crop production, cleared land capable of being cultivated, hay land, pasture land, managed woodlands and woodlands of commercial value, truck gardens, farmsteads, commercial agricultural-related facilities, feedlots, rangeland, livestock confinement systems, land on which farm buildings are located, and land used to implement management practices and structures for the improvement or conservation of soil, water, air, and related plant and animal resources.

“Board” means the utilities board within the utilities division of the department of commerce.

“County inspector” means a professional engineer who is licensed under Iowa Code chapter 542B, who is familiar with agricultural and environmental inspection requirements, and who is designated by the county board of supervisors to be responsible for completing an on-site inspection for compliance with this chapter and Iowa Code chapters 479 and 479B.

“Drainage structures” or *“underground improvements”* means any permanent structure used for draining agricultural lands, including tile systems and buried terrace outlets.

“Hazardous liquid” means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

UTILITIES DIVISION[199](cont'd)

“Person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“Pipeline” means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, or hazardous liquid, within or through Iowa.

“Pipeline company” means any person engaged in or organized for the purpose of owning, operating, or controlling pipelines.

“Pipeline construction” means activity associated with installation, relocation, replacement, removal, or operation or maintenance of a pipeline that disturbs agricultural land, but shall not include work performed during an emergency, tree clearing, or topsoil surveying completed on land under easement with written approval from the landowner. Emergency means a condition involving clear and immediate danger to life, health, or essential services, or a risk of a potentially significant loss of property. When the emergency condition ends, pipeline construction will be in accordance with these rules.

“Proper notice to the county inspector” means that the pipeline company and its contractors shall keep the county inspector continually informed of the work schedule and any changes to the schedule, and shall provide at least 24 hours’ written notice before commencing or continuing any construction activity which requires inspection by the county inspector, including, but not limited to, right-of-way staking, clearing, boring, topsoil removal and stockpiling, trenching, tile marking, tile screening, tile repairs, backfilling, decompaction, cleanup, restoration, or testing at any project location. The pipeline company may request that the county inspector designate a person to receive such notices. If proper notice is given, construction shall not be delayed due to a county inspector’s failure to be present on site.

“Soil conservation practices” means any land conservation practice recognized by federal or state soil conservation agencies, including, but not limited to, grasslands and grassed waterways, hay land planting, pasture, and tree plantings.

“Soil conservation structures” means any permanent structure recognized by federal or state soil conservation agencies, including, but not limited to, toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

“Surface drains” means any surface drainage system, such as shallow surface field drains, grassed waterways, open ditches, or any other conveyance of surface water.

“Till” means to loosen the soil in preparation for planting or seeding by plowing, chiseling, discing, or similar means. For the purposes of this chapter, agricultural land planted using no-till planting practices is also considered tilled.

“Topsoil” means the uppermost layer of the soil with the darkest color or the highest content of organic matter, generally referred to as the “A” horizon. In areas where the “A” horizon is determined by a certified professional soil scientist to be less than 12 inches, the topsoil depth shall include both the “A” and the “Bw” horizons as determined by the March 2017 United States Department of Agriculture Soil Survey Manual. Topsoil depth is to be determined under the supervision of a certified professional soil scientist.

“Underground storage” means storage of either natural gas or hazardous liquid in a subsurface stratum or formation of the earth.

“Wet conditions” means adverse soil conditions due to rain events, antecedent moisture, or ponded water, where the passage of construction equipment may cause rutting that mixes topsoil and subsoil, may prevent the effective removal or replacement of topsoil and subsoil, may prevent proper decompaction, or may damage underground tile lines.

199—9.2(479,479B) Filing of land restoration plans. Pursuant to Iowa Code sections 479.29 and 479B.20, a land restoration plan is required for any pipeline construction that requires a permit from the board and for any proposed amendment to an existing permit that involves pipeline construction, relocation, or replacement. The land restoration plan shall be filed with the appropriate petition and be identified as Exhibit I. For pipelines that do not need a permit from the board and that are constructed

UTILITIES DIVISION[199](cont'd)

across agricultural land, the pipeline company shall have on file with the board a general land restoration plan covering pipelines that do not need a permit from the board.

9.2(1) *Content of plan.* A land restoration plan shall include, but not be limited to, the following:

- a. A brief description of the purpose and nature of the pipeline construction project.
- b. A description of the sequence of events that will occur during pipeline construction.
- c. A description of how the pipeline company will comply with rules 199—9.4(479,479B) and 199—9.5(479,479B).
- d. The point of contact for landowner inquiries or claims as provided for in rule 199—9.5(479,479B).
- e. A unique identification number that follows a linearly sequential pattern on each parcel of land over which the pipeline will be constructed.

9.2(2) *Plan variations.* The board may by waiver allow variations from the requirements in this chapter if the pipeline company requesting a waiver is able to satisfy the standards set forth in rule 199—1.3(17A,474,476) and if the alternative methods proposed by the pipeline company would restore the land to a condition as good or better than provided for in this chapter.

9.2(3) *Mitigation plans and agreements.* Preparation of a separate land restoration plan may be waived by the board where a pipeline company enters into an agricultural impact mitigation plan or similar agreement with the appropriate agencies of the state of Iowa that satisfies the requirements of this chapter. If a mitigation plan or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be filed with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

199—9.3(479,479B) Procedure for review of plan.

9.3(1) *Timing.* The board will review the proposed land restoration plan, as established in rule 199—9.2(479,479B), at the same time it reviews the petition. Objections to the proposed plan shall be filed as part of the permit proceeding. The pipeline company shall modify the plan as required by the board.

9.3(2) *Distributing approved plan.* After the board has approved the plan as part of the board's review and approval of the petition, but prior to construction, the pipeline company shall provide copies of the final plan approved by the board to all landowners of property and persons in possession of the property under a lease that will be disturbed by the construction, the county board of supervisors in each county affected by the project, the county engineer of each affected county, and to the county inspector in each affected county.

199—9.4(479,479B) Staking and clearing of agricultural land.

9.4(1) *Easement staking.* The pipeline company shall allow the county inspector and the landowner to be present during the staking of the easement. Written notice of the staking shall be provided to the landowner and the county inspector in the same manner as provided for in proper notice to the county inspector. Pipeline construction may not occur until seven days after the easement is staked unless the landowner waives the seven-day period after the easement staking has been completed. If proper notice is given, easement staking shall not be delayed due to a county inspector or landowner's failure to be present on site.

9.4(2) *Trees and brush.* If trees are to be removed from the easement, the pipeline company shall consult with the landowner to determine if there are trees of commercial or other value to the landowner.

a. If there are trees of commercial or other value to the landowner, the pipeline company shall allow the landowner the right to retain ownership of the trees with the disposition of the trees to be negotiated prior to commencement of land clearing, or if the landowner does not want to retain ownership of the trees, the pipeline company shall hire a forester with local expertise to appraise the commercial value of any timber to be cut for construction of the pipeline. The pipeline company shall compensate the landowner for the full appraised commercial value of any timber removed. The pipeline company shall remove all cleared trees and debris left on or adjacent to the easement.

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b. If the trees to be cleared have been determined to have no commercial or other value to the landowner and there is no negotiated agreement between the pipeline company and the landowner for the disposition of the trees in advance of clearing of the easement, removal and disposal of the material shall be completed at the discretion of the pipeline company.

9.4(3) Fencing. The pipeline company may remove all field fences and gates, located within the pipeline company's easement, during clearing of the easement and may construct temporary fences and gates where necessary. Upon completion of the pipeline construction, the pipeline company shall replace any temporary field fences or gates with permanent field fences or gates. The pipeline company and landowner may negotiate separate agreements regarding field fences and gates. If livestock is present, the pipeline company shall construct any temporary or permanent fences and gates in a manner which will contain livestock.

199—9.5(479,479B) Restoration of agricultural lands.**9.5(1) Topsoil survey.**

a. Prior to the removal of any topsoil, the pipeline company shall direct that a topsoil survey be performed under the supervision of a certified professional soil scientist across the full extent of the easement for any pipeline which requires a board permit. A minimum of three soil depths shall be physically measured in the field at each cross section as follows: (1) one on the left edge of the easement; (2) one at 15 feet of the centerline of the pipeline on the working side of the right-of-way; and (3) one on the right edge of the working easement. Cross sections shall be taken a minimum of every 500 linear feet for the full extent of the easement. Each parcel of land shall have a minimum of two cross sections.

b. The pipeline company shall provide the results of the topsoil survey to the county board of supervisors, county inspector, county engineer, and affected persons at least six weeks prior to commencing construction.

9.5(2) Topsoil separation and replacement.

a. *Removal.* Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with pipeline construction unless otherwise provided in these rules. The actual depth of the topsoil, as determined by a topsoil survey, shall be stripped from the full extent of the easement. Topsoil shall also be removed and replaced in accordance with these rules at any location where land slope or contour is significantly altered to facilitate construction. Topsoil removal shall not occur during wet conditions.

b. *Soil storage.* The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The stored topsoil and subsoil shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be used to construct field entrances or drives, or be otherwise removed from the property, without the written consent of the landowner. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

c. *Stockpile stabilization.* Topsoil stockpiles shall be stabilized with seeding and mulch within 14 calendar days of stockpiling. Between October 15 and March 15, soil tackifier shall be used in place of seeding and mulch.

d. *Topsoil removal not required.* Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods that do not require the opening of a trench. If provided for in a written agreement between the pipeline company and the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

e. *Backfill.* The topsoil and subsoil shall be replaced in the reverse order in which they were excavated from the trench. The depth of the replaced topsoil shall conform as near as possible to the depth of topsoil that was removed. Where excavations are made for road, stream, drainage ditch, or other crossings, the original depth of topsoil shall be replaced as near as possible.

9.5(3) Pumping of water from open trenches.

a. In the event it becomes necessary to pump water from open trenches, the pipeline company shall pump the water in a manner that avoids damaging adjacent agricultural land. Damages from pumping

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water from trenches include, but are not limited to, inundation of crops and depositing of sediment in fields, pastures, and surface drains.

b. If water-related damages result from pumping water from trenches, the pipeline company shall either compensate the landowner for the damages or restore the land, pasture, surface drains, or similar land, to their preconstruction condition, at the landowner's discretion.

c. Written permission from the landowner is required before the pipeline company can pump water from trenches onto land outside of the pipeline company's easement.

d. All pumping of water shall comply with existing state drainage laws, local ordinances, and federal statutes.

9.5(4) Temporary and permanent repair of drain tile.

a. Pipeline clearance from drain tile. Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline.

b. Temporary repair. The following standards shall be used to determine if temporary repair of agricultural drainage tile lines encountered during pipeline construction is required.

(1) Any underground drain tile damaged, cut, or removed and found to be flowing or which subsequently begins to flow shall be temporarily repaired as soon as practicable, and the repair shall be maintained as necessary to allow for its proper function during construction of the pipeline. The temporary repairs shall be maintained in good condition until permanent repairs are made.

(2) Any underground drain tile damaged, cut, or removed and found to not be flowing shall have the upstream exposed tile line screened or otherwise protected to prevent the entry of foreign material and small animals into the tile system. The downstream tile line entrance shall be capped or filtered to prevent entry of mud or foreign material into the line if water level rises in the trench.

c. Marking. Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker shall not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

d. Permanent repairs. Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed within 14 days after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. The county inspector shall inspect each permanent repair for compliance with this chapter. If proper notice is given, construction shall not be delayed due to a county inspector's failure to be present on site. Permanent repair and replacement of damaged drain tile shall be performed in accordance with the following requirements:

(1) All damaged, broken, or cracked tile shall be removed.
(2) Only unobstructed tile shall be used for replacement.
(3) The tile furnished for replacement purposes shall be of a quality, size, and flow capacity at least equal to that of the tile being replaced.

(4) Tile shall be replaced using a laser transit, or similar instrument or method, to ensure that the tile's proper gradient and alignment are restored, except where relocation or rerouting is required for angled crossings. Tile lines at a sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUB PL-1 at the end of this chapter.

(5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUB PL-1 at the end of this chapter.

e. Inspection. Prior to backfilling of the applicable trench area, each permanent tile repair shall be inspected for compliance by the county inspector. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on site prior to backfilling.

f. Backfilling. The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that ensures that any further backfilling will not damage or misalign the repaired section of the tile line. The county inspector shall inspect that backfill for compliance with

UTILITIES DIVISION[199](cont'd)

this chapter. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

g. Subsurface drainage. Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

9.5(5) Removal of rocks and debris from the easement.

a. Removal. The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in the adjacent natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile or above the frost line. In addition, the pipeline company shall examine areas adjacent to the easement and along access roads and shall remove any large rocks or debris that may have rolled or blown from the right-of-way or fallen from vehicles.

b. Disposal. Rock that cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris shall include spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal or treated by appropriate in situ remediation.

9.5(6) Restoration after soil compaction and rutting.

a. Agricultural restoration. Agricultural land, including off right-of-way access roads traversed by heavy construction equipment that will be removed, shall be deep tilled to alleviate soil compaction upon completion of construction on the property. If the topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches deep on other lands and shall be performed under soil moisture conditions that result in a maximum standard penetration test (SPT) reading of 300 psi pursuant to ASTM D1586-11 performed by a qualified person. Decompaction shall not occur in wet conditions. Upon agreement, this tillage may be performed by the landowners or tenants using their own equipment.

b. Rutted land restoration. Rutted land shall be graded and tilled until restored as near as practical to its preconstruction condition. Rutting shall be remedied before any topsoil that was removed is replaced.

9.5(7) Restoration of terraces, waterways, and other erosion control structures. Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the elevation and grade existing prior to the time of pipeline construction. Any drain tiles or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUB PL-2 at the end of this chapter. The county inspector shall inspect restoration of terraces, waterways, and other erosion control structures for compliance with this chapter. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

9.5(8) Revegetation of untilled land.

a. Crop production. Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate, following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original or a comparable ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph 9.5(9) "b" shall apply.

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b. Delayed crop production. Agricultural land used for row crop or small grain production which will not be planted in that calendar year due to the pipeline construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become established and in such instances is not required if the landowner or tenant proposes to till the land the following year. The landowner may request ground cover where the construction is completed too late in the year for a cover crop to become established to prevent soil erosion.

c. Weed control. On any easement, including, but not limited to, construction easements and easements relating to valve sites, metering stations, and compression stations, the pipeline company shall provide for weed control in a manner that prevents the spread of weeds onto adjacent lands used for agricultural purposes. Spraying shall be done by a pesticide applicator that is appropriately licensed for spraying of pesticide in Iowa. If the pipeline company fails to control weeds within 45 days after receiving written notice from the landowner, the pipeline company shall be responsible for reimbursing all reasonable costs of weed control incurred by owners of adjacent land.

9.5(9) Future installation of drain tile or soil conservation practices and structures.

a. Future drain tile. The pipeline company shall consult with affected persons regarding plans for future drain tile installation. Where an affected person provides the pipeline company with written plans prepared by a qualified tile technician for future drain tile improvements before an easement is secured, the pipeline shall be installed at a depth which will allow proper clearance between the pipeline and the proposed future tile installation.

b. Future practices and structures. The pipeline company shall consult with any affected person's plans for future use or installation of soil conservation practices or structures. Where an affected person provides the pipeline company with a design for such practice or structure prepared by a qualified technician before an easement is secured, the pipeline shall be installed at a depth that will allow for future installation of the planned soil conservation practice or structure and that will retain the integrity of the pipeline.

9.5(10) Restoration of land slope and contour. Upon completion of construction, the slope, contour, grade, and drainage pattern of the disturbed area shall be restored as near as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area, which visibly affects land contour or undesirably alters surface drainage, shall be remediated by the pipeline company by means such as regrading and, if necessary, import of appropriate fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished. The county inspector shall inspect restoration of land slope and contour for compliance with this chapter.

9.5(11) Restoration of areas used for field entrances or temporary roads. Upon completion of construction and land restoration, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule 9.5(10) and deep tilled as required by subrule 9.5(6). If by agreement, or at landowner request, and subject to any necessary approval by local public road authorities, a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition. The county inspector shall inspect restoration of areas used for field entrances or temporary roads for compliance with this chapter.

9.5(12) Construction in wet conditions. The county inspector, in consultation with the pipeline company and the landowner or person in possession of the land pursuant to a lease, if present, shall determine when construction should not proceed in a given area due to wet conditions. The county inspector shall have the sole authority to determine whether construction should be halted due to wet conditions. Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed or underground drainage structures may be damaged. To facilitate construction in wet soils, the pipeline company may elect to remove and stockpile the topsoil from the

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traveled way, install mats or padding, or use other methods acceptable to the county inspector. Topsoil removal, storage, and replacement shall comply with subrule 9.5(2).

9.5(13) Access to land. Nothing in this rule shall prohibit a landowner or person in possession of the land pursuant to a lease from having access to the property. A landowner or person in possession of the land pursuant to a lease shall not disrupt ongoing construction and shall not compromise the safety considerations of the construction. A landowner or person in possession of the land pursuant to a lease shall abide by any and all safety instructions established by the pipeline company during construction.

199—9.6(479,479B) Designation of a pipeline company point of contact for landowner inquiries or claims.

9.6(1) For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for inquiries or claims from affected persons. The designation shall include the name of an individual to contact and a toll-free telephone number, an email address, and an address through which that person can be reached. The pipeline company shall also provide the name of and contact information for the county inspector. This information shall be provided to all affected persons prior to commencement of construction. Any change in the point of contact shall be promptly communicated in writing to affected persons. A designated point of contact shall remain available for all affected persons for at least one year following project completion and for affected persons with unresolved damage claims until such time as those claims are settled.

9.6(2) If requested by an affected person, any notice required to be given to the county inspector shall also be given to the affected person.

199—9.7(479,479B) Separate agreements. This chapter does not preclude the application of provisions for protecting or restoring property that are different from those contained in this chapter, or in a land restoration plan, which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. The agreement shall be in writing, and the pipeline company shall provide a copy to the county inspector and the board.

199—9.8(479,479B) Notice of violation and halting construction.

9.8(1) Notice of violation. If the county inspector identifies a violation of the standards adopted in this chapter, Iowa Code section 479.29 or 479B.20, or a separate agreement between the pipeline company and the landowner, the county inspector shall give verbal notice, followed by written notice, to the pipeline company and the pipeline company's contractor and require the pipeline company to take corrective action.

9.8(2) Halting construction. A county inspector may temporarily halt construction at the location of the dispute if construction is not in compliance with the standards adopted in this chapter, the land restoration plan, or the terms of an independent agreement between the pipeline company and landowner regarding land restoration or line location until the county inspector consults with a supervisor of the pipeline company or contractor. If, after consultation with a supervisor of the pipeline company or contractor, agreement on corrective action to address the violation cannot be reached, the county inspector may submit a request to the county board of supervisors for resolution of the issue. Construction may not resume at the disputed location either (1) until the county inspector and supervisor of the pipeline company reach an agreement on a resolution or (2) where the board of supervisors has been contacted, until the board of supervisors has responded or after one business day after contact by the county inspector. If a resolution is not reached, construction may continue; however, the pipeline company will be responsible for any damages or for correcting any violation.

199—9.9(479,479B) Enforcement. A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code sections 479.29 and 479B.20, including giving proper notice before staking, clearing, boring, topsoil removal and stockpiling, trenching, tile marking, silt screening, tile repair or backfilling, decompaction, cleanup, restoration, or testing of any easement. The

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pipeline company shall pay the reasonable costs for any work provided during the pipeline construction by the county inspector. If the pipeline company or its contractor does not comply with the requirements of Iowa Code section 479.29 or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken. The county board of supervisors may also file a complaint with the board seeking imposition of civil penalties.

199—9.10(479,479B) Project completion. The county inspector for each county affected by the pipeline project shall recommend to the county board of supervisors that the pipeline project be considered complete upon completion of restoration of all affected agricultural lands and 70 percent growth is established in locations requiring seeding after receiving written notification by the pipeline company to the same effect. The county board of supervisors shall determine whether the project is completed.

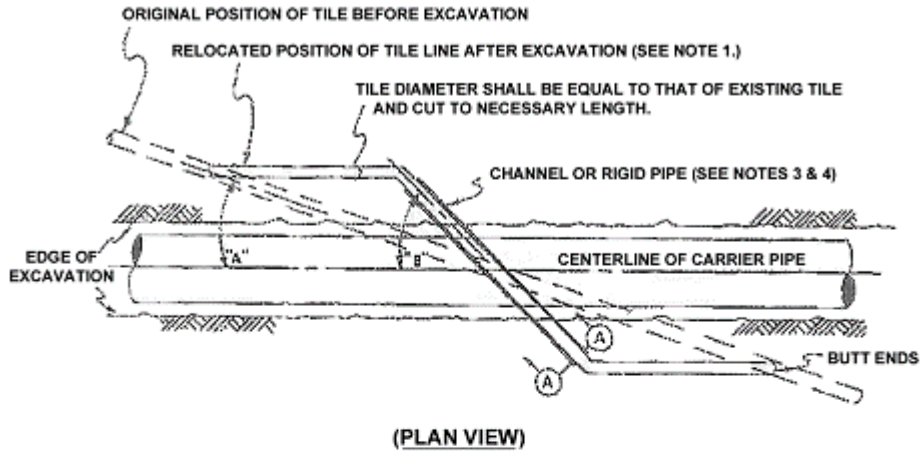
199—9.11(479,479B) Document submittal. Once a project is completed, project documents shall be submitted as follows:

9.11(1) Document turnover. The county inspector shall submit to the county board of supervisors and the pipeline company copies of inspection reports; tile reports and maps; punch lists; notice of violation documents; decompaction agreements; separate agreements, including those that excuse the pipeline company from certain construction responsibilities; and landowner agreements. The documents shall also be available for inspection by the board or an affected person upon request.

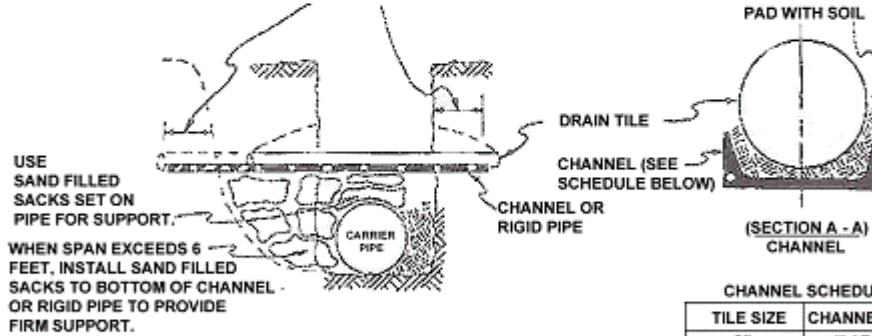
9.11(2) As-built drawings. The pipeline company shall provide the county inspector and affected landowners with copies of pipe alignment as-built drawings and underground drain tile as-built drawings, including the Global Positioning System location of drain tile.

Drawing No. IUB PL-1

RESTORATION OF DRAIN TILE



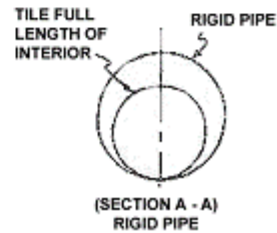
20" MINIMUM LENGTH OF CHANNEL OR RIGID PIPE SUPPORT ON SOLID SOIL, EACH SIDE OF EXCAVATION.

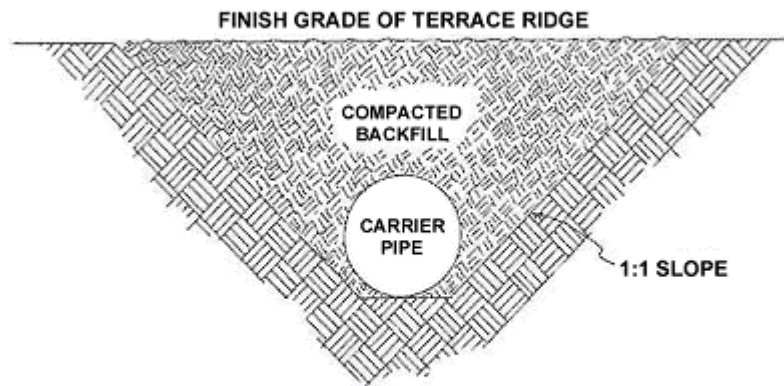


CHANNEL SCHEDULE

TILE SIZE	CHANNEL SIZE
3"	4" AT 5.4#
4" - 5"	5" AT 6.7#
6" - 9"	7" AT 9.8#
10" & LARGER	10" AT 15.3#

- NOTES:
1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AGREED TO BY LANDOWNER AND COMPANY.
 2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
 3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
 4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.



RESTORATION OF TERRACE**NOTE:**

COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.

IUB PL-2

These rules are intended to implement Iowa Code sections 479.29 and 479B.20.

[Filed 5/13/21, effective 7/21/21]

[Published 6/16/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/16/21.

PUBLIC HEARINGS: POSSIBLE USE OF TELEPHONIC OR ELECTRONIC FORMAT DUE TO COVID-19

To protect public health and promote efficient government operations during the COVID-19 outbreak, the format of a public hearing on a Notice of Intended Action (NOIA) scheduled and published in the Iowa Administrative Bulletin (IAB) may be changed, without further publication in the IAB, from an in-person hearing at a physical location to a hearing conducted solely via telephonic or electronic means. For information on whether the format of a public hearing as published in the IAB has changed and how to participate telephonically or electronically in such a hearing, see the Internet site of the relevant agency or contact the agency directly using the contact information published in the NOIA. See also section 99 of the Governor's proclamation of disaster emergency issued May 27, 2021: governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202021.05.27.pdf.